

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec(2004)7 of the Committee of Ministers to member states on organ trafficking

*(Adopted by the Committee of Ministers on 19 May 2004
at the 884th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members and that this aim may be pursued, *inter alia*, by the adoption of common action in the field of health;

Taking into account Resolution (78) 29 on harmonisation of legislation of member states relating to removal, grafting and transplantation of human substances and the final text of the 3rd Conference of European Health Ministers (Paris, 16-17 November 1987), and the World Health Organisation Resolution WHA 42.5 condemning the purchase and sale of organs of human origin;

Having regard to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (ETS No. 164) and in particular to Articles 19 and 20 thereof;

Bearing in mind the requirements of the Additional Protocol to the above convention on Transplantation of Organs and Tissues of Human Origin, and in particular that Article 22 requires the prohibition of organ and tissue trafficking; that Article 3 requires member states to have a transplant system in place which allocates organs, and where appropriate tissues, only to those on the official waiting list; that Article 26 requires member states to provide for appropriate sanctions to be applied in the event of any infringement of the provisions contained in the aforementioned protocol; that Article 21 requires that the human body and its parts shall not, as such, give rise to financial gain or comparable advantage,

Considering that:

The universal shortage of organs and tissues can lead patients to a desperate search for a transplant which may involve unacceptable practices from a legal or ethical point of view;

Organ shortage can also encourage illegal organisations to traffic human beings for the purpose of organ transplantation, or to traffic organs obtained as a result of inducement or coercion;

Organ trafficking may undermine public confidence in organ and tissue transplantation services, decreasing the public's disposition to legitimate organ donation, thereby exacerbating the shortage of organs and tissues for transplantation,

Recommends that the governments of member states conform with the requirements set out in the appendix to this recommendation.

Appendix to Recommendation Rec(2004)7

Article 1 – Object

Member states should protect the dignity and identity of all persons and guarantee without discrimination their fundamental rights and freedoms with regard to organ and tissue transplantation.

Member states should make it clear to all that organ trafficking exploits human beings and is illegal, and should take all possible measures to prevent organ trafficking (see Article 4).

Article 2 – Scope and definitions

1. The provisions of this recommendation shall apply to all living persons and to the removal of organs, tissues and cells from those recently deceased.
2. The provisions of this recommendation applicable to tissues shall apply also to cells, including haematopoietic stem cells.
3. The provisions of this recommendation do not apply to blood or blood derivatives.
4. For the purposes of this recommendation the term “organ and tissue trafficking” applies to:
 - the transportation of a person to a place for the removal of organs or tissues without his or her valid consent;
 - the transportation of a person to a place for the removal of organs or tissues with his or her consent but in contravention of legislation or other controls in operation in the relevant jurisdiction;
 - the transplantation of removed organs and tissues, whether transported or not, in contravention of legislation or other regulations in operation in the relevant jurisdiction or in contravention of international legal instruments.
5. For the purposes of this recommendation:
 - the term “transplantation” covers the complete process of removal of an organ or tissue from one person and implantation of that organ or tissue into another person, including all procedures for preparation, preservation, storage and transportation;
 - the term “removal” refers to removal from the body of an organ or tissue intended for transplantation, by a surgical procedure or by other means.

Article 3 – Prevention

Prevention of organ trafficking should be undertaken in an integrated way by:

- Improving organ and tissue availability by well-established means such as those described in the Council of Europe consensus document “Meeting the organ shortage: current status and strategies for improvement of organ donation” (1999);
- Approving a legal framework which strictly forbids any kind of commercialisation of the human body and its parts consistent with the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (ETS No. 164). Legislation should be extended to citizens going abroad. However, medical care should not be denied;

- Assuring the traceability of human organs and tissues through the accreditation and control of centres for procurement and/or transplantation, tissue banks, and the follow up of patients;
- In the case of a living donor transplant, member states should provide for official authorisation of all such transplants;
- In all cases where the living donor is a foreign citizen, the relevant officially recognised bodies in the country of transplantation and in the home country of the living donor must be informed;
- In the case of a living donor, all payments to the donor should be strictly prohibited and considered a criminal offence.

This provision should not apply to payments which do not constitute a financial gain or a comparable advantage, in particular:

- compensation of living donors for loss of earnings and any other justifiable expenses caused by the removal or by related medical examinations;
- payment of a justifiable fee for legitimate medical or related technical services rendered in connection with transplantation;
- compensation in case of unjustified harm resulting from the removal of organs or tissues from living donors.

Article 4 – Legal instruments

1. Member states should ensure that there are legal instruments in place which prohibit the trafficking of persons for the purpose of organ or tissue transplantation and the trafficking of organs and tissues themselves.
2. Member states should ensure that those legal instruments prohibit:
 - the removal of organs and tissues except in centres or circumstances recognised for the purpose and by health professionals with appropriate training and experience;
 - the implantation of organs and tissues except in centres or circumstances recognised for the purpose and by health professionals with appropriate training and experience;
 - financial gain from the human body or parts of the body intended for transplantation;
 - advertising with the intention of securing persons or organs or tissues for trafficking or for financial gain;
 - organising or running an organisation or service involved in organ or tissue trafficking.
3. Member states shall ensure that legislation provides for appropriate sanctions to be applied in the event of any infringement of the provisions of this recommendation.

Article 5 – The transplantation system

1. Member states shall ensure the provision of a nationally recognised transplantation system which guarantees equitable access to transplant services.
2. National transplant waiting lists should be established in compliance with the Committee of Ministers' Recommendation Rec(2001)5 on the management of organ transplant waiting lists and waiting times.

3. The system shall ensure that:

- appropriate information is recorded on all organs and tissues removed for the purposes of transplantation;
- all organs, and where appropriate tissues, are only allocated to persons who are on a nationally recognised waiting list;
- appropriate information is recorded on all organs and tissues used for implantation or other purposes;
- information on the risks associated with organs obtained illegally is provided.

4. The information provided should ensure traceability from donor to recipient but shall be collected, processed and communicated in accordance with regulations relating to confidentiality and personal data protection.

Article 6 – International co-operation

1. Organ trafficking is a universal problem. Therefore international co-operation is required to combat it.

2. Member states should ensure full co-operation with all other states and with international agencies, including law enforcement agencies, in order to combat organ trafficking, and apply the sanctions provided for in this recommendation to any person or entity involved in organ trafficking.

3. Member states should present a full report of any allegations or instances of organ trafficking within their territory to the Secretary General of the Council of Europe.

Article 7 – Information for the general public

Member states should ensure that the general public is fully informed about organ trafficking and the penalties which may be incurred. In particular:

- accurate information about organ and tissue donation and transplantation should be provided;
- organ and tissue donation should be promoted as positive behaviour that contributes to saving lives and improving the health of many people;
- false reports on organ trafficking may alarm the general public and adversely affect organ and tissue donation and should be refuted.