



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 **15th March 2024**

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

TABLE OF CONTENTS

I. INTRODUCTION	3
II. PRELIMINARY REMARKS.....	4
III. GENERAL LEGAL FRAMEWORK AND ALIGNMENT OF THE CONVENTION	5
Question 1: Non-discrimination	5
Question 2: Overview of the implementation	5
Question 3: National co-operation and information exchange	7
Question 4: International cooperation	9
IV. PROSECUTION OF PERPETRATORS OF TRAFFICKING IN HUMAN ORGANS	10
Question 5: Criminal Law offences	10
Question 6: Jurisdiction.....	12
Question 7: Corporate liability	13
Question 8: Sanctions and measures	13
Question 9: Aggravating Circumstances.....	14
Question 10: Investigations and criminal measures	14
Question 11: Measures of protection for the victim	15
V. PREVENTION OF AND COMBAT AGAINST TRAFFICKING IN HUMAN ORGANS ..	19
Question 12: Ensure quality and safety requirements for the transplantation system	19
VI. INFORMATION.....	21

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.

The principle of non-discrimination, to which Article 3 of the Convention refers, is enshrined in the Constitution of the Portuguese Republic, in its Article 13 on the principle of equality. In addition to establishing that all citizens have the same social dignity and are equal before the law, it prohibits any form of privilege, benefit, prejudice, deprivation of rights or exemption from duties on the grounds of descent, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation, social status or sexual orientation.

This constitutional principle applies in this context through the ethical principle of non-discrimination, according to which the selection of donors, as well as the tissues or organs to be donated, is carried out in accordance, exclusively, with medical criteria.

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 most relevant measures to combat trafficking in human organs were the legislative measures adopted by Law no. 102/2019, of 6 September, which takes on board the provisions of the Council of Europe Convention against Trafficking in Human Organs, amending the Criminal Code and the Code of Criminal Procedure and establishes the crime of trafficking in human organs.

- 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;

There is no national strategy/action plan to combat the trafficking in human organs.

- 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.

There is no sectorial strategy/action plan to combat the trafficking in human organs.

- 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)?

Although not all the definitions contained in the Convention are expressly transposed into national law in an autonomous provision, the national legislation has incorporated the definitions resulting from this international instrument.

Thus, considering that the very definition of "trafficking in human organs" refers to the conduct criminalized in the substantive part of the Convention, it is considered that these elements have been integrated into Article 144 B of the Criminal Code, inserted by Law no. 102/2019, of 6 September, mentioned above. The same applies to the concept of "financial gain or comparable benefit" covered by the concept of patrimonial or non-patrimonial advantage in the Portuguese legal system.

Regarding the definition of "human organ", it should be noted that this definition is expressly included in the Portuguese legal system, namely in Article 1A of Law no. 12/93, of 22 April, which establishes the regime for the harvesting and transplantation of organs.

- 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"?

Law no. 12/93, of 22 April, which regulates the collection and transplantation of organs and tissues of human origin at national level, establishes, in Article 5, the principle of no compensation, according to which the donation of organs, tissues and cells for therapeutic or transplantation purposes cannot be remunerated under any circumstances, and their commercialization is prohibited.

- 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?

All citizens who are not registered in the National Register of Non-Donors (RENDA) can be organ donors. In other words, according to Portuguese legislation, everyone can be considered a potential donor, as long as they don't express their opposition to donating on the National Non-Donor Register (RENDA).

Regarding live donation, Article 6 (4) and (5) of Law no. 12/93, of 22 April, establishes and admits the donation of organs, tissues or cells by minors or other incapacitated persons only in the case of regenerable organs or tissues and when the following cumulative requirements are met:

- a) There is no compatible capable donor;
- b) The recipient is the donor's brother or sister;
- c) The donation is necessary to preserve the recipient's life.

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)**);

In the context of co-operation between health authorities, law enforcement authorities and other competent authorities, the exceptions to the doctors' obligation of professional secrecy are particularly noteworthy.

The Code of Ethics of the Portuguese Medical Association, in its Article 27, under the heading "Minors, the Elderly and the Disabled", expressly enshrines one of the exceptions to the duty of professional secrecy, by stating that: "Whenever a doctor called upon to treat a minor, an elderly person, a handicapped person, an incapacitated person or a particularly defenceless person finds that they are victims of abuse, mistreatment or harassment, he or she must take appropriate measures to protect them, in particular by alerting the competent authorities".

