

PREDLOG

ZAKON O POTVR IVANJU KONVENCIJE SAVJETA EVROPE PROTIV TRGOVINE LJUDSKIM ORGANIMA

lan 1

Potvr uje se Konvencija Savjeta Evrope protiv trgovine ljudskim organima, sa injena u Santiago de Compostela, 25. marta 2015. godine, u originalu na engleskom i francuskom jeziku.

lan 2

Tekst Konvencije iz lana 1 ovog zakona, u originalu na engleskom jeziku i u prevodu na crnogorski jezik, glasi:

Konvencija Savjeta Evrope protiv trgovine ljudskim organima

Preamble

Države lanice Savjeta Evrope i druge potpisnice ove Konvencije;

Imaju i u vidu Univerzalnu Deklaraciju o ljudskim pravima, usvojenu od strane Generalne skupštine Ujedinjenih nacija 10. decembra, 1948. godine, i Konvenciju o zaštiti ljudskih prava i osnovnih sloboda (1950, ETS br.5);

Imaju i u vidu Konvenciju o zaštiti ljudskih prava i dostojanstva ljudskog bi a u pogledu primjene biologije i medicine: Konvencija o ljudskim pravima i biomedicini (1997, ETS br. 164) i Dodatni protokol uz Konvenciju o zaštiti ljudskih prava i biomedicini u vezi presa ivanja organa i tkiva ljudskog porijekla (2002, ETS br. 186);

Imaju i u vidu Protokol za spre avanje, suzbijanje i kažnjavanje trgovine ljudima, posebno trgovine ženama i djecom, koji dopunjuje Konvenciju Ujedinjenih nacija protiv transnacionalnog organizovanog kriminala (2000) i Konvenciju Savjeta Evrope o borbi protiv trgovine ljudima (2005, CETS br. 197);

Imaju i u vidu da je cilj Savjeta Evrope postizanje ve eg jedinstva me u njegovim lanicama;

Imaju i u vidu da trgovina ljudskim organima narušava ljudsko dostojanstvo i pravo na život i predstavlja ozbiljnu opasnost po javno zdravlje;

Odlu ni da na zna ajan na in doprinesemo suzbijanju trgovine ljudskim organima kroz uvo enje novih krivi nih djela koja e dopuniti postoje e me unarodne pravne instrumente u oblasti trgovine ljudima u svrhu uzimanja organa;

S obzirom da je svrha ove Konvencije spre avanje i borba protiv trgovine ljudskim organima, a da se primjena odredaba Konvencije koje se ti u materijalnog krivi nog prava treba sprovesti imaju i u vidu njenu svrhu i princip proporcionalnosti;

Prepoznaju i da je potrebno podsticati blisku me unarodnu saradnju izme u država lanica Savjeta Evrope kao i ne lanica, u cilju efikasne borbe protiv globalne opasnosti od trgovine ljudskim organima,

složile su se o sljede em:

I. Ciljevi, obim primjene i koriš enje termina

Ciljevi

lan 1

1. Svrha ove Konvencije je:

- a) spre avanje i suzbijanje trgovine ljudskim organima obezbje ivanjem kriminalizacije odre enih djela;
- b) zaštita prava žrtava krivi nih djela utvr enih u skladu sa ovom Konvencijom;
- c) olakšavanje saradnje u suzbijanju trgovine ljudskim organima na nacionalnom i me unarodnom nivou.

2. Da bi se osiguralo efikasno sprove enje odredbi Konvencije od strane država potpisnica, njome se uspostavlja poseban mehanizam za pra enje.

Obim primjene i upotreba termina

lan 2

1. Ova Konvencija se primjenjuje na trgovinu ljudskim organima u svrhu presa ivanja ili u druge svrhe, kao i na druge oblike nezakonitog uzimanja i nelegalnog usa ivanja.

2. Za svrhe ove Konvencije, izraz:

- "Trgovina ljudskim organima" podrazumijeva svaku nezakonitu aktivnost u vezi sa ljudskim organima u skladu sa odredbama lana 4 stav 1 i l. 5, 7, 8 i 9 ove Konvencije;

- "Ljudski organ" podrazumijeva odvojeni dio ljudskog tijela, sa injen od razli itih tkiva, koji održava svoju strukturu, vaskularizaciju i sposobnost razvijanja fizioloških funkcija sa zna ajnim nivoom autonomije. Dio organa se tako e smatra organom ako se njegova funkcija koristi u istu svrhu koju ima cio organ u ljudskom tijelu, pri tom zadržavaju i iste uslove vezane za strukturu i vaskularizaciju.

Princip nediskriminacije

Ilan 3

Implementacija odredbi ove Konvencije od strane država potpisnica, a posebno koriš enje mјera za zaštitu prava žrtava, obezbijedi e se bez diskriminacije po bilo kom osnovu, kao što su pol, rasa, boja kože, jezik, starost, vjeroispovest, politi ko ili bilo koje drugo mišljenje, nacionalno ili socijalno porijeklo, veza s nekom nacionalnom manjinom, imovinsko stanje, ro enje, seksualna orijentacija, zdravstveno stanje, invaliditet ili drugi status.

II. Materijalno krivi no pravo

Nedozvoljeno uzimanje ljudskih organa

Ilan 4

1. Svaka strana e preduzeti neophodne zakonodavne i druge mјere kako bi se uzimanje ljudskih organa od živih ili preminulih davaoca propisalo kao krivi no djelo u njenom doma em zakonodavstvu, kada je u injeno sa umišljajem:

- a) gdje se uzimanje obavlja bez slobodne, informisane i posebne saglasnosti živog ili preminulog davaoca, ili, u slu aju preminulog davaoca, gdje uzimanje nije odobreno doma im zakonodavstvom;
- b) gdje je živom davaocu, ili tre em licu, ponu ena finansijska dobit ili sli na prednost u zamjenu za uzimanje organa;
- c) gdje je tre oj strani ponu ena ili je ista primila finansijsku dobit ili sli nu prednost u zamjenu za uzimanje organa od preminulog davaoca.

2. Svaka država ili Evropska unija može, u trenutku potpisivanja ili prilikom deponovanja instrumenta potvr ivanja, prihvatanja ili odobravanja, izjavom upu enom generalnom sekretaru Savjeta Evrope, izjaviti da zadržava pravo da ne primijeni stav 1. ovog lana na uzimanje ljudskih organa od živih davaoca u izuzetnim slu ajevima i u skladu sa odgovaraju im garancijama ili odredbama o saglasnosti sadržanim u doma em zakonodavstvu. Svaka rezerva izražena na osnovu ovog stava sadrža e kratku izjavu o relevantnom doma em zakonu.

3. Izraz "finansijska dobit ili sli na prednost", u smislu stava 1 ta . b i c, ne e uklju ivati naknadu za gubitak zarade i sve druge opravdane troškove prouzrokovane uzimanjem organa ili srodnim ljekarskim pregledima, ili naknadu u slu aju štete koja nije svojstvena uzimanju organa.

4. Svaka strana e razmotriti preduzimanje neophodnih zakonodavnih ili drugih mjeru kako bi se uzimanje ljudskih organa od živih ili preminulih davaoca propisalo kao krivi no djelo u doma em zakonodavstvu, gdje se uzimanje obavlja izvan okvira doma eg sistema presa ivanja, ili kada se uzimanje vrši u suprotnosti sa osnovnim principima nacionalnih zakona ili pravila o presa ivanju. Ako država potpisnica ustanovi krivi na djela u skladu sa ovom odredbom, ona e nastojati da primjenjuje i 1. 9 do 22 na takva krivi na djela.

