



GENERAL OVERVIEW QUESTIONNAIRE

COUNTRY PROFILE QUESTIONNAIRE

COUNCIL OF EUROPE CONVENTION AGAINST TRAFFICKING IN HUMAN ORGANS

**As adopted by the Santiago de Compostela Committee
in Plenary meeting
on 25-26 October 2023**

Replies should be addressed to the Committee Secretariat
by **3rd May 2024**
(organtrafficking@coe.int)

Document prepared by the Committee of the Parties' Secretariat
Directorate General I – Human Rights and Rule of Law

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I. INTRODUCTION

1. The Council of Europe Convention against Trafficking in Human Organs¹ (hereinafter “the Santiago de Compostela Convention” or “the Convention”), which entered into force in March 2018, requires criminalisation of illicit removal of human organs, the use of illicitly removed organs for purposes of implantation or other purposes than implantation, illicit solicitation, recruitment, offering and requesting of undue advantages and preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs. The Convention provides a framework for national and international co-operation across the different sectors of the public administration, measures for coordination at national level, preventive measures at domestic and international level and protection of victims and witnesses. Furthermore, it foresees the establishment of a monitoring body to oversee the implementation of the Convention by the States Parties.
2. The Committee of the Parties to the Convention (also known as the “Santiago de Compostela Committee” or “the Committee of the Parties), established to monitor whether Parties effectively implement the Convention, decided that:

1. Following ratification and within six months from the entry into force of the Santiago de Compostela Convention in respect of the Party concerned, every Party to the Convention shall be required to reply to a questionnaire aimed at providing the Santiago de Compostela Committee with a general overview of the legislation practice, institutional framework and policies for the implementation of the Convention at the national, regional and local levels. Thereafter, the Parties should regularly inform the Santiago de Compostela Committee of any substantial changes to the situation described in their replies to the General Overview Questionnaire.

2. States having signed the Convention shall be invited to reply to the questionnaire referred to in paragraph 1 of this rule.

3. The secretariat shall compile the replies received and make them public on the Committee’s website².

3. In accordance with Rule 27 of the Committee’s Rules of Procedure:

“(…)

2. The secretariat shall address such questionnaires to the Parties through the member in the Santiago de Compostela Committee representing the Party to be monitored and who will act as “contact point”.

3. Parties shall coordinate with their respective domestic authorities to collect replies, which shall be submitted to the secretariat in one of the official languages of the Council of Europe within the time limit set by the Santiago de Compostela Committee. The replies shall be detailed, as comprehensive as possible, answer all questions and contain all relevant

¹ Council of Europe Convention against Trafficking in Human Organs (CETS No. 216), Santiago de Compostela, 25/03/2015.

² Santiago de Compostela Committee’s Rules of Procedure, Rule 25.

reference texts. The replies shall be made public, unless a Party makes a reasoned request to the Santiago de Compostela Committee to keep a reply confidential.

4. The Santiago de Compostela Committee may also receive information on the implementation of the Convention from non-governmental organisations and civil society involved in preventing and combating trafficking in human organs, in one of the official languages of the Council of Europe and within the time-limit set by the Santiago de Compostela Committee. The secretariat transmits these comments to the Party(ies) concerned.

5. The secretariat may request additional information if it appears that the replies are not exhaustive or are unclear. Where warranted, with the consent of the Party or Parties concerned and within the limits of budgetary appropriations, the Bureau may decide to mandate an on-site visit in the Party or Parties concerned to clarify the situation. The Bureau shall establish guidance as to the procedure governing the on-site visits pending any official guidelines agreed by the Santiago de Compostela Committee.

4. The purpose of this general questionnaire is to collect information to provide the Committee of the Parties with an overview of the situation, which will constitute the general framework within which it will assess replies by Parties to the thematic questionnaire for the first monitoring round (see Rule 25 of the Committee's Rules of Procedure).