It should be noted that medical deontology, although its basic principle is the preservation of confidentiality to sustain the doctor/patient relationship of trust, the Code of Ethics of the Portuguese Medical Association, in its Article 69, also stipulates that the doctor has the possibility of reporting to the Prosecution Service, Medical Association and to the Portuguese Blood and Transplant Institute facts that indicate or confirm that a patient was transplanted in circumstances consistent with organ trafficking or human trafficking for the purpose of organ harvesting.

- 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)**);

In the context of guaranteeing transparency in the transplant system, it is important to note the existence of the Portuguese Blood and Transplant Institute, whose mission is to guarantee and regulate, at national level, the activity of transfusion medicine and transplantation and to guarantee the donation, collection, analysis, processing, preservation, storage and distribution of human blood, blood components, organs, tissues, and cells of human origin.

As part of this system, it is also important to mention the Entity for Verifying the Admissibility of Harvesting for Transplantation, which is the body designated, under Article 6a of Law no. 12/93, of 22 April, to issue a binding opinion in the case of donation and live harvesting of organs, tissues, or cells for therapeutic or

transplantation purposes. This body exists in each hospital where harvesting takes place, and operates under and as a section of the Health Ethics Committee of the hospital where organ harvesting takes place.

Of particular relevance is the mention of the Transparency Area of the SNS Portal, available online, which records all transplants carried out and the number of donations.

To guarantee the principles of equitable access, the criteria for organ distribution are defined taking into account two fundamental aspects: regional aspects and clinical aspects.

Regional criteria allow donor organs from a certain region to be transplanted in the same region, in order to minimise ischaemic time (the maximum time that can elapse between the organ being collected and its transplantation into the recipient).

The clinical criteria define donor/recipient compatibility and the severity of the patient. There is one clinical criterion that goes above the regional criteria, which is the urgency/emergency of the patient's need for a transplant. A super-urgent or emergent request has absolute priority throughout the country.

For requests of other kinds, organs are allocated according to territorial criteria. The transplant team decides, consulting the waiting list, which patient is best suited to receive the organ, following clinical criteria: blood group compatibility, anthropometric characteristics, patient severity, etc.

Regarding the collection of data, the Justice Statistics Information System includes information on crime recorded by the police, the movement and characterisation of cases investigated by the Criminal Investigation Police (*Polícia Judiciária*) and the activity of the National Institute for Legal Medicine and Forensic Sciences I.P.

Information on the crime of organ trafficking is included in the statistical data on crimes against physical integrity.

- 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**);

As mentioned above, the Portuguese Blood and Transplant Institute is the most relevant authority in this context regarding the health sector.

On the other hand, the various law enforcement authorities (the Criminal Investigation Police, the National Republican Guard and the Public Security Police) are also important, as are the public prosecutors and judges. Without prejudice to any individual training that may take place, the training of mentioned police forces is the responsibility of the respective training institutes.

With regard to other legal professionals and their training, special mention should be made of judges and public prosecutors, whose training is provided by the Centre for Judicial Studies.

In this context, special mention should be made of the course given in 2018 exclusively dedicated to this topic, the aim of which was to provide a legal context for the phenomenon in terms of international law, deepen the analysis of risk situations in order to facilitate a multidisciplinary understanding of trafficking in human beings and analyze the problem of indirect evidence in the investigation and prosecution of trafficking in human beings.

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

In accordance with Article 15 of Law no. 12/93, of 22 April, which regulates the collection and transplantation of organs, the government must promote information campaigns on the significance, in terms of solidarity, health policy and therapeutic means, of the harvesting of organs, tissues and cells and the carrying out of transplants.

The information campaign should also provide information on the possibility of expressing unwillingness to donate post-mortem, on the existence of the National Register of such decisions and on the issue and use of the individual card on which this is mentioned.

- 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**);

According to the criminal law, specifically Article 144-B (3) of the Criminal Code, there is a penalty of 3 to 10 years imprisonment for anyone who, with the intention of obtaining a financial or non-financial advantage for themselves or a third party, solicits, entices or recruits a donor or recipient for the purpose of extracting or transplanting a human organ.

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)**).

