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GENERAL OVERVIEW QUESTIONNAIRE

COUNTRY PROFILE QUESTIONAIRE

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 Organs[1] (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 website[2].*

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.

The equality of all before the law is enshrined in Article 14 of the Constitution, as a basic pillar of our legal system: "Spaniards are equal before the law, and no discrimination may prevail on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

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;

The Spanish legislation on Donation and Transplantation of organs contain measures to combat against the trafficking in human organs.

·**Organic Law 10/1995, of November 23, 1995, of the Penal Code**.This law regulates both the crime of illicit trafficking in human organs and trafficking in human beings for the purpose of organ extraction.(Arts. 156 bis y 177 bis)

·**The Law 30/1979, of October 27, 1979, on organ extraction and transplantation**.

·**Royal Decree 1723/2012, of December 28, which regulates the activities of procurement, clinical use and territorial coordination of human organs intended for transplantation and establishes quality and safety requirements establish** (https://www.ont.es/informacion-a-los-profesionales-4/legislacion-4-1/):

· **Spanish Medical Ethics Code** which regulates the obligation of doctors and nursing staff to reveal professional secrecy in cases of suspected transplant tourism or organ trafficking (art. 31.1.7)). Approved in December 2022 (Código de Deontología Médica (cgcom.es)

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;

ONT funds an annual meeting between judges, coroners and the transplant community since 1997. Training is provided on the functioning of the donation and transplantation system and on the fight against trafficking in human beings for the purpose of organ removal and trafficking in human organs. ONT also participates in training activities convened by law enforcement agencies to address their role in the fight against trafficking in human beings for the purpose of organ removal and trafficking in human organs. The Human Trafficking Investigation Workshops for Law Enforcement Agencies, and in the training plan approved by the General Council of the Judiciary.

An annual meeting between journalists and transplant community is also funded by ONT since 90'. Continuous communication and availability for media is one of the Spanish Model on organ donation and transplantation characteristics; which it is crucial for general public awareness-raising about donation.

On 9 and 10 November 2023, the ONT, under the Spanish Presidency of the Council of the European Union, convened in Santander (Spain) a Global Summit entitled "Towards Global Convergence in Transplantation: Sufficiency, Transparency and Oversight". The Summit was co-organised by the EDQM of the Council of Europe, the European Society for Organ Transplantation (ESOT), and The Transplantation Society (TTS). The Summit was co-sponsored by the World Health Organization (WHO) and supported by the International Society of Nephrology (ISN).

The Summit's objective was to pave the way for global action in transplantation for the next decade. In particular, the Summit aimed to critically review the current state of donation and transplantation of organs, tissues, and cells, identify key challenges, and shape the future direction of transplant activities worldwide to ensure that advances in this field benefit citizens across the globe.

The Summit, attended by 183 participants from 57 countries, international organisations and professional associations, concluded with a set of recommendations, targeted to national and regional governments, though acknowledging the role of other key stakeholders, including health authorities, relevant professional associations, healthcare professionals and institutions, law enforcement agencies, academic and research institutions, and civil society organisations. The Summit also called upon international organisations, in particular the European Union, the Council of Europe, and the WHO, to provide guidance and support to States in taking effective measures to implement these recommendations to ensure that no one is left behind. These recommendations are conveyed in the so called "Santander Statement", that includes elements targeted to propel action against trafficking in human organs and trafficking in human beings for the Purpose of organ removal (https://www.ont.es/wp-content/uploads/2023/11/Santander_Transplant_Statement_nov_23.pdf).

The Spanish donation and transplantation network is connected through a computer system (CORE) where all the information on donors, transplants and recipients is collected. This allows an exhaustive follow-up of the procedures, analyzing them and detecting any anomaly.

In 2021 the ONT elaborated a circular addressed to the Spanish health professionals of the donation and transplantation network regarding the displacement of patients from other countries to Spain for the purpose of transplantation, which can be found in the professionals section of its web page https://www.ont.es/wp-content/uploads/2023/06/Circular-ONT-4_2021_TURISMO-DE-TRASPLANTE-NOVIEMBRE-2021.pdf.

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.