II. PRELIMINARY REMARKS

5. The provisions of the Santiago de Compostela Convention have been grouped under different sections in this questionnaire without necessarily following the structure of the Convention. This methodological choice in no way intends to prioritise the various provisions of the Convention: equal importance is attached to all rights and principles therein.
6. Parties will be invited to update their replies to this Country Profile Questionnaire when they will receive the next thematic monitoring questionnaire. Responses to a thematic questionnaire should therefore be interrelated and combined with the responses provided in the context of this questionnaire.
7. Parties are kindly requested to:
 - answer the questions with regard to central, regional and local levels to the extent possible. Federal states may, in respect of their sovereign entities, answer the questions in a summarised way;

III. GENERAL LEGAL FRAMEWORK AND ALIGNMENT OF THE CONVENTION

Question 1: Non-discrimination

Is discrimination, on grounds such as the ones mentioned in the indicative list in **Article 3**, prohibited in the implementation of the Convention, in particular in the enjoyment of the rights guaranteed by it? If so, please specify.

Articles 248C and 248CA of the Criminal Code hold that trafficking in human organs is punishable by imprisonment for up to twelve years whomsoever the victim may be. Article 248D further provides that trafficking of minors for purposes of organ trafficking is also punishable by the same penalty even if the means (violence, threats, deceit, misuse of authority, pressure, the giving or receiving of payments to obtain the consent of a person having control over another person, and abuse of power or of a position of vulnerability) are not used. When the means are used, the penalty is increased by one grade (meaning that the maximum increases to twenty years).

Neither is there any unlawful discrimination of the kind mentioned in Article 3 of the Convention in the provisions of Chapter 558 of the Laws of Malta (Human Organs, Tissues and Cell Donation Act). Reference to this particular law is necessary as reference to it is also made in the articles of the Criminal Code which punish organ trafficking and trafficking of minors for purposes of organ trafficking.

The upcoming National Trafficking in Human Beings (THB) Strategy and National Action Plan 2024-2030 takes a non-discriminatory approach by taking into account how different forms of discrimination (discrimination against minorities and vulnerable social groups, migration policies of discriminatory and restrictive nature, gender-based discrimination) are very often root causes of trafficking in human beings. The Strategy ensures that measures apply to all victims in a non-discriminatory manner, in accordance with Article 3 of the Convention – women, men and children, including persons with disabilities, whether subjected to transnational or national trafficking, regardless of the form of exploitation and the country where they were exploited.

Question 2: Overview of the implementation

Please indicate (without entering into details):

- a. the main legislative or other measures to combat against the trafficking in human organs in accordance with the Convention;

Articles 248C, 248CA, 248D, 248E and 248F of the Criminal Code (Chapter 9 of the Laws of Malta).

Chapter 558 of the Laws of Malta (Human Organs, Tissues and Cell Donation Act). Reference to this is necessary as reference to it is also made in the articles of the Criminal

Code which punish organ trafficking and trafficking of minors for purposes of organ trafficking.

- b. whether your country has adopted a national strategy and/or Action Plan to combat against the trafficking in human organs. If so, please specify the main fields of action and the body/bodies responsible for its/their implementation;

Malta does not have a national strategy and/or Action Plan to combat against the trafficking in human organs. However, it is in the process of adopting a human trafficking strategy and action plan which, it is envisaged, would also contribute to the detection of possible organ trafficking cases. So far, Malta did not experience any cases of organ trafficking.

- c. If there has not been any adoption of a national strategy and/or Action Plan to combat against the trafficking in human organs, whether there is a strategy and /or Action Plan by a particular Ministry or State Agency that leads on this nationally.

Although Malta does not have national strategy and/or Action Plan to specifically combat against the trafficking in human organs, Malta has finalised the implementation of the National Action Plan 2020 – 2023 and is working to launch the upcoming National Trafficking in Human Beings (THB) Strategy and National Action Plan 2024-2030.

The Human Rights Directorate (HRD) within the Ministry for European Funds, Equality, Reform and Social Dialogue (MEES) is the body responsible for the development and coordination of anti-human trafficking efforts including the National Action Plans and Upcoming THB Strategy. The measures found in these documents are broadly tailored to the fight against human trafficking in general but are also relevant to the fight against trafficking in human organs.

[https://humanrights.gov.mt/en/Pages/Initiatives%20Unit/Human%20Trafficking/National-Strategy-and-Action-Plan-Against-Human-Trafficking-\(2024-onwards\).aspx](https://humanrights.gov.mt/en/Pages/Initiatives%20Unit/Human%20Trafficking/National-Strategy-and-Action-Plan-Against-Human-Trafficking-(2024-onwards).aspx)

- d. Regarding compliance with the content of the Convention, does your country's domestic law comply with the concepts of:
- "trafficking in human organs" (Article 2)
 - "human organ" (Article 2)
 - "financial gain or comparable benefit" (Article 4)?

The definitions contained in Article 248CA of the Criminal Code (Chapter 9 of the Laws of Malta) reflect the definitions contained in Articles 2 and 4 of the relative Convention. Moreover, Article 248CA establishes the offence of trafficking in human beings.

- e. Does your legal system provide the compensation for an organ donation (Article 4 para. 3)? If so, which concepts are legally included in the term "compensation"?

Article 248CA(4) defines “financial gain or comparable advantage” reflects the text found in Article 4(3) of the relative Convention.

Furthermore, the Human Organs, Tissues and Cell Donation Act (Chapter 558 of the Laws of Malta), provides the following definitions:

"donation" means the act of giving human organs, tissues or cells intended for human transplantation" ; and

"donor" means a person who donates one or several organs, tissues or cells, whether donation occurs during lifetime or after death".

- f. Does your legal system provide for the possibility that persons without the capacity to decide may donate organs? If so, under what conditions, circumstances and requirements?

Under Article 5 of the Human Organs, Tissues and Cell Donation Act, Chapter 558 of the Laws of Malta, a person may be enrolled in the register of organ donors if, inter alia, he does not suffer from a mental disorder which renders him incapable of taking care of his own affairs and if the said person voluntarily requested to become a donor. Furthermore, Article 6 refers to persons who choose to donate (emphasising voluntariness) and Article 7 provides for the possibility to reverse one’s choice to become a donor.

At this point, it is worth noting that Article 248CA(1) of the Criminal Code (Chapter 9 of the Laws of Malta) renders it an offence for the removal of organs, tissues or cells to take place not according to Chapter 558 of the Laws of Malta and without free, informed and specific consent on the donor’s part.

According to Article 5 (1) of CAP558 Human Tissues, Organ and Cell Donation

« The Superintendent shall only register a person requesting to become a donor under this Act after having satisfied himself that the said person: (a) has attained the age of sixteen years; (b) is not suffering from any mental disorder which renders him incapable of taking care of his own affairs; (c) has done so voluntarily, out of his own free will; (d) has had adequate information on the meaning and consequences of registration as a donor under this Act and has been certified under article 14 »
<https://legislation.mt/eli/cap/558/eng/pdf>

In instances where there is the death of an unregistered person Article 10 (1)-(3) of the same Act «The next of kin of a deceased person who is not a registered donor may be approached by a transplant coordinator or a clinician to declare whether they consent to the donation taking place: Provided that this sub-article shall not apply where the deceased has registered his wish not to be a donor. (2) In the event where consent is given under this article the donation shall take place and the said person shall be deemed to have been a registered donor for purposes of this Act. (3) In the event of a donation under this article taking place, this shall be annotated by the Superintendent in the Register. »

Re: Cadaveric Organ donation Article 12 « 12.(1) Cadaveric organ, tissue and cell donation shall be considered in patients who are certified brain dead by a clinician. (2) The Superintendent shall maintain updated and peer reviewed guidelines for the diagnosis of brain death for the purposes of organ, tissue and cell donation »

Question 3: National co-operation and information exchange

- a. Please describe how co-operation and exchange of information is ensured between representatives of health authorities, law-enforcement (e.g. police) and other competent authorities in order to prevent and combat effectively the trafficking in human organs (**Article 21, para. 1 letter (c)**);

Health authorities and the Malta Police Force cooperate as a matter of course. Within the Police Force, potential cases of organ trafficking would be referred to the Vulnerable Victims Unit, which is also responsible for cases of human trafficking.

The referral system in relation to human trafficking cases will be further enhanced as part of the Strategy and Action Plan currently being finalised. This system will also be useful in relation to organ trafficking cases.

- b. Which legislative or other structured measures have been taken to set up or ensure:
- the existence of a transparent domestic system for the transplantation of human organs (**Article 21 para. 1 letter (a)**);
 - equitable access to transplantation services for patients (**Article 21 para. 1 Letter (b)**);
 - adequate collection, analysis and exchange of information related to the offences covered by the Convention (**Article 21 para. 1 letter (c)**);

Organ donation and transplantation is carried out in our main national hospital and is led and guided by specialists in their field following EU and local legislation and standards. It is ingrained in our legal and medical system that healthcare is offered equally to all irrespective of race or gender.

- c. Please indicate the healthcare professionals and relevant officials (including police, legal professionals) as well as civil society in the prevention of and combat against trafficking in human organs. Please indicate how healthcare professionals and relevant officials (including police, legal professionals) are trained for this purpose and how resources are secured for them (**Article 21, para. 2**);

Vulnerable Victims Unit, Malta Police Force

There are no Voluntary Organisations which work on the subject of Trafficking in Human Organs.

- d. Please describe how campaigns about the unlawfulness and dangers of trafficking in human organs are promoted (**Article 21, para. 2 letter (b)**);

The Human Rights Directorate (HRD) has been working on a national awareness campaign on human trafficking since February 2023. This campaign has featured awareness on the fact that trafficking in human organs is a violation of human rights and that the crime involves coercion, deception, or false promises of payment to recruit victims. Within the campaign, it is emphasised that victims cannot consent to their own exploitation and may have organs removed without their knowledge, often when being treated for medical issues, which may be genuine or fabricated by traffickers.

<https://humanrights.gov.mt/en/Pages/Initiatives%20Unit/Human%20Trafficking/Trafficking-in-Human-Organs.aspx>

- e. Is prohibited any advertisement of the need for, or availability of human organs, with a view to offering or seeking financial gain or comparable advantage? (**Article 21, para. 3**);

Under Article 248CA of the Criminal Code (Chapter 9 of the Laws of Malta), the removal of human organs from live or dead donors in cases where financial gain or comparable advantage was offered in exchanged is an offence. Accordingly, advertising such conduct would also constitute an offence, as enticing someone to commit an offence is also an offence.

There is also a specific offence under Article 248CA(2)(c) of the Criminal Code, which states: "A person who does any of the following acts shall be guilty of an offence against this article..... (c) solicits or recruits an organ donor or a recipient for financial gain or comparable advantage".

Question 4: International cooperation

- a. Please indicate the national contact point responsible for the exchange of information pertaining to trafficking in human organs (**Article 22, letter (b)**).

Human Rights Directorate

Dr. Lynn Chircop Faure – Senior Manager, Human Rights Directorate
lynn.chircop-faure@gov.mt

- b. Please, indicate the national authorities involved in the fight against organ trafficking and their contact details.

Vulnerable Victims Unit, Malta Police Force
vice.police@gov.mt
Police Headquarters general contact number +356 2294 0000.

IV. PROSECUTION OF PERPETRATORS OF TRAFFICKING IN HUMAN ORGANS

Question 5: Criminal Law offences

- a. Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law.

The conduct described in the box below is criminalised under Maltese law.

- b. Do the offences in your internal laws require intentional conduct? If no, please provide information.

Yes, Article 248CA of the Criminal Code (Chapter 9 of the Laws of Malta) renders an offence the removal of organs, tissues or cells in a way which is not compliant with Chapter 558 of the Laws of Malta.

- c. Please highlight whether there are any other offences not included in the box below that involves trafficking in human organs in your country? Please provide their definitions and specify in which act these are included;

It seems that the box below does not mention organ trafficking in relation to minors. Maltese law criminalises such conduct – this being the exact same conduct already criminalised, but this time, when committed upon minors.

- d. According to the explanatory report para 29 it is left open for Parties to decide whether to apply Article 4, paragraph 1, Articles 5, 7 and 9 to the donor and/or the recipient. Please specify whether your internal law criminalize donors and/or the recipients for these criminal offences. Please explain the reasoning behind the regulation.

The text of Article 248CA(1) of the Criminal code refers to whomsoever commits the removal of organs. Obviously, it is hard to imagine a person removing their own organ.

Article 248CA(2) then refers to persons who commit any of the actions described thereunder. It refers to persons who make use of organs, tissues or cells removed illegally as described in Article 248CA(1); to the persons who implant the said illegally removed organs/tissues/cells; to anyone who entices such conduct; to the persons who prepare, preserve or store such illegally removed organs/tissues/cells; and to persons who transport, transfer, receive, import or export such illegally removed organs/tissues/cells.

Article 4 – Illicit removal of human organs

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.

(...)

Article 5 – Use of illicitly removed organs for purposes of implantation or other purposes than implantation

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.

Article 7 – Illicit solicitation, recruitment, offering and requesting of undue advantages

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.

Article 8 – Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs

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.

Article 9 – Aiding or abetting and attempt

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.

Question 6: Jurisdiction

- a. With regard to the offences referred to in question 5, letters a, b and c, please indicate which jurisdiction rules apply. Please specify under which conditions, if required (**Article 10, Explanatory Report, paras. 64-75**).

Article 248E(5) of the Criminal Code adds to the jurisdictional rules under Article 5 of the Criminal Code the following:

- When only part of the conduct which gives rise to the carrying out of the offence takes place in Malta; or
- When the guilty part is a Maltese citizen or permanent resident in Malta or if the offence took place for the benefit of a legal person registered in Malta; or
- When the offence took place upon the person of a Maltese citizen or upon the person of a permanent resident of Malta.

The usual jurisdictional rules, in summary, are:

- If the offence takes place in Malta or at sea within Maltese territorial jurisdiction;
- If the offence takes place at sea outside the aforementioned limits aboard a vessel registered in Malta;
- If the offence takes place on an aircraft in Maltese airspace or on aircraft registered in Malta, wherever they may be.

- b. According to your national legislation, is your country competent to investigate and prosecute suspected organ trafficking abroad? If yes, please specify in which cases.

In relation to prosecution, only if the provisions of law mentioned hereinabove are applicable to the situation.

Question 7: Corporate liability

Does your system provide that a legal person may be held liable for an offence established in accordance with **Article 11**? Please specify under which conditions.

A legal person may be held liable for such an offence, and in such cases, the prescribed penalty is a fine of not less than twenty thousand Euros (€20,000) and not more than two million Euros (€2,000,000).

Question 8: Sanctions and measures

- a. Please indicate which sanctions internal law provides for the criminal offences established in accordance with the Convention with regard to both natural and legal persons. Please specify whether the sanctions are criminal, civil and/or administrative sanctions (**Article 12, Explanatory Report, paras. 83-87**);

The penalty for organ trafficking is set at imprisonment for not less than six years and not more than twelve years. However, when the offence is committed upon a minor and any of the following means are used:

- violence or threats;
- deceit or fraud;
- misuse of authority, influence or pressure;
- the giving or receiving of payments or benefits to obtain the consent of a person having control over another person;
- abuse of power or of a position of vulnerability;
- then the prescribed penalty is increased by one degree (not less than seven years and not more than twenty years).

The penalty is also increased by one degree in any one of the following circumstances:

- if the offence is committed through violence or resulted in physical or psychological harm to the victim;
- if the offence generates income of more than €11,646.87;
- if the offence takes place through the involvement of a criminal organisation;
- if the offence is committed by a public officer during the carrying out of his duties;
- if the offence is committed against a vulnerable person;
- if the offender knowingly or recklessly endangered the life of the trafficked person;
- if the offender was also previously found guilty of a human trafficking offence;
- if the offender is a family member of the minor victim or is a person who lived with the minor victims or is a person who abused a recognised position of trust and authority.

A legal person may be held liable for such an offence, and in such cases, the prescribed penalty is a fine of not less than twenty thousand Euros (€20,000) and not more than two million Euros (€2,000,000).

When a person found guilty of a human trafficking offence:

- was an employee or otherwise in the service of a legal person;
- when such offence took place for the benefit, in part or in full, of a legal person;
- took place due to lack of monitoring of control by the controlling parties;

- the guilty party is considered as having legal representation of the same legal person and the said legal person is fined not less than ten thousand Euros (€10,000) and not more than two million Euros (€2,000,000).

These sanctions are criminal in nature.

However, when the offence takes place, in full or in part, for the benefit of a legal person by a person having the authority to represent that legal person or having the authority to represent the decision-making body or person within that legal person, such legal person may be subjected to:

- exclusion from entitlement to public assistance or benefits;
- suspension or revocation of all licences, permits and other authority to carry on business or other commercial activity;
- placing under judicial supervision;
- compulsory dissolution; or
- temporary or permanent closure of the establishment which may have been used for the carrying out of the offence.

- b. Which legislative or other measures have been taken to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with the Convention? Please provide details and describe any good practice resulting from the taking of these measures (**Article 14, Explanatory Report, paras. 95-100**).

Under Maltese law, when one is a repeat offender (recidivist), final judgments issued by foreign courts are also considered. This emerges from Article 49(1) of the Criminal Code.

Question 9: Aggravating Circumstances

Please indicate which of the circumstances referred to in **Article 13**, 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 internal law, be taken into consideration in your legal system as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention (**Explanatory Report, paras. 88-94**).

Already explained above.

Question 10: Investigations and criminal measures

- a. Which legislative or other measures have been taken to ensure that investigations or prosecutions of offences established in accordance with the Convention shall not be subordinate to a complaint and that the proceedings may continue even if the victim has withdrawn his or her statement? (**Article 15, Explanatory Report, para. 101**).

Under Maltese law, when the law requires that prosecution may only take place following a complaint, the law explicitly states that. In the case of human organ trafficking, there is no such requirement. Prosecution is unaffected if the complainant withdraws his or her complaint.

- b. Please describe which circumstances or other measures have been taken to ensure effective criminal investigation and prosecution of offences established in accordance with the Convention (e.g. carrying out financial investigations, the use of covert operations, other special investigative techniques (**Article 16**)).

There were no reported cases of trafficking in Human Organs since Malta's accession to the convention. However, should any reports be filed, the law enforcement authorities would implement measures to ensure the thorough investigation and prosecution of such offences (together with the Attorney General), employing investigative techniques as necessary. The authorities may also decide to initiate a financial investigation concurrently with the criminal investigation.

Question 11: Measures of protection for the victim

- a. Please describe the measures taken to (**Article 18**):
- ensure that victims have access to information relevant to their case and which is necessary for the protection of their health;
 - assist victims in their physical, psychological and social recovery;
 - provide for the right of victims to compensation from the perpetrators.

Whenever a healthcare professional in Malta suspects any case of illegal activity including cases of victims of trafficking of organs or humans, they are legally obliged to report it to the police. It is then the duty of the legal and judicial system to take the necessary actions depending on the case.

- b. Please describe the measures taken to inform victims of their rights, the services at their disposal, the follow-up given to their complaint, the charges, the state of the criminal proceedings, and their role as well as the outcome of their cases (**Article 19, para. 1, letter (a) and para. 2**).

The Victim Support Agency has taken the following measures, which implement the provisions of Article 18:

- i. setting up of the national support line 116 006;
- ii. in-person and online access to services;
- iii. outreach sessions; and,
- iv. information sessions.

Meanwhile, Agenzija Appoġġ within the Foundation for Social Welfare Services (FSWS) has never encountered a victim of organ trafficking thus far. Should this occur in future, however, the service would still cater and provide psychosocial help, including social work help and counselling, accommodation in a safe house, provision of basic needs, such as

food, clothing and medication, facilitation of collaboration with other services, such as ease of access to health care, legal aid, and the police, and the use of interpreters and cultural mediators, just like in any other case of trafficking.

- c. Please also indicate which measures have been taken to enable the victim to be heard, to supply evidence and the means of having his/her views, needs and concerns presented, directly or through an intermediary, and considered (**Article 19, para. 1, letter (b)**);

The Victim Support Agency provides free legal advice to victims of crime.

- d. What kind of support services are provided to victims so that their rights and interests are duly presented and taken into account? (**Article 19, para. 1, letter (c)**)

The Victim Support Agency provides information on court proceedings, in the context of criminal justice, as well as information on the rights of the victim in Court.

- e. Please describe the measures taken to provide the safety of the victims, their families and witnesses from intimidation and retaliation (**Article 19, para. 1, letter (d)**);

All victim support services are provided free of charge and confidentially. Moreover, Victim Support Centres have been established closer to the community.

Meanwhile, the prosecution requests the Court to issue a Protection Order at the start of proceedings.

- f. Please specify under which conditions victims of the offences established according to the Convention have access to legal aid provided free of charge (**Article 19, para. 3**).

Any victims of crime can request to be assisted with State funded legal aid services. At their request, a victim will be assigned a legal aid lawyer for advice and if necessary another legal aid lawyer for Court representation for Court proceedings.

- g. Which legislative or other measures have been taken to ensure that victims of an offence established in accordance with the Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their state of residence? (**Article 19, para. 4, Explanatory Report, para. 120**).

There are no restrictions on the filing of complaints.

- h. Please describe how your internal law allows for groups, foundations, associations or governmental or non-governmental organisations assisting and/or supporting victims to participate in legal proceedings (for example, as third parties) (**Article 19, para. 5**). Please specify under which conditions, if so required;

Insofar as criminal proceedings are concerned (as the Office of the Attorney General (OAG) is a prosecution service), such groups, foundations or other bodies may not participate themselves. They may, however, offer services to victims which may include the provision of legal assistance to said victims.

Court proceedings in Malta are regulated by Cap 12, the Code of Organisation and Civil Procedure and, in relation to criminal matters, by Cap 9, the Criminal Code.

In civil proceedings there may be direct interventions by NGOs or other parties in relation to pending cases through the process of intervention in statu et terminis, as long as the criterium of juridical interest is satisfied. A victim seeking redress through civil remedies may also be assisted by legal representatives of an NGO or other parties.

In criminal matters, a victim may be admitted as parte civile in a case and may be assisted by a lawyer from an NGO or third party.

V. PREVENTION OF AND COMBAT AGAINST TRAFFICKING IN HUMAN ORGANS

Question 12: Ensure quality and safety requirements for the transplantation system

- a. Which legislative or other measures have been taken to establish the existence of a transparent domestic system for the transplantation of human organs? (**Article 21 para. 1 letter (a), Explanatory Report, para. 125-126**)

There is only one organ donation and transplantation centre, and this is co-ordinated by a team of specialist physicians and nurses trained in the subject. Patient waiting lists for kidney transplantation is owned by the hospital and is transparent to healthcare professionals. Living donation kidney transplantation is only allowed by a rigorous screening process of the potential donor that includes screening by psychologists and the final decision is taken by a committee and not an individual. This removes the risk of forced donations or donations for financial gain. All excess organs are offered to established centres abroad like ISMETT in Palermo and national transplant organisations in UK.

- b. Which legislative or other measures have been taken to ensure equitable access to transplantation services for patients? (**Article 21 para. 1 letter (b)**)

All residents of Malta are entitled to access to the public healthcare system which includes access to organ transplantation. There are national rules on who is entitled to free treatment, but this is not just for organ donation but all aspects of healthcare.

- c. Which legislative or other measures have been taken to ensure adequate collection, analysis and exchange of information related to the offences covered by the Convention in co-operation between all relevant authorities? (**Article 21 para. 1 letter (c)**)

The National Statistics Office (NSO) explained that it coordinates an annual data collection on human trafficking which fulfils a data collection requirement of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (Article 19). As part of this collection, statistics on victims of trafficking in human beings by form of exploitation is provided. One of the types being the removal of organs, however the Directive does not address specifically organ trafficking.

Nevertheless, all data collected by the NSO falls under the Malta Statistics Authority (MSA) Act. Therefore, all the data held by the NSO is subject to strict processes and controls in terms of confidentiality. For instance, the statistics produced with the data collected for the implementation of Directive 2011/36/EU is subject to suppression to protect the identification of victims due to small counts. Furthermore, as per the MSA Act, the possibilities for the NSO to share confidential data are very limited and for research purposes only.

Therefore, although the NSO may be collecting data related to organ trafficking, this is done indirectly in the course of collecting data related to human trafficking.

Through the Eurostat information 2021-2022, Malta did not report any cases of organ trafficking.

<https://humanrights.gov.mt/en/Pages/Initiatives%20Unit/Human%20Trafficking/National-Statistics-Victims-of-Human-Trafficking-in-Malta.aspx>

- d. Which legislative or other measures have been taken to ensure the prohibition of the advertising of the need for, or availability of human organs? (**Article 21 para.3**)

Under Article 248CA(2)(c), enticing or recruiting someone to donate organs for financial gain or similar advantage is an offence, as described.

A new Bill proposing a shift to an 'opt-out' system for organ donations received unanimous support from all parties in the legislature and was presented to parliament on Wednesday 21 February 2024. This Bill aims to change the current framework, presuming individuals over the age of 16 consent to organ donation unless they explicitly opt out.

<https://www.parlament.mt/media/126476/motion-229-organ-donation-pmb.pdf>

- e. Which measures have been taken to provide (**Article 21 para. 2 letter a, Explanatory Report, para. 127**):

- information for healthcare professionals and relevant officials (including police, legal professionals in the prevention of and combat against trafficking in human organs?
- information for civil society in the prevention of and combat against trafficking in human organs?

A 2014 SOP on trafficking in general is available on the hospital intranet. The Ministry for Health and Active Ageing (MHA) has also starting to work on an updated information sheet on organ trafficking to better sensitise healthcare professionals to this topic however this work is in the initial stages.

In the development of the upcoming National Strategy and Action Plan on Combatting Trafficking in Human Beings in Malta (2024-2030) the collaboration of civil society has been sought and this has ensured that measures in the Strategy and Action Plan specifically address the involvement of civil society in the fight against human trafficking, including trafficking in human organs.

Awareness and training on national measures as well as information for healthcare professionals and relevant officials in the prevention of and combat against trafficking in human beings is a crucial part of the upcoming Strategy and Action Plan. The Maltese Criminal Code includes that the removal of a human organ, tissue, or cell from living or dead donors is a criminal offense, and the law stipulates that behaviour that constitutes this offense under Article 248CA of the Criminal Code. It states that in Malta, a person found guilty of the crime of trafficking in human organs faces a prison sentence of six to twelve years. These provisions in conjunction with the articles that criminalise human trafficking are brought to the awareness of governmental officers through the TSI training activities. Although the Action Plan does not include actions specifically to prevent and combat organ trafficking, it provides for specific objectives, namely:

- Strategic area 1: Strengthening the supporting anti-trafficking framework;
- Strategic area 2: Ensuring targeted prevention of THB and early identification of potential victims of THB and persons at risk of THB;
- Strategic area 3: Tackling a culture of impunity by effective investigation and prosecution of traffickers;
- Strategic area 4: Comprehensive victim protection, access to justice and remedies;
- Strategic area 5: Strategic partnerships at national, regional and international level to tackle human trafficking.

In essence the Strategy and Action Plan aim to prevent human trafficking, prosecute perpetrators and protect victims of human trafficking in general which inherently incorporates organ trafficking.

Meanwhile, since the Office of the Attorney General is a prosecution service, it is not involved in prevention of and combat against organ trafficking in a frontline sense. The Office of the Attorney General prosecutes offences which are brought to it by the Police following proper investigation.

f. Which policies or strategies have been implemented to promote or conduct awareness-raising campaigns targeted at the general public where the focus is directed especially towards the risks and realities of the unlawfulness and dangers of trafficking in human organs?

- Please describe the material used for the campaign/programme and its dissemination.

- If possible, please provide an assessment of the impact of the campaign/programme. If there are currently plans for launching a (new) campaign or programme, please provide details (**Article 21, para. 2 letter b**);

As stated in question 3d, the national awareness raising campaign has specifically targeted the general public to inform about the risks and realities of the unlawfulness and dangers of trafficking in human organs. Through this campaign, indicators have been shared to ensure that the public is informed on the potential warning signs of trafficking in human organs. The Crime Stop Hotline (119) and the national support line (179) have been promoted throughout the campaign to ensure that the public can report any suspicious activity, including anything pertaining to trafficking in human organs, and for victims/potential victims to contact the police and/or seek support. Thus far, social media platforms, such as Facebook and Instagram, have been the main method of disseminating information on trafficking in human organs.

The website of the Human Rights Directorate refers to the unlawfulness of trafficking in human organs, and plans are underway to create a specific page focusing on this type of exploitation. Further awareness raising plans include a collaboration with the Ministry for Health and Active Ageing to create further awareness on trafficking in human organs amongst healthcare professionals.

Meanwhile, public health specialist doctors are leading an awareness campaign on recognition of human trafficking for organ donation.

VI. INFORMATION

Please specify which state body/agency was responsible for collecting the replies to this questionnaire and which state bodies/agencies (and, at the discretion of the country, where relevant, civil society and external contributors) contributed to responding to this questionnaire.

➤ **Body/agency responsible for collecting the replies:**

Human Rights Directorate (HRD)

➤ **State bodies/agencies (where relevant, civil society and external contributors) that contributed to responding to this questionnaire:**

Human Rights Directorate (HRD) / Ministry for European Funds, Equality, Reforms and Social Dialogue (MEES)

Ministry for Justice and Reform of the Construction Sector (MJR)

Ministry for Home Affairs, Security and Employment (MHSE)

Ministry for Health and Active Ageing (MHA)

Ministry for Social Policy and Children's Rights (MSPC)

National Statistics Office (NSO) / Ministry for Finance (MFIN)