Manuel Eduardo Aires Magriço
Public Prosecutor
manuel.e.magrico@mpublico.org.pt

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

Polícia Judiciária
Novo Edifício-Sede, Rua Gomes Freire

1169-007 Lisboa
www.pj.pt (+351) 211 967 000

Polícia de Segurança Pública
Largo da Penha de França, nº 1
1199-010 Lisboa
www.psp.pt (+351) 218 111 000 / 219 020 019

Guarda Nacional Republicana
Largo do Carmo 27,
1200-092 Lisboa
www.gnr.pt (+351) 21 321 7000

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 Portuguese legal system criminalises the conduct listed in the table below. These conducts are typified in Article 144-B, added to the Criminal Code by Law no. 102/2019, of 6 September, or in the generic provisions of the Criminal Code, such as attempt and aiding and abetting, for which Articles 23 and 26 of this Code are relevant.

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

Intent is a constituent element of the crimes listed, and negligence is not criminalized in this context.

- 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;

Yes. Portugal also criminalizes, under Article 144 (b) (4), anyone who transplants or allocates a human organ to a recipient other than the one who would be eligible, in violation of the *leges artis* or contrary to the general criteria for transplantation in relation to clinical urgency, immunogenetic compatibility or preference and priority. This provision transposes Article 6 of the Convention into national law.

- 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.

Portuguese criminal law does not criminalize donors for these offences. The choice not to criminalize the donor is due to the empirical recognition that these situations are often related to situations of great vulnerability, such as trafficking in human beings.

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**).

Most of the cases of jurisdiction established in the Convention were already covered by Portuguese law. However, the national legal system was adapted to include the crime of trafficking in the list of legal types of crime set out in Article 5 (c) of the Criminal Code.

Thus, under Article 4 of the Criminal Code, and in correspondence with Article 10 (1) (a), (b) and (c) of the Convention, Portugal establishes jurisdiction over the facts committed:

- a) In Portuguese territory, whatever the nationality of the perpetrator; or
- b) On board Portuguese ships or aircraft.

In addition to these cases, as can now be seen from Article 5 of the Criminal Code, Portugal also establishes jurisdiction over acts committed outside Portuguese territory when they constitute crimes under Article 144-B of the Criminal Code, relating to trafficking in human organs, provided that the agent is found in Portugal and cannot be extradited or surrendered as a result of the execution of a European arrest warrant or other international cooperation instrument that binds the Portuguese State, therefore covering all the grounds established by Article 10 of the Convention.

- 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.

As mentioned above, as a result of the changes made by Law no. 102/2019, of 6 September, Portugal also establishes jurisdiction over acts committed outside Portuguese territory when they constitute crimes under Article 144-B of the Criminal Code, relating to trafficking in human organs, provided that the agent is found in Portugal and cannot be extradited or surrendered as a result of the execution of a European arrest warrant or other international cooperation instrument that binds the Portuguese State, therefore covering all the grounds established by Article 10 of the Convention.

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.

According to the changes introduced by Law no. 102/2019, of 6 September, to the Criminal Code, and in accordance with the current wording of Article 11 of this Code, legal persons and similar entities, with the exception of the State, legal persons exercising prerogatives of public power and public international law organizations, are responsible for the crimes provided for in Articles 144-B on the crime of trafficking in human organs.

For this criminal liability to apply, the acts must have been committed in the name of the legal person or on its behalf and in its direct or indirect interest by persons in a leading position within it or by anyone acting in its name or on its behalf and in its direct or indirect interest, under the authority of persons in a leading position within it, as a result of a breach of their duties of supervision or control.

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 penalties provided for natural and legal persons for criminal offences established in accordance with the Convention are criminal in nature.

For natural persons, the penalties provided for are prison sentences and range from 3 to 10 years imprisonment for the crimes corresponding to Articles 4, 5, 7 and 8 of the Convention, and 1 to 5 years for the crimes provided for in paragraph 6.

For legal persons, the general system of penalties for legal persons set out in Articles 90-A *et seq.* of the Criminal Code applies. The main penalties in question are fines or dissolution sentences, with the measure of the fine being measured against the prison

sentence for natural persons, whereby one month's imprisonment corresponds to 10 days' fine for legal persons and similar entities (each day's fine corresponds to an amount of between €100 and €10,000, which the court sets according to the economic and financial situation of the convicted person and their costs).

- 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**).

The issue of recidivism was already regulated in national law, namely in Article 75 of the Criminal Code, which expressly states that convictions by foreign courts count towards recidivism provided that the fact constitutes a crime under Portuguese 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**).

Most of the aggravating circumstances were already expressly enshrined in the national legal system, as is the case, by way of example, with the aggravating circumstance for death or serious harm, which can be found in Article 147 of the Criminal Code.

Nevertheless, in the context of adapting the Portuguese legal system to the Convention, Article 13 (c) and (e) of the Convention were expressly transposed, corresponding to Article 144-B (5) introduced into the Criminal Code by Law no. 102/2019, of 6 September.

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 Portuguese law, the crime of organ trafficking is a public offense, which means that all that is needed to initiate proceedings is that judicial or police authorities have knowledge that the crime may have occurred. The criminal procedure for public offences runs even against the victim's will.

- 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**)).

As a result of Law no. 102/2019, of 6 September, the Code of Criminal Procedure was amended to include organ trafficking in the concept of highly organized crime set out in Article 1(m) of this Code. The effects of this inclusion allow for the use of measures to obtain evidence and the application of procedural mechanisms necessary for the investigation of the most serious and complex crimes such as the possibility of carrying out house searches between 9pm and 7am, the possibility of tapping telephones, the possibility of applying preventive detention and the extension of its time limits.

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.

Victims' rights in criminal proceedings are regulated in particular by Law no. 130/2015, on 4 September, which transposes European Directive 2012/29/EU of 25 October, establishing minimum standards on the rights, support and protection of victims of crime.

This law approved the twenty third amendment to the Code of Criminal Procedure and added to this code the Victims' Statute. This legislation regulates access to information, support services and compensation for victims, among other aspects.

The right of victims to receive information about their case is established in Article 11 of the Victims' Statute. Article 11(5) of the Statute also refers that it is permitted to the victim to consult the legal procedure and obtain copies of procedural documents in the same circumstances as it is permitted to the offender (Articles 86 and 89 of the Code of Criminal Procedure). Furthermore Article 11 (6) of the Statute states that, without prejudice to legal confidentiality, victims shall receive, at their request, information regarding: a decision not to charge the defendant; a decision to temporarily suspend the legal procedure; a decision to charge the defendant; place and date of the trial, and the procedural situation of the defendant; and the court's final judgement.

Regarding support services, in the Victim Statute, Article 11 (1) (a) and (b) refer to victims' right to be informed about available support services and the type of support they may benefit from. In the same vein, Article 15 (3), dedicated to the right to protection, establishes that the public prosecutor, during the investigation phase, and the judge can determine that the victims is in need for psychosocial support. Regarding referral to support services, besides informing orally the victims, the copy of the

Victims' Statute that is handed to the victims of crime when in contact with the authorities contains contacts of organisations providing victim support services.

Regarding compensation, the Portuguese legal framework established a regime of compensation from the offender in Articles 71 to 84 of the Code of Criminal Procedure. Additionally, Article 16 (1) of the Statute of Victims, states that it is recognised the right of the victim to obtain, within a reasonable period of time, a decision regarding a compensation from the author of the crime.

- 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**).

As mentioned above, the right of victims to receive information about their case is established in Article 11 of the Victims' Statute. Article 11 (5) of the Statute also refers that it is permitted to the victim to consult the legal procedure and obtain copies of procedural documents in the same circumstances as it is permitted to the other interveners (Articles 86 and 89 of the Code of Criminal Procedure). Furthermore, as it follows from paragraph 6 of Article 11 of the Statute, without prejudice to legal confidentiality, victims receive, at their request, information regarding: a decision not to charge the defendant; a decision to temporarily suspend the legal procedure; a decision to charge the defendant; place and date of the trial, and the procedural situation of the defendant; and the court's final judgement.

- 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)**);

Article 67-A (4) and (5) of the Code of Criminal Procedure states clearly the right of the victim to actively participate in the criminal procedure and the right to be heard. This provision grants victims the right to cooperate with the police and judicial authorities by providing information and evidence.

The Victims' Statute introduced other amendments to the Code of Criminal Procedure specifically related to the right to be heard. The first one of these modifications concerns the removal or replacement of any coercive measure previously applied to the offender. In such circumstances, Article 212 (4) of the Code of Criminal Procedure now establishes that the victim is granted the right to be heard. In the same sense, Article 292 (2) of the Code of Criminal Procedure determines that in the pre-trial phase, the judge can inquire both