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)

  Art. 156 bis of Criminal Code contains the following definition that in accordance with the Art. 2 of the Santiago de Compostela convention: “Trafficking in human organs shall be understood to mean

  (a) The unlawful removal or procurement of another's human organs. Said extraction or procurement shall be unlawful if it is carried out under any of the following circumstances:

  1. that it has been carried out without the free, informed and express consent of the living donor in the manner and with the requirements provided for by law;

  2. that it has been carried out without the necessary authorization required by law in the case of the deceased donor; 3. that it has been carried out without the necessary authorization required by law in the case of the deceased donor,

  3. that, in exchange for the extraction or procurement, for one's own benefit or for the benefit of another, a gift or retribution of any kind is requested or received by the donor or a third party, by himself or by an interposed person, or an offer or promise is accepted. A gift or retribution shall not be understood as compensation for expenses or loss of income derived from the donation.

  b) The preparation, preservation, storage, transportation, transfer, reception, import or export of illicitly harvested organs.

  c) The use of illicitly harvested organs for the purpose of transplantation or for other purposes.”

- "human organ" (Article 2)

  Art.3. 19 of Royal Decree 1723/2012, of December 28, which regulates the activities of procurement, clinical use and territorial coordination of human organs intended for transplantation and establishes quality and safety requirements establish, contains the following definition of organ that in accordance with the Art. 2 of the Santiago de Compostela convention:” that differentiated part of the human body made up of various tissues that maintains its structure, vascularization and capacity to carry out physiological functions with an important degree of autonomy and sufficiency. In tis sense, organs are: Kidneys, heart, lungs, liver, pancreas,

intestine and any others with similar criteria that can be obtained and transplanted in accordance with scientific and technical advances. An organ is also considered to be a part of an organ whose function is to be used in the human body for the same purpose as the whole organ, while maintaining the requirements of structure and vascularization. For the purposes of this Royal Decree, vascularized composite tissues are also considered organs.

- "financial gain or comparable benefit" (Article 4)?

  Art. 2 **L. 30/1979, of October 27, 1979,** on organ extraction and transplantation**,** It expressly states that no compensation whatsoever may be received for organ donation. Means shall be provided to ensure that the performance of these procedures is in no way burdensome for the living donor or for the family of the deceased. In no case shall there be any financial compensation for the donor, nor shall any price be charged to the recipient for the transplanted organ.

  Art. 7 of Royal Decree 1723/2012, of December 28, which regulates the activities of procurement, clinical use and territorial coordination of human organs intended for transplantation and establishes quality and safety requirements establish, contains expressly that:" 1. No gratuity may be received for the donation of human organs by the donor, or by any other natural or legal person. Neither may any pecuniary or any other type of benefit be offered or given in connection with the allocation of one or more organs for transplantation, nor may they be solicited or accepted.

  2. The performance of the medical procedures related to the procurement shall not, in any case, be burdensome for the living donor or for the family of the deceased. The principle of gratuity shall not prevent living donors from being reimbursed for expenses and loss of income directly related to the donation. When such restitution is appropriate, it shall necessarily be made through the mechanisms that may be provided for this purpose by the competent administrations.

  3. It is forbidden to advertise the need for an organ or its availability by offering or seeking any kind of gratification or remuneration.

  4. No price shall be demanded from the recipient for the transplanted organ."

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"?

Spanish legal system recognizes the altruism as a principle of the donation of organs, tissues and cells for transplantation.

Art. 2 **L. 30/1979, of October 27, 1979,** on organ extraction and transplantation**,** It expressly states that no compensation whatsoever may be received for organ donation. Means shall be provided to ensure that the performance of these procedures is in no way burdensome for the living donor or for the family of the deceased. In no case shall there be any financial compensation for the donor, nor shall any price be charged to the recipient for the transplanted organ.

In Art. 156. Bis 1. a) 3ª) of Penal Code, It is expressly mentioned that *a gift or remuneration shall not be understood as compensation for expenses or loss of income resulting from the donation*

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?

In the case of the deceased donor, it is the donor's family or the close relatives who consent to the donation, assuming that they are aware of the deceased's wishes in this regard.

One of the requirements for the procurement of organs from deceased donors for therapeutic purposes (art. 9 of Royal Decree 1723/2012, of December 28) is that "*the deceased person from whom organs are to be procured has not expressly stated his or her opposition to organ procurement after his or her death. Said opposition, as well as his agreement, if he wishes to express it, may refer to all types of organs or only to some of them, and will be respected.*

In the case of minors or incapacitated persons, the opposition may be recorded by those who had been their legal representatives during their lifetime, in accordance with the provisions of civil legislation."

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)**);

To implement Resolutions CM/Res(2013)55 and CM/Res(2017) adopted by the Committee of Ministers of the Council of Europe, the European Directorate for the Quality of Medicines and Healthcare (EDQM) established a Network of National Focal Points (NFPs) on Travel for Transplantation (NETTA) to provide a forum for cooperation and exchange of information on this phenomenon and facilitate the collection of data to understand its dimension and impact. The EDQM created a secured Registry of International Travel for Transplantation Activity (RITTA) for NFPs to report data on cases of travel for transplantation identified in Council of Europe member States. Spain is participating in NETTA through ONT since its creation in 2016, by collecting data from transplant centers on:

i. patients who receive a transplant abroad and return to their country of residence for post-transplant care;
ii. transplants carried out on resident patients from non-resident living donors;
iii. transplants performed on non-resident patients from resident living donors; and
iv. transplants in which neither the patient nor the living donor is a resident in the country where the transplant is performed.

Although each NFP can only see the data of their country and the information included is anonymized, this exercise allows NFPs to investigate cases reported to RITTA with close cooperation between countries concerned. Notably, cases reported from Spain during 2021-2023 have been deemed consistent with ethical travel for transplantation.

On the other hand, State security forces and bodies holds regular meetings with the different organizations involved in the fight against THB, collaborating with the different institutions; Prosecutor's Office for THB and Immigration, National Transplant Organization, National Police and Ministry of Justice to exchange information between the different entities involved.

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)**);

In Spain, organ transplant teams meet at the beginning of every year to review the previous year's activity and reach a consensus on the national criteria for the distribution of organs for transplantation during that year. After these meetings, the organ distribution criteria are approved by the Transplant Commission of the Interterritorial Council of the National Health System of the Ministry of Health.

   - adequate collection, analysis and exchange of information related to the offences covered by the Convention **(Article 21 para. 1 letter (c));**

Answered in question 3.a.

Report of the hospital's Ethics Committee,

Judge's consent.

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**);

Answered in question 2.b.

In the other hand, State security forces and bodies carries out different training sessions for the members of the institution, including training related to organ trafficking in all of them.

Training sessions for investigators are held every year, training specialists in THB belonging to all the Units of the Judicial Police of the Guardia Civil, also training sessions for social partners from all over Spain and a teletraining course on THB, open to all members of the institution.

With this training, the State security forces and bodies tries to constantly renew and update the training of its agents regarding THB.

d. Please describe how campaigns about the unlawfulness and dangers of trafficking in human organs are promoted ((**Article 21, para. 2 letter (b)**);.
There are not campaigns but training to health professionals, judges, coroners and journalist, groups that have or may encounter this type of illicit facts and raise awareness of the issue in society

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**);
Yes, it is. It is punishable under the Penal Code Art. 156 bis Article 156 bis, which punishes those who advertise trafficking in human organs,

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)**).

Secretary of State for Justice (secretaria.estado@mjusticia.es) and advisor Escarlata Gutiérrez (escarlata.gutierrezm@mjusticia.es)

b. Please, indicate the national authorities involved in the fight against organ trafficking and their contact details.
National Transplant Organization / Organización Nacional de Trasplantes – ONT
Ministry of the Presidency, Justice and Relations with the Courts.
State Security Forces and Corps.
Attorney General's Office.
Legal system (Judges)

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.
Article 156 bis. of the Penal Code punishes all conducts included in the articles of the Santiago de Compostela Convention, with the following wording:
"1. Those who in any way promote, favour, facilitate, publicize or execute the trafficking in human organs shall be punished.
a) The unlawful removal or procurement of human organs from another person. Said extraction or procurement shall be unlawful if it takes place under any of the following circumstances:
1. that it has been carried out without the free, informed and express consent of the living donor in the form and with the requirements provided for by law;

2. that it has been carried out without the necessary authorization required by law in the case of a deceased donor.
3. that, in exchange for the extraction or procurement, for one's own or another's benefit, it was requested or received by the donor or a third party, by himself or by an interposed person, a gift or remuneration of any kind, or an offer or promise is accepted. It shall not be understood as gift or retribution shall not be understood as compensation for expenses or loss of income derived from the donation."

The above paragraph includes the conducts of art. 4 of the Santiago de Compostela agreement.

Art. 156 bis Penal Code.:" b) The preparation, preservation, storage, transportation, transfer, reception,
importation or exportation of illicitly harvested organs.
c) The use of illicitly harvested organs for the purpose of transplantation or for other purposes."

The above paragraph includes the conducts of arts. 5 y 8 of the Santiago de Compostela Convention.

Art. 156 bis Penal Code: "2. The same punishment shall be imposed on those who, for their own benefit or that of another:
a) solicit or receive, by themselves or through an intermediary, gifts or retribution of any kind, or accept an offer or promise for proposing or recruiting a donor or recipient;
(b) offer or deliver, by himself or through an intermediary, a gift or payment of any kind to medical personnel, public officials or private individuals in the exercise of his profession or position in clinics, establishments or offices, whether public or private, with the purpose of carrying out or facilitating the illicit extraction or procurement or the implantation of illicitly extracted organs."

The above paragraph includes the conducts of art. 7 of the Santiago de Compostela agreement.

Aiding and abetting and attempt are punishable in general for all crimes in the Spanish penal code, but in addition in the case of illicit organ trafficking it is punishable in art. 156 bis.8:" Provocation, conspiracy and proposition to commit the offenses provided for in this article shall be punishable by a penalty one to two degrees less than that which corresponds, respectively, to the acts provided for in the preceding paragraphs.".

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

Yes. They do.

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;

In addition to the conducts described in the previous paragraph, in art. 177 bis 1. d) of the Criminal Code punishes trafficking in human beings for the purpose of organ extraction.

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.

In our legal system, the recipient of the organ is punished with an attenuated penalty provided that he/she was aware of the illicit origin of the transplant. (art. 156 bis. Criminal Code)

***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**).

According with Art. 23. 1 of the L.O.P.J.: "1. In criminal matters, Spanish jurisdiction shall be competent to hear cases involving crimes and misdemeanors committed in Spanish territory or committed on board ships or r aircraft, without prejudice to the provisions of international treaties to which Spain is a party."

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.

Spanish jurisdiction shall hear crimes that have been committed by a person with the Spanish nationality, outside the national territory, provided the following requirements are met (Spain has reserved the right to apply the art. 10.1 e) and does not have

jurisdiction to prosecute these offenses when they have been committed outside spanish territory by a person resident in Spain) (art. 23 L.O.P.J.):

a) That the fact is punishable in the place of execution,
b) That the victim or the Public Prosecutor's Office files a complaint before the Spanish courts.
c) That the offender has not been acquitted, pardoned or sentenced abroad, or, in the latter case, has not served his sentence.

In the case of prosecutting trafficking in human beings for the purpose of organ removal the conclusion is different, according to the annual report of the Public Prosecutor's Office of Spain, the Spanish justice system is investigating these crimes when the destination of the trafficked persons is the national territory, even if the criminal organisations are based abroad. (according with art. 570 quarter 3 CP, 65.1 e) LOPJ and Framework Decision 2008/841/JHA of 24 October 2008 on organized crime.

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.

Yes, it does. Art. 156 bis. 7 expressly contains criminal liability of legal persons for crimes of illicit organ trafficking with the following wording: " 7. When, in accordance with the provisions of article 31 bis, a legal person is responsible for the offences covered by this article, it shall be sentenced to a fine three times to five times the amount of the benefit obtained.
In accordance with the rules set out in article 66 bis, the judges and courts may also impose the penalties set out in letters b) to g) of paragraph 7 of Article 33."

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 crime of illicit trafficking in human organs (art. 156 bis Penal Code)
and trafficking in human beings for the purpose of organ extraction (art. 177 bis) provides for criminal penalties for natural and legal persons.
In the case of natural persons, this articles provides for the imposition of a prison sentence and special disqualification from exercising the right to stand as a candidate during the time of the sentence.
The penalty of prohibition of approach and communication with the victim may also be imposed.
They also provide for the imposition in certain cases of the penalty of special disqualification from a profession, trade, industry or trade for the duration of the sentence.

Convictions for these offences also include compensation (civil liability) that the convicted person must pay to the victim for the damage caused (physical, psychological and moral)
In the case of legal persons, both Articles 156 bis and 177 bis provide for the imposition of criminal penalties, as we answered in question 7.

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**).
Articles 156 bis 10 and 177 bis 10 provides that convictions by foreign judges or courts for offences of the same nature as those provided for in this article shall have the effect of recidivism, unless the criminal record has been cancelled or may be cancelled under Spanish law.

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**).

All the aggravating circumstances in article 13 are considered as aggravating circumstances in articles 156 bis and 177 bis of our Criminal Code.

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**).

In our system, the procedure can be initiated without the need for a complaint from the victim. Nor should the latter appear as a party to prosecute the crime because that is done by the Public Prosecutor's Office. However, if the victim does not testify, it is difficult to obtain a conviction.
Recently (in 2021), article 449 ter has been introduced into the Criminal Procedure Law, which provides that in the event that the victim is under 14 years of age or a person with a disability, he or she must testify only once (pre-constituted evidence) and this serves to support the conviction.

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**)).

This possibility is recognized in article 125 of our Constitution, which states: citizens may exercise popular action. Similarly, article 101 of the Code of Criminal Procedure provides that criminal proceedings are public. All Spanish citizens may exercise it in accordance with the provisions of the Law.
Article 102 reads notwithstanding the provisions of the preceding article, the following may not bring criminal proceedings:

1. Anyone who does not enjoy the fullness of civil rights.

2. A person who has been convicted twice by a final judgment as guilty of the crime of slanderous denunciation or complaint.

3. The Judge or Magistrate.

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.

State security forces and bodies following the Protocol for the Protection of Victims of Human Trafficking, informs victims of the possible risks and the protection and security measures that are necessary to adopt.

They are informed about the assistance resources at their disposal, to guarantee accommodation, material help, psychological assistance, medical assistance, interpretation services and legal advice.

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**).

Guardia Civil will inform victims of their rights and offer actions to victims. In the event that the victim is a foreigner in an irregular situation, they will be offered the measures of article 59.bis of Organic Law 4/2000 that protect them.

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 statements of the victims during the investigation will be made according to the precise requirements so that in the oral trial they can be used as pre-constituted summary evidence. Likewise, the measures provided for in Law 19/1994, on the Protection of Witnesses and Experts in criminal cases and the use of other means that contribute to the protection of the victim, such as testimony by videoconference, will be adopted.

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)**)

Organizations and entities with proven experience in assisting victims of trafficking will be in charge of assisting them by developing programs aimed at guaranteeing victims access to their rights and addressing their needs when they are not covered by public services. These programs are aimed at the proactive detection and identification of victims of trafficking and sexual exploitation, their protection, and immediate attention in the social, legal, health, psychological, training and labor spheres. They support and accompany the person's decision-making, directed towards voluntary return to their country of origin or integration into Spain.

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)**);

Victims of human trafficking can benefit from the measures provided for in Law 19/1994 on the Protection of Witnesses and Experts.

Likewise, when the victim is a foreigner, she may request assisted return to her country of origin for herself and her minor or disabled children.

When the victim is a minor, assistance, support and protection will be provided immediately.

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**).

The right to free legal assistance is recognized, regardless of the existence of resources to litigate, for victims of gender violence, terrorism and trafficking in human beings in those processes that are linked to, derive from or are a consequence of their status as victims, as well as minors and people with mental disabilities when they are victims of situations of abuse or mistreatment.

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**).

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;

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**)
Answered in Question 2.b

b. Which legislative or other measures have been taken to ensure equitable access to transplantation services for patients? (**Article 21 para. 1 letter (b)**)
Answered in Question 2.b

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))**
Answered in Question 2.b

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)**
Spanish Penal Code, art. 156 bis Código Penal.

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

- 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?

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**);

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**:

  Secretary of State for Justice (Ministry of the Presidency, Justice and Relations with the Courts)

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

  National Transplant Organization / Organización Nacional de Trasplantes – ONT
  State Security Forces and Corps.