Koriš enje bespravno uzetih organa za svrhe usa ivanja ili druge svrhe osim usa ivanja lan 5

Svaka država potpisnica e preduzeti neophodne zakonodavne i druge mjeru kako bi se korištenje nedozvoljeno uzetih organa opisano u lanu 4 stav 1, za svrhe usa ivanja ili druge svrhe osim usa ivanja, propisalo kao krivi no djelo u njenom doma em zakonodavstvu, kada je u injeno sa umišljajem.

Usa ivanje organa van doma eg sistema presa ivanja ili u suprotnosti sa osnovnim principima nacionalnog zakonodavstva o presa ivanju

lan 6

Svaka država potpisnica e razmotriti preduzimanje neophodnih zakonodavnih ili drugih mjeru kako bi se usa ivanje ljudskih organa od živih ili preminulih davaoca propisala kao krivi no djelo u njenom doma em zakonodavstvu, kada je u injena sa umišljajem, gdje se usa ivanje obavlja izvan okvira doma eg sistema presa ivanja, ili gdje se usa ivanje vrši u suprotnosti sa osnovnim principima nacionalnog zakonodavstva ili pravila o presa ivanju. Ako država potpisnica ustanovi krivi na djela u skladu sa ovom odredbom, ona e nastojati da primjenjuje i 1. 9 do 22 na takva krivi na djela.

Nezakonito traženje, regrutovanje, nu enje i zahtijevanje neosnovane prednosti

lan 7

1. Svaka država potpisnica e preduzeti neophodne zakonodavne i druge mjeru kako bi traženje i regrutovanje davaoca ili primaoca organa propisala kao krivi no djelo u njenom doma em zakonodavstvu, kada su u injeni sa umišljajem, i gdje se sprovode radi finansijske dobiti ili uporedive koristi za lice koje navodi ili regrutuje, ili za tre e lice.

2. Svaka država potpisnica će preduzeti neophodne zakonodavne i druge mjere kako bi se propisalo kao krivi no djelo, kada je u injeno sa umišljajem, obe avanje, nu enje ili davanje od strane bilo kog lica, direktno ili indirektno, bilo koje neosnovane koristi zdravstvenim radnicima, javnim funkcionerima ili licima koja vode ili rade za subjekte u privatnom sektoru u bilo kom svojstvu, sa ciljem vršenja ili olakšavanja uzimanja ili usa ivanja ljudskog organa, gdje se uzimanje ili usa ivanje odvijaju pod okolnostima koje su opisane u lanu 4 stav 1 ili lanu 5 i gdje je to primjenjivo, u lanu 4 stav 4 ili lanu 6.

3. Svaka država potpisnica će preduzeti neophodne zakonodavne i druge mjere kako bi se propisalo kao krivi no djelo, kada je u injeno sa umišljajem, zahtijevanje ili prihvatanje od zdravstvenih radnika, javnih funkcionera ili lica koja upravljaju ili rade za subjekte u privatnom sektoru u bilo kom svojstvu, bilo kakve neosnovane prednosti u cilju obavljanja ili olakšavanja uzimanja ili usa ivanja ljudskog organa, gdje se uzimanje ili usa ivanje odvijaju pod okolnostima koje su opisane u lanu 4 stav 1 ili lanu 5 i gdje je to primjenjivo u lanu 4 stav 4 ili lanu 6.

Priprema, o uvanje, skladištenje, transport, prenošenje, prijem, uvoz i izvoz nedozvoljeno uzetih ljudskih organa

lan 8

Svaka država potpisnica će preduzeti neophodne zakonodavne i druge mjere kako bi propisala kao krivi no djelo u njenom domaćem zakonodavstvu, kada je po injeno sa umišljajem, sljedeće:

- a) priprema, uvanje i skladištenje ljudskih organa na nedozvoljen na in opisan u lanu 4 stav 1 i gdje je to primjenjivo, u lanu 4 stav 4;
- b) transport, prenošenje, prijem, uvoz i izvoz nedozvoljeno uzetih ljudskih organa na na in opisan u lanu 4 stav 1 i kada je to primjenjivo u lanu 4 stav 4.

Pomaganje ili podsticanje i pokušaj

lan 9

1. Svaka država potpisnica će preduzeti neophodne zakonodavne i druge mjere kako bi se pomaganje ili podsticanje na izvršenje bilo kog od krivi nih djela utvr enih u skladu sa ovom Konvencijom propisali kao krivi na djela, kada su u injena sa umišljajem.
2. Svaka država potpisnica će preduzeti neophodne zakonodavne i druge mjere kako bi se namjerni pokušaj da se po ini bilo koje od krivi nih djela utvr enih u skladu sa ovom Konvencijom propisao kao krivi no djelo.
3. Svaka država potpisnica ili Evropska unija može u trenutku potpisivanja ili prilikom deponovanja instrumenta potvr ivanja, prihvatanja ili odobravanja, izjavom upu enom

generalnom sekretaru Savjeta Evrope, izjaviti da zadržava pravo da ne primjenjuje stav 2 ili da ga primjenjuje samo u odre enim slu ajevima ili okolnostima, na djela utvr ena u skladu sa 1. 7 i 8.

Nadležnost

Ian 10

1. Svaka država potpisnica e preduzeti takve zakonodavne ili druge mjere koje mogu biti potrebne kako bi utvrdila nadležnost nad svim krivi nim djelima predvi enim ovom Konvencijom, kada je krivi no djelo po injeno:

- a) na njenoj teritoriji; ili
- b) na brodu koji plovi pod zastavom te zemlje; ili
- c) u vazduhoplovu koji je registrovan po zakonima te države potpisnice; ili
- d) od strane jednog od njenih državljanina; ili
- e) od strane lica koje ima prebivalište na njenoj teritoriji.

2. Svaka država potpisnica e nastojati da preduzme neophodne zakonodavne ili druge mjere kako bi utvrdila nadležnost nad svim krivi nim djelima predvi enim ovom Konvencijom, gdje je djelo po injeno protiv njenog državljanina ili lica koja ima prebivalište na njenoj teritoriji.

3. Svaka država potpisnica ili Evropska unija može u trenutku potpisivanja ili prilikom deponovanja instrumenta potvr ivanja, prihvatanja ili odobravanja, izjavom upu enom generalnom sekretaru Savjeta Evrope, izjaviti da zadržava pravo da ne primjenjuje, ili da primjenjuje samo u odre enim slu ajevima ili okolnostima, pravila o nadležnosti iz stava 1 ta . d i e ovog lana.

4. Za gonjenje zbog krivi nih dela utvr enih u skladu sa ovom Konvencijom, svaka država potpisnica e preduzeti neophodne zakonodavne ili druge mjere kako bi se osiguralo da njeni nadležnosti u pogledu stava 1 ta . d i e ovog lana ne bude podre ena uslovu da se krivi no gonjenje može pokrenuti samo nakon prijavljivanja od strane žrtve ili davanja informacija od strane države o mjestu gdje je krivi no djelo po injeno.

5. Svaka država potpisnica ili Evropska unija može u trenutku potpisivanja ili prilikom deponovanja instrumenta potvr ivanja, prihvatanja ili odobravanja, izjavom upu enom generalnom sekretaru Savjeta Evrope, izjaviti da zadržava pravo da ne primjenjuje ili da primjenjuje samo u odre enim slu ajevima stav 4 ovog lana.

6. Svaka država potpisnica e preduzeti neophodne zakonodavne ili druge mjere kako bi se utvrdila nadležnost nad krivi nim djelima propisanim u skladu sa ovom konvencijom, u slu ajevima u kojima je navodni po inilac prisutan na njenoj teritoriji, a nije izru en drugoj državi isklju ivo na osnovu njegovog ili njenog državljanstva.

7. Kada više država potpisnica tvrdi da ima nadležnost nad navodnim krivi nim djelom utvr enim u skladu sa ovom Konvencijom, države potpisnice e se, po potrebi, konsultovati sa ciljem utvr ivanja najpogodnije nadležnosti za krivi no gonjenje.

8. Ne dovode i u pitanje opšta pravila me unarodnog prava, ova Konvencija ne isklju uje bilo kakvu krivi nu nadležnost države potpisnice u skladu sa njenim unutrašnjim pravom.

Odgovornost pravnih lica

Ilan 11

1. Svaka država potpisnica e preduzeti neophodne zakonodavne i druge mjere kako bi se osiguralo da se pravna lica mogu smatrati odgovornim za djela utvr ena u skladu sa ovom Konvencijom, ako su po injena u njihovu korist od strane bilo kog fizi kog lica koje djeluje bilo pojedina no ili kao dio organa pravnog lica, koje ima vode u poziciju unutar njega na osnovu:

- a) ovlaš enja za zastupanje tog pravnog lica;
- b) ovlaš enja da donosi odluke u ime tog pravnog lica;
- c) ovlaš enja da vrši kontrolu unutar tog pravnog lica.

2. Osim u slu ajevima predvi enim u stavu 1 ovog lana, svaka država potpisnica e preduzeti neophodne zakonodavne i druge mjere kako bi se osiguralo da se pravno lice može smatrati odgovornim kada nedostatak nadzora ili kontrole od strane fizi kog lica iz stava 1 omogu i izvršenje krivi nog djela utvr enog u skladu sa ovom Konvencijom u korist tog pravnog lica od strane fizi kog lica koje djeluje u njegovo ime.

3. U skladu sa pravnim principima države potpisnice, odgovornost pravnog lica može biti krivi na, gra anska ili upravna.

4. Takva odgovornost ne e dovoditi u pitanje krivi nu odgovornost fizi kih lica koja su po inila krivi no djelo.

Sankcije i mjere

Ilan 12

1. Svaka država potpisnica e preduzeti neophodne zakonodavne i druge mjere kako bi se osiguralo da djela ustanovljena ovom Konvencijom budu kažnjiva efikasnim, proporcionalnim i odvra aju im sankcijama. Ove sankcije obuhvataju, za krivi na djela utvr ena u skladu sa lanom 4 stav 1 i gdje je to primjenjivo lanom 5 i 1. 7 do 9, ako su po injena od strane fizi kih lica, kazne lišenja slobode koje mogu dovesti do izru enja.

2. Svaka država potpisnica e preduzeti neophodne zakonodavne i druge mjere kako bi se osiguralo da pravna lica koja su odgovorna u skladu sa lanom 11, podliježu efikasnim,

proporcionalnim i odvra aju im sankcijama, uklju uju i i krivi ne ili nekrivi ne nov ane kazne, a može uklju iti i druge mjere, kao što su:

- a) privremena ili trajna suspenzija vršenja privredne djelatnosti;
- b) stavljanje pod sudski nadzor;
- c) sudska naredba o zatvaranju.

3. Svaka država potpisnica e preduzeti neophodne zakonodavne i druge mjere kako bi:

- a) Dozvolila zaplenu i konfiskaciju imovine ste ene krivi nim djelima utvr enim u skladu sa ovom konvencijom, ili imovine ija vrijednost odgovara takvim prihodima;
- b) Omogu ila privremeno ili trajno zatvaranje svakog objekta koji se koristi za obavljanje bilo kog krivi nog djela utvr enog u skladu sa ovom konvencijom, bez prejudiciranja prava bona fide tre ih lica, ili uskra ivanje izvršiocu krivi nog dela, privremeno ili trajno, u skladu sa relevantnim odredbama unutrašnjeg prava, obavljanja profesionalne djelatnosti koja se odnosi na izvršenja bilo kog krivi nog djela utvr enog u skladu sa ovom Konvencijom.

Otežavaju e okolnosti

Iznan 13

Svaka država potpisnica e preduzeti neophodne zakonodavne i druge mjere kako bi se osiguralo da slede e okolnosti, u mjeri u kojoj ve ne ine dio konstitutivnih elemenata krivi nog djela, mogu u skladu sa relevantnim odredbama doma eg zakonodavstva, biti uzete u razmatranje kao otežavaju e okolnosti pri odre ivanju kazne u odnosu na krivi na djela ustanovljena u skladu sa ovom Konvencijom:

- a) djelo koje je izazvalo smrt ili ozbiljno ošte enje fizi kog ili mentalnog zdravlja žrtve;
- b) djelo koje je izvršeno od strane lica koje zloupotrebljava svoj položaj;
- c) djelo koje je izvršeno u okviru kriminalne organizacije;
- d) po inilac je ranije osu ivan za krivi na djela utvr ena ovom Konvencijom;
- e) djelo u injeno prema djetetu ili bilo kojoj drugoj naro ito ranjivoj osobi.

Prethodne osude

Iznan 14

Svaka država potpisnica e preduzeti neophodne zakonodavne i druge mjere da se obezbijedi mogu nost da se prilikom odre ivanja sankcije uzmu u obzir kona ne kazne izre ene od strane druge države potpisnice u odnosu na krivi na djela predvi ena ovom Konvencijom.

II. Krivi no procesno pravo

Iniciranje i nastavak postupka

lan 15

Svaka strana e preduzeti neophodne zakonodavne i druge mjere kako bi se osiguralo da istraga ili gonjenje krivi nih djela utvr enih u skladu sa ovom konvencijom ne budu podre eni žalbi i da se postupak može nastaviti ak i ako se povu e tužba.

Krivi na istraga

lan 16

Svaka država potpisnica e preduzeti neophodne zakonodavne i druge mjere, u skladu sa principima svog doma eg zakonodavstva, kako bi se osigurala efikasna istraga i gonjenje krivi nih djela utvr enih ovom Konvencijom.

Me unarodna saradnja

lan 17

1. Države potpisnice e sara ivati jedne sa drugima u skladu sa odredbama ove Konvencije i u skladu sa relevantnim važe im me unarodnim i regionalnim instrumentima i aranžmanima dogovorenim na osnovu jednoobraznog ili recipro nog zakonodavstva i svog doma eg zakonodavstva, u najve oj mogu oj mjeri, u cilju istrage ili postupka u vezi krivi nih djela utvr enih ovom Konvencijom, uklju uju i i oduzimanje ili konfiskaciju imovine.

2. Države potpisnice e sara ivati u najve oj mogu oj mjeri u skladu sa relevantnim važe im me unarodnim, regionalnim i bilateralnim ugovorima o ekstradiciji i me usobnoj pravnoj pomo i u krivi nim stvarima u vezi krivi nih djela utvr enih ovom Konvencijom.

3. Ako država potpisnica koja sprovodi izru enje ili pruža uzajamnu pravnu pomo u krivi nim stvarima uslovljenu postojanjem ugovora primi zahtjev za izru enje ili pravnu pomo u krivi nim stvarima od države potpisnice sa kojom nema takav ugovor, ona može, djeluju i u potpunoj saglasnosti sa svojim obavezama utvr enim me unarodnim pravom i pod uslovima predvi enim doma im zakonodavstvom zamoljene države lanice, smatrati ovu Konvenciju pravnim osnovom za izru enje ili uzajamnu pravnu pomo u krivi nim stvarima u vezi krivi nih djela utvr enih ovom Konvencijom.

IV. Mjere zaštite

Zaštita žrtava

lan 18

Svaka država potpisnica će preduzeti neophodne zakonodavne i druge mjere za zaštitu prava i interesa žrtava krivi nih djela utvr enih u skladu sa ovom Konvencijom, naro ito:

- a) osiguranjem da žrtve imaju pristup informacijama koje su važne za njihov slu aj, a koje su neophodne za zaštitu njihovog zdravlja i drugih relevantnih prava;
- b) pomo žrtvama u njihovom fizi kom, psihi kom i socijalnom oporavku;
- c) obezbje ivanjem, u svom doma em zakonodavstvu, prava žrtve na odštetu od strane po inioca.

Prava žrtava u krivi nom postupku

lan 19

1. Svaka država potpisnica će preduzeti neophodne zakonodavne i druge mjere za zaštitu prava i interesa žrtava u svim fazama krivi nih istraga i postupaka, naro ito:

- a) informišu i ih o njihovim pravima i uslugama na raspolaganju i, na zahtjev, daju i odgovore na njihovu žalbu, podržane optužbe, status krivi nog postupka, osim ukoliko u izuzetnim slu ajevima takvo obaveštavanje može negativno uticati na pravilno rešavanje slu aja, kao i njihovu ulogu u njemu, kao i ishod slu aja;
- b) omogu avaju i im, na na in koji je u skladu sa procesnim pravilima doma eg zakonodavstva, da budu saslušani, da obezbijede dokaze i iskažu svoje stavove, potrebe i probleme, direktno ili preko posrednika, i da se isti razmotre;
- c) pružaju i im odgovaraju e službe podrške, tako da su im prava i interesi uredno predstavljeni i uzeti u obzir;
- d) obezbje uju i efikasne mjere za njihovu bezbjednost, kao i bezbjednost njihovih porodica, od zastrašivanja i odmazde.

2. Svaka država potpisnica će osigurati da žrtve imaju pristup informacijama o relevantnim sudskim i upravnim postupcima, po ev od prvog kontakta sa nadležnim organima.

3. Svaka država potpisnica će osigurati da žrtve imaju pristup pravnoj pomo i u skladu sa doma im zakonodavstvom i besplatnu pravnu pomo gdje je to opravdano, kada je mogu e da oni dobiju status stranke u krivi nom postupku.

4. Svaka država potpisnica će preduzeti neophodne zakonodavne i druge mjere kako bi se osiguralo da žrtve krivi nog djela utvr enog ovom Konvencijom po injenog na teritoriji

države potpisnice u kojoj nemaju boravište mogu podnijeti tužbu nadležnim organima države u kojoj imaju boraviše.

5. Svaka država potpisnica će, putem zakonodavnih ili drugih mera, u skladu sa uslovima predviđenim njenim domaćim zakonodavstvom, obezbijediti mogućnost za grupe, fondacije, udruženja ili vladine ili nevladine organizacije, da pomognu i/ili pruže podršku žrtvama uz njihovu saglasnost tokom krivnih postupaka koji se odnose na krivi na djela predviđena ovom Konvencijom.

Zaštita svjedoka

Ilan 20

1. Svaka država potpisnica će, u okviru svojih mogućnosti i u skladu sa uslovima predviđenim domaćim zakonodavstvom, obezbijediti efikasnu zaštitu od mogućih odmazde ili zastrašivanja svjedoka u krivnom postupku, koji su svjedočili o krivim djelima obuhvaćenim ovom Konvencijom i, po potrebi, njihovim rođacima i drugim njima bliskim osobama.

2. Stav 1 ovog lana se primjenjuje i na žrtve, ukoliko su one svjedoci.

V. Preventivne mjeru

Mjere na nacionalnom nivou

Ilan 21

1. Svaka država potpisnica će preduzeti neophodne zakonodavne i druge mjeru kako bi se osiguralo:

- a) postojanje transparentnog domaćeg sistema za preserviranje ljudskih organa;
- b) jednak pristup uslugama preserviranja organa za pacijente;
- c) adekvatno prikupljanje, analizu i razmjenu informacija koje se odnose na krivi na djela iz ove Konvencije u saradnji između svih relevantnih organa.

2. U cilju sprečavanja i borbe protiv trgovine ljudskim organima, svaka država potpisnica će preduzeti mjeru, prema potrebi:

- a) da pruži informacije ili ojača obuku za zdravstvene radnike i relevantne zvaničnike u prevenciji i borbi protiv trgovine ljudskim organima;
- b) da promoviše kampanje upozorenje javnosti za podizanje svijesti o nezakonitosti i opasnostima trgovine ljudskim organima.

3. Svaka država potpisnica će preuzeti neophodne zakonodavne i druge mјere da se zabrani reklamiranje potrebe za, ili dostupnost ljudskih organa, sa ciljem ponude ili traženja materijalne ili njoj slične koristi.

Mjere na međunarodnom nivou

lan 22

Države potpisnice će u najvećoj mjeri sarađivati jedne sa drugima u cilju spremanja trgovine ljudskim organima. Konkretno, države potpisnice će:

- a) izvještavati Komitet država potpisnica na njegov zahtjev, o broju službenih trgovina ljudskim organima u okviru svojih nadležnosti;
- b) odrediti nacionalnu kontaktantu za razmjenu informacija koje se odnose na trgovinu ljudskim organima.

VI. Mehanizam za pravilje

Komitet država potpisnica

lan 23

1. Komitet država potpisnica će biti sastavljen od predstavnika država potpisnika Konvencije.
2. Komitet država potpisnica saziva Generalni sekretar Savjeta Evrope. Njegov prvi sastanak će biti održan u roku od godinu dana nakon stupanja na snagu ove konvencije za deset potpisnika koje su je ratifikovale. Nakon toga će se sastajati kad god najmanje jedna trećina država potpisnika ili generalni sekretar to zahtijevaju.
3. Komitet država potpisnica će usvojiti svoj poslovnik o radu.
4. Komitet država potpisnica će imati pomoć Sekretarijata Savjeta Evrope u obavljanju svojih funkcija.
5. Država potpisnica koja nije članica Savjeta Evrope će doprinijeti finansiranju Komiteta država potpisnica na način o kojem odluči Komitet ministara u konsultaciji sa tom državom potpisnicom.

Ostali predstavnici

lan 24

1. Parlamentarna skupština Savjeta Evrope, Evropski komitet za probleme kriminala (CDPC), kao i drugi relevantni nevladini i nau ni komiteti Savjeta Evrope e imenovati svog predstavnika u Komitetu država potpisnica u cilju doprinosa multisektorskog i multidisciplinarnog pristupa.
2. Komitet ministara može pozvati i druga tijela Savjeta Evrope da imenuju svog predstavnika u Komitetu država potpisnica nakon konsultacija sa istim.
3. Predstavnici relevantnih me unarodnih tijela mogu biti primljeni kao posmatra i u Komitetu država potpisnica nakon postupka utvr enog odgovaraju im pravilima Savjeta Evrope.
4. Predstavnici relevantnih zvani nih organa država potpisnica mogu biti primljeni kao posmatra i u Komitetu država potpisnica nakon postupka utvr enog odgovaraju im pravilima Savjeta Evrope.
5. Predstavnici civilnog društva, a posebno nevladine organizacije, mogu biti primljeni kao posmatra i u Komitetu država potpisnica nakon postupka utvr enog odgovaraju im pravilima Savjeta Evrope.
6. U imenovanju predstavnika iz st. 2 do 5 ovog lana, obezbjedi e se uravnotežena zastupljenost razli itih sektora i disciplina.
7. Predstavnici imenovani na osnovu st. 1 do 5 ovog lana u estvuju na sastancima Komiteta država potpisnica bez prava glasa.

Funkcije Komiteta država potpisnica

lan 25

1. Komitet država potpisnica e pratiti sprovo enje ove konvencije. Poslovnikom o radu Komiteta država potpisnica e se utvrditi postupak za ocjenu sprovo enja ove Konvencije, kroz multisektoralni i multidisciplinarni pristup.
2. Komitet država potpisnica e tako e olakšati prikupljanje, analizu i razmjenu informacija, iskustava i dobre prakse me u državama kako bi unaprijedile svoje kapacitete za spre avanje i suzbijanje trgovine ljudskim organima. Komitet može iskoristiti stru nost drugih relevantnih komisija i tijela Savjeta Evrope.
3. Pored toga, Komitet država potpisnica e, gdje je to mogu e:

- a) olakšati efikasnu upotrebu i primjenu ove Konvencije, uklju uju i identifikaciju problema koji mogu nastati i efekte svake izjave ili rezerve prema odredbama ove Konvencije;
- b) izraziti mišljenje o bilo kom pitanju koje se ti e primjene ove Konvencije i olakšati razmjenu informacija o zna ajnim pravnim, politi kim ili tehnološkim dešavanjima;
- c) napraviti konkretne preporuke državama potpisnicama u vezi primjene ove Konvencije.

4. Evropski komitet za probleme kriminala (CDPC) treba da bude periodi no informisan o aktivnostima pomenutim u st. 1, 2 i 3 ovog lana.

VII. Odnos prema drugim me unarodnim instrumentima

Odnos prema drugim me unarodnim instrumentima

lan 26

1. Ova Konvencija ne uti e na prava i obaveze koji proisti u iz odredbi drugih me unarodnih instrumenata kojima su potpisnice ove Konvencije potpisnice ili e postati potpisnice i koji sadrže odredbe o pitanjima koja ure uje ova Konvencija.
2. Države potpisnice Konvencije mogu da zaklju uju bilateralne ili multilateralne sporazume jedna sa drugom o stvarima koje su definisane ovom Konvencijom, u cilju dopune ili ja anja njenih odredbi ili olakšavanja primjene principa koji su sadržani u njoj.

VII. Izmjene i dopune Konvencije

Amandmani

lan 27

1. Svaki predlog za izmjenu ove konvencije predstavljen od strane države potpisnice e biti dostavljen generalnom sekretaru Savjeta Evrope i proslije en državama lanicama Savjeta Evrope, državama potpisnicama koje nisu lanice ali uživaju status posmatra a u Savjetu Evrope, Evropskoj uniji, i svakoj državi koja je pozvana da potpiše ovu Konvenciju.
2. Svaki amandman predložen od strane države potpisnice dostavlja se Evropskom komitetu za probleme kriminala (CDPC) i drugim relevantnim me uvladinim ili nau nim komitetima Savjeta Evrope, koji dostavljaju Komitetu država potpisnica svoje mišljenje o tom predloženom amandmanu.

3. Komitet ministara Savjeta Evrope e razmotriti predloženi amandman i mišljenje koje je podnio Komitet država potpisnica i, nakon konsultacija sa državama potpisnicama ove Konvencije koje nisu lanice Savjeta Evrope, može da usvoji izmjene i dopune ve inom predvi enom lanom 20.d Statuta Savjeta Evrope.
4. Tekst svakog amandmana koji usvoji Komitet ministara u skladu sa stavom 3 ovog lana bi e proslije en državama potpisnicama na usvajanje.
5. Svaki amandman usvojen u skladu sa stavom 3 ovog lana stupa na snagu prvog dana u mjesecu nakon isteka perioda od mjesec dana od datuma kada sve države obavijeste generalnog sekretara da su ga prihvatile.

X. Završne odredbe

Potpisivanje i stupanje na snagu

lan 28

1. Ova Konvencija je otvorena za potpisivanje državama lanicama Savjeta Evrope, Evropskoj uniji i državama ne lanicama koje imaju status posmatra a u Savjetu Evrope. Tako e e biti otvorena za potpisivanje bilo kojoj drugoj državi koja nije lanica Savjeta Evrope, na poziv Komiteta ministara. Odluku da se pozove da potpiše Konvenciju država koja nije lanica donosi ve ina predvi ena lanom 20.d Statuta Savjeta Evrope, jednoglasnom odlukom predstavnika država ugovornica koje imaju pravo lanstva u Komitetu ministara. Ova odluka e biti donijeta po pribavljenoj jednoglasnoj saglasnosti drugih država/Evropske unije koje izraze svoj pristanak da budu obavezane ovom Konvencijom.
2. Ova Konvencija podliježe potvr ivanju, prihvatanju ili odobrenju. Instrumenti potvr ivanja, prihvatanja ili odobravanja se deponuju kod generalnog sekretara Savjeta Evrope.
3. Ova Konvencija stupa na snagu prvog dana u mjesecu nakon isteka perioda od tri mjeseca nakon datuma kada je pet potpisnica, uklju uju i najmanje tri države lanice Savjeta Evrope, izrazilo svoj pristanak da budu obavezane Konvencijom u skladu sa odredbama prethodnog stava.
4. U odnosu na bilo koju državu ili Evropsku uniju, koja naknadno izrazi svoj pristanak da bude obavezana Konvencijom, ona e stupiti na snagu prvog dana u mjesecu nakon isteka perioda od tri mjeseca nakon datuma deponovanja njenog instrumenta potvr ivanja, prihvatanja ili odobrenja.

Teritorijalna primena

lan 29

1. Svaka država ili Evropska unija može u trenutku potpisivanja ili prilikom deponovanja instrumenta potvrivanja, prihvatanja ili odobrenja, da odredi teritoriju ili teritorije na kojima se ova Konvencija primjenjuje.
2. Svaka država potpisnica može bilo kojeg kasnijeg datuma, izjavom upu enom generalnom sekretaru Savjeta Evrope, da proširi primjenu ove Konvencije na bilo koju drugu teritoriju navedenu u izjavi, za koje je međunarodne odnose ona odgovorna ili u koje ime je ovlaštena da prihvata obaveze. U odnosu na takve teritorije, Konvencija će stupiti na snagu prvog dana u mjesecu nakon isteka perioda od tri mjeseca nakon datuma prijema takve izjave od strane generalnog sekretara.
3. Svaka izjava data na osnovu prethodna dva stava može u odnosu na bilo koju teritoriju navedenu u takvoj izjavi da se povuče putem obavještenja upu enog generalnom sekretaru Savjeta Evrope. Povlačenje će stupiti na snagu prvog dana narednog mjeseca od isteka perioda od tri mjeseca od datuma prijema takvog obavještenja od strane generalnog sekretara.

Rezerve

lan 30

1. Svaka država ili Evropska unija može u trenutku potpisivanja ili prilikom deponovanja instrumenta potvrivanja, prihvatanja ili odobravanja, da izjavi da će koristiti jednu ili više rezervi predviđenih u lanu 4 stav 2, lanu 9 stav 3, lanu 10 st. 3 i 5.
2. Svaka država ili Evropska unija može takoči u vrijeme potpisivanja ili deponovanja svog instrumenta potvrivanja, prihvatanja ili odobravanja, izjaviti da zadržava pravo da primjenjuje lan 5 i lan 7 st. 2 i 3, samo kada su krivi na djela po injena za svrhe usavranja, ili za svrhe usavranja i druge svrhe utvrđene od strane države potpisnice.
3. Nijedna druga rezerva ne može biti izražena.
4. Svaka država potpisnica koja je izrazila rezervu može je u svakom trenutku povući u potpunosti ili djelimično obavještenjem upu enim generalnom sekretaru Savjeta Evrope. Povlačenje stupa na snagu od datuma prijema takvog obavještenja od strane generalnog sekretara.

Rešavanje sporova

Ilan 31

Komitet država potpisnica će pratiti u bliskoj saradnji sa Evropskim komitetom za probleme kriminala (CDPC) i drugim relevantnim međulatinim ili naučnim komitetima Savjeta Evrope primjenu ove Konvencije i olakšati, kada je to potrebno, prijateljsko rešavanje svih poteškoća vezanih za njenu primjenu.

Otkazivanje

Ilan 32

1. Svaka strana može u svakom trenutku otkazati ovu Konvenciju putem obavještenja upućenog generalnom sekretaru Savjeta Evrope.
2. Takvo otkazivanje stupa na snagu prvog dana u mjesecu nakon isteka perioda od tri mjeseca od datuma prijema obavještenja od strane generalnog sekretara.

Obavještenje

Ilan 33

Generalni sekretar Savjeta Evrope će obavještavati države lanice Savjeta Evrope, ne lanice koje uživaju status posmatrača u Savjetu Evrope, Evropsku uniju i svaku državu koja je pozvana da potpiše ovu Konvenciju u skladu sa odredbama lana 28, o:

- a) svakom potpisu;
- b) deponovanju svakog instrumenta potvrđivanja, prihvatanja ili odobrenja;
- c) svakom datumu stupanja na snagu ove Konvencije u skladu sa lantom 28;
- d) bilo kojem amandmanu usvojenom u skladu sa lantom 27 i datumu kada takav amandman stupa na snagu;
- e) svakoj rezervi i povlačenju rezerve ostvarene u skladu sa lantom 30;
- f) svakom otkazivanju u skladu sa odredbama lana 32;
- g) svakom drugom aktu, obavještenju ili saopštenju u vezi sa ovom Konvencijom.

U potvrdu ega dolje potpisani, propisno ovlašćeni, potpisuju ovu Konvenciju.

Sa injeno u Santiago de Compostela, 25. marta 2015. godine, na engleskom i francuskom jeziku, od kojih su oba teksta podjednako autentična, u jednom primjerku koji će biti deponovan u arhivi Savjeta Evrope. Generalni sekretar Savjeta Evrope će proslijediti ovjerene kopije svakoj državi lici Savjeta Evrope, državi ne lanici koja ima status posmatrača u Savjetu Evrope, Evropskoj uniji i svakoj državi pozvanoj da potpiše ovu konvenciju.

Council of Europe Convention against Trafficking in Human Organs

Preamble

The member States of the Council of Europe and the other signatories to this Convention;

Bearing in mind the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly on 10 December 1948, and the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5);

Bearing in mind 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 (1997, ETS No. 164) and the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (2002, ETS No. 186);

Bearing in mind the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (2000) and the Council of Europe Convention on Action against Trafficking in Human Beings (2005, CETS No. 197);

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that the trafficking in human organs violates human dignity and the right to life and constitutes a serious threat to public health;

Determined to contribute in a significant manner to the eradication of the trafficking in human organs through the introduction of new offences supplementing the existing international legal instruments in the field of trafficking in human beings for the purpose of the removal of organs;

Considering that the purpose of this Convention is to prevent and combat trafficking in human organs, and that the implementation of the provisions of the Convention concerning substantive criminal law should be carried out taking into account its purpose and the principle of proportionality;

Recognising that, to efficiently combat the global threat posed by the trafficking in human organs, close international co-operation between Council of Europe member States and non-member States alike should be encouraged,

Have agreed as follows:

Purposes, scope and use of terms

Chapter I

Purposes

Article 1

1 The purposes of this Convention are:

- a to prevent and combat the trafficking in human organs by providing for the criminalisation of certain acts;
- b to protect the rights of victims of the offences established in accordance with this Convention;
- c to facilitate co-operation at national and international levels on action against the trafficking in human organs.

2 In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific follow-up mechanism.

Scope and use of terms

Article 2

1 This Convention applies to the trafficking in human organs for purposes of transplantation or other purposes, and to other forms of illicit removal and of illicit implantation.

2 For the purposes of this Convention, the term:

- “trafficking in human organs” shall mean any illicit activity in respect of human organs as prescribed in Article 4, paragraph 1 and Articles 5, 7, 8 and 9 of this Convention;
- “human organ” shall mean a differentiated part of the human body, formed by different tissues, that maintains its structure, vascularisation and capacity to develop physiological functions with a significant level of autonomy. A part of an organ is also considered to be an organ if its function is to be used for the same purpose as the entire organ in the human body, maintaining the requirements of structure and vascularisation.

Principle of non-discrimination

Article 3

The implementation of the provisions of this Convention by the Parties, in particular the enjoyment of measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, age, religion, political or

any other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status.

Substantive Criminal Law

Chapter II

Illicit removal of human organs

Article 4

1 Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the removal of human organs from living or deceased donors:

a where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;

b where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage;

c where in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage.

2 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply paragraph 1. a of this article to the removal of human organs from living donors, in exceptional cases and in accordance with appropriate safeguards or consent provisions under its domestic law. Any reservation made under this paragraph shall contain a brief statement of the relevant domestic law.

3 The expression “financial gain or comparable advantage” shall, for the purpose of paragraph 1, b and c, not include compensation for loss of earnings and any other justifiable expenses caused by the removal or by the related medical examinations, or compensation in case of damage which is not inherent to the removal of organs.

4 Each Party shall consider taking the necessary legislative or other measures to establish as a criminal offence under its domestic law the removal of human organs from living or deceased donors where the removal is performed outside of the framework of its domestic transplantation system, or where the removal is performed in breach of essential principles of national transplantation laws or rules. If a Party establishes criminal offences in accordance with this provision, it shall endeavour to apply also Articles 9 to 22 to such offences.

Use of illicitly removed organs for purposes of implantation or other purposes than implantation

Article 5

Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the use of illicitly removed

organs, as described in Article 4, paragraph 1, for purposes of implantation or other purposes than implantation.

Implantation of organs outside of the domestic transplantation system or in breach of essential principles of national transplantation law

Article 6

Each Party shall consider taking the necessary legislative or other measures to establish as a criminal offence under its domestic law, when committed intentionally, the implantation of human organs from living or deceased donors where the implantation is performed outside of the framework of its domestic transplantation system, or where the implantation is performed in breach of essential principles of national transplantation laws or rules. If a Party establishes criminal offences in accordance with this provision, it shall endeavour to apply also Articles 9 to 22 to such offences.

Illicit solicitation, recruitment, offering and requesting of undue advantages

Article 7

1 Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally, the solicitation and recruitment of an organ donor or a recipient, where carried out for financial gain or comparable advantage for the person soliciting or recruiting, or for a third party.

2 Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, with a view to having a removal or implantation of a human organ performed or facilitated, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1, or Article 5 and where appropriate Article 4, paragraph 4 or Article 6.

3 Each Party shall take the necessary legislative and other measures to establish as a criminal offence, when committed intentionally, the request or receipt by healthcare professionals, its public officials or persons who direct or work for private sector entities, in any capacity, of any undue advantage with a view to performing or facilitating the performance of a removal or implantation of a human organ, where such removal or implantation takes place under the circumstances described in Article 4, paragraph 1 or Article 5 and where appropriate Article 4, paragraph 4 or Article 6.

Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs

Article 8

Each Party shall take the necessary legislative and other measures to establish as a criminal offence under its domestic law, when committed intentionally:

a the preparation, preservation, and storage of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4;

b the transportation, transfer, receipt, import and export of illicitly removed human organs as described in Article 4, paragraph 1, and where appropriate Article 4, paragraph 4.

Aiding or abetting and attempt

Article 9

1 Each Party shall take the necessary legislative and other measures to establish as criminal offences, when committed intentionally, aiding or abetting the commission of any of the criminal offences established in accordance with this Convention.

2 Each Party shall take the necessary legislative and other measures to establish as a criminal offence the intentional attempt to commit any of the criminal offences established in accordance with this Convention.

3 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply, or to apply only in specific cases or conditions, paragraph 2 to offences established in accordance with Article 7 and Article 8.

Jurisdiction

Article 10

1 Each Party shall take such legislative or other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

- a in its territory; or
- b on board a ship flying the flag of that Party; or
- c on board an aircraft registered under the laws of that Party; or
- d by one of its nationals; or
- e by a person who has his or her habitual residence in its territory.

2 Each Party shall endeavour to take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention where the offence is committed against one of its nationals or a person who has his or her habitual residence in its territory.

3 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraph 1. d and e of this article.

4 For the prosecution of the offences established in accordance with this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraphs 1. d and e of this article is not subordinated to the condition that the prosecution can only be initiated following a report from the victim or the laying of information by the State of the place where the offence was committed.

5 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases paragraph 4 of this article.

6 Each Party shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged offender is present on its territory and it does not extradite him or her to another State, solely on the basis of his or her nationality.

7 When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

8 Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.

Corporate liability

Article 11

1 Each Party shall take the necessary legislative and other measures to ensure that legal persons can be held liable for offences established in accordance with this Convention, when committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it based on:

- a a power of representation of the legal person;
- b an authority to take decisions on behalf of the legal person;
- c an authority to exercise control within the legal person.

2 Apart from the cases provided for in paragraph 1 of this article, each Party shall take the necessary legislative and other measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of an offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

Sanctions and measures

Article 12

1 Each Party shall take the necessary legislative and other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for offences established in accordance with Article 4, paragraph 1 and, where appropriate, Article 5 and Articles 7 to 9, when committed by natural persons, penalties involving deprivation of liberty that may give rise to extradition.

2 Each Party shall take the necessary legislative and other measures to ensure that legal persons held liable in accordance with Article 11 are subject to effective, proportionate and dissuasive sanctions, including criminal or non-criminal monetary sanctions, and may include other measures, such as:

- a temporary or permanent disqualification from exercising commercial activity;
- b placing under judicial supervision;
- c a judicial winding-up order.

3 Each Party shall take the necessary legislative and other measures to:

- a permit seizure and confiscation of proceeds of the criminal offences established in accordance with this Convention, or property whose value corresponds to such proceeds;
- b enable the temporary or permanent closure of any establishment used to carry out any of the criminal offences established in accordance with this Convention, without prejudice to the rights of bona fide third parties, or deny the perpetrator, temporarily or permanently, in conformity with the relevant provisions of domestic law, the exercise of a professional activity relevant to the commission of any of the offences established in accordance with this Convention.

Aggravating circumstances

Article 13

Each Party shall take the necessary legislative and other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of domestic law, be taken into consideration as aggravating circumstances in determining the sanctions in relation to the offences established in accordance with this Convention:

- a the offence caused the death of, or serious damage to the physical or mental health of, the victim;
- b the offence was committed by a person abusing his or her position;
- c the offence was committed in the framework of a criminal organisation;
- d the perpetrator has previously been convicted of offences established in accordance with this Convention;
- e the offence was committed against a child or any other particularly vulnerable person.

Previous convictions

Article 14

Each Party shall take the necessary legislative and other measures to provide for the possibility to take into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sanctions.

Criminal Procedural Law

Chapter III

Initiation and continuation of proceedings

Article 15

Each Party shall take the necessary legislative and other measures to ensure that investigations or prosecution of offences established in accordance with this Convention should not be subordinate to a complaint and that the proceedings may continue even if the complaint is withdrawn.

Criminal investigations

Article 16

Each Party shall take the necessary legislative and other measures, in conformity with the principles of its domestic law, to ensure effective criminal investigation and prosecution of offences established in accordance with this Convention.

International co-operation

Article 17

1 The Parties shall co-operate with each other, in accordance with the provisions of this Convention and in pursuance of relevant applicable international and regional instruments and arrangements agreed on the basis of uniform or reciprocal legislation and their domestic law, to the widest extent possible, for the purpose of investigations or proceedings concerning the offences established in accordance with this Convention, including seizure and confiscation.

2 The Parties shall co-operate to the widest extent possible in pursuance of the relevant applicable international, regional and bilateral treaties on extradition and mutual legal assistance in criminal matters concerning the offences established in accordance with this Convention.

3 If a Party that makes extradition or mutual legal assistance in criminal matters conditional on the existence of a treaty receives a request for extradition or legal assistance in criminal matters from a Party with which it has no such a treaty, it may, acting in full compliance with its obligations under international law and subject to the conditions provided for by the domestic law of the requested Party, consider this Convention as the legal basis for extradition or mutual legal assistance in criminal matters in respect of the offences established in accordance with this Convention.

Protection measures

Chapter IV

Protection of victims

Article 18

Each Party shall take the necessary legislative and other measures to protect the rights and interests of victims of offences established in accordance with this Convention, in particular by:

- a ensuring that victims have access to information relevant to their case and which is necessary for the protection of their health and other rights involved;
- b assisting victims in their physical, psychological and social recovery;
- c providing, in its domestic law, for the right of victims to compensation from the perpetrators.

Standing of victims in criminal proceedings

Article 19

1 Each Party shall take the necessary legislative and other measures to protect the rights and interests of victims at all stages of criminal investigations and proceedings, in particular by:

- a informing them of their rights and the services at their disposal and, upon request, the follow-up given to their complaint, the charges retained, the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification, and their role therein as well as the outcome of their cases;
- b enabling them, in a manner consistent with the procedural rules of domestic law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;
- c providing them with appropriate support services so that their rights and interests are duly presented and taken into account;
- d providing effective measures for their safety, as well as that of their families, from intimidation and retaliation.

2 Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings.

3 Each Party shall ensure that victims have access to legal aid, in accordance with domestic law and provided free of charge where warranted, when it is possible for them to have the status of parties to criminal proceedings.

4 Each Party shall take the necessary legislative and other measures to ensure that victims of an offence established in accordance with this Convention committed in the territory of a Party other than the one where they reside can make a complaint before the competent authorities of their State of residence.

5 Each Party shall provide, by means of legislative or other measures, in accordance with the conditions provided for by its domestic law, the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention.

Protection of witnesses

Article 20

1 Each Party shall, within its means and in accordance with the conditions provided for by its domestic law, provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings, who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2 Paragraph 1 of this article shall also apply to victims insofar as they are witnesses.

Prevention measures

Chapter V

Measures at domestic level

Article 21

1 Each Party shall take the necessary legislative and other measures to ensure:

- a the existence of a transparent domestic system for the transplantation of human organs;
- b equitable access to transplantation services for patients;
- c adequate collection, analysis and exchange of information related to the offences covered by this Convention in co-operation between all relevant authorities.

2 With the aim of preventing and combatting trafficking in human organs, each Party shall take measures, as appropriate:

- a to provide information or strengthen training for healthcare professionals and relevant officials in the prevention of and combat against trafficking in human organs;
- b to promote awareness-raising campaigns addressed to the general public about the unlawfulness and dangers of trafficking in human organs.

3 Each Party shall take the necessary legislative and other measures to prohibit the advertising of the need for, or availability of human organs, with a view to offering or seeking financial gain or comparable advantage.

Measures at international level

Article 22

The Parties shall, to the widest extent possible, co-operate with each other in order to prevent trafficking in human organs. In particular, the Parties shall:

- a report to the Committee of the Parties at its request on the number of cases of trafficking in human organs within their respective jurisdictions;
- b designate a national contact point for the exchange of information pertaining to trafficking in human organs.

Follow-up mechanism

Chapter VI

Committee of the Parties

Article 23

- 1 The Committee of the Parties shall be composed of representatives of the Parties to the Convention.
- 2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention for the tenth signatory having ratified it. It shall subsequently meet whenever at least one third of the Parties or the Secretary General so requests.
- 3 The Committee of the Parties shall adopt its own rules of procedure.
- 4 The Committee of the Parties shall be assisted by the Secretariat of the Council of Europe in carrying out its functions.
- 5 A contracting Party which is not a member of the Council of Europe shall contribute to the financing of the Committee of the Parties in a manner to be decided by the Committee of Ministers upon consultation of that Party.

Other representatives

Article 24

- 1 The Parliamentary Assembly of the Council of Europe, the European Committee on Crime Problems (CDPC), as well as other relevant Council of Europe intergovernmental or scientific committees, shall each appoint a representative to the Committee of the Parties in order to contribute to a multisectoral and multidisciplinary approach.
- 2 The Committee of Ministers may invite other Council of Europe bodies to appoint a representative to the Committee of the Parties after consulting the latter.

3 Representatives of relevant international bodies may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

4 Representatives of relevant official bodies of the Parties may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

5 Representatives of civil society, and in particular non-governmental organisations, may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.

6 In the appointment of representatives under paragraphs 2 to 5 of this article, a balanced representation of the different sectors and disciplines shall be ensured.

7 Representatives appointed under paragraphs 1 to 5 above shall participate in meetings of the Committee of the Parties without the right to vote.

Functions of the Committee of the Parties

Article 25

1 The Committee of the Parties shall monitor the implementation of this Convention. The rules of procedure of the Committee of the Parties shall determine the procedure for evaluating the implementation of this Convention, using a multisectoral and multidisciplinary approach.

2 The Committee of the Parties shall also facilitate the collection, analysis and exchange of information, experience and good practice between States to improve their capacity to prevent and combat trafficking in human organs. The Committee may avail itself of the expertise of other relevant Council of Europe committees and bodies.

3 Furthermore, the Committee of the Parties shall, where appropriate:

- a facilitate the effective use and implementation of this Convention, including the identification of any problems that may arise and the effects of any declaration or reservation made under this Convention;
- b express an opinion on any question concerning the application of this Convention and facilitate the exchange of information on significant legal, policy or technological developments;
- c make specific recommendations to Parties concerning the implementation of this Convention.

4 The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the activities mentioned in paragraphs 1, 2 and 3 of this article.

Relationship with other international instruments

Chapter VII

Relationship with other international instruments

Article 26

1 This Convention shall not affect the rights and obligations arising from the provisions of other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention.

2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

Amendments to the Convention

Chapter VIII

Amendments

Article 27

1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, the non-member States enjoying observer status with the Council of Europe, the European Union, and any State having been invited to sign this Convention.

2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC) and other relevant Council of Europe intergovernmental or scientific committees, which shall submit to the Committee of the Parties their opinions on that proposed amendment.

3 The Committee of Ministers of the Council of Europe shall consider the proposed amendment and the opinion submitted by the Committee of Parties and, after having consulted the Parties to this Convention that are not members of the Council of Europe, may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.

4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5 Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Final clauses

Chapter IX

Signature and entry into force

Article 28

1 This Convention shall be open for signature by the member States of the Council of Europe, the European Union and the non-member States which enjoy observer status with the Council of Europe. It shall also be open for signature by any other non-member State of the Council of Europe upon invitation by the Committee of Ministers. The decision to invite a non-member State to sign the Convention shall be taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers. This decision shall be taken after having obtained the unanimous agreement of the other States/European Union having expressed their consent to be bound by this Convention.

2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five signatories, including at least three member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.

4 In respect of any State or the European Union, which subsequently expresses its consent to be bound by the Convention, it shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Territorial application

Article 29

1 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of

the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Reservations

Article 30

1 Any State or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, declare that it avails itself of one or more of the reservations provided for in Articles 4, paragraph 2; 9, paragraph 3; 10, paragraphs 3 and 5.

2 Any State or the European Union may also, at the time of signature or when depositing its instrument of ratification, acceptance or approval, declare that it reserves the right to apply the Article 5 and Article 7, paragraphs 2 and 3, only when the offences are committed for purposes of implantation, or for purposes of implantation and other purposes as specified by the Party.

3 No other reservation may be made.

4 Each Party which has made a reservation may, at any time, withdraw it entirely or partially by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect from the date of the receipt of such notification by the Secretary General.

Dispute settlement

Article 31

The Committee of the Parties will follow in close co-operation with the European Committee on Crime Problems (CDPC) and other relevant Council of Europe intergovernmental or scientific committees the application of this Convention and facilitate, when necessary, the friendly settlement of all difficulties related to its application.

Denunciation

Article 32

1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Notification

Article 33

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States enjoying observer status with the Council of Europe, the European Union, and any State having been invited to sign this Convention in accordance with the provisions of Article 28, of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Convention in accordance with Article 28;
- d any amendment adopted in accordance with Article 27 and the date on which such an amendment enters into force;
- e any reservation and withdrawal of reservation made in pursuance of Article 30;
- f any denunciation made in pursuance of the provisions of Article 32;
- g any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done in Santiago de Compostela, this 25th day of March 2015, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which enjoy observer status with the Council of Europe, to the European Union and to any State invited to sign this Convention.

Ilan 3

Ovaj zakon stupa na snagu osmog dana od dana objavljanja u „Službenom listu Crne Gore – Međunarodni ugovori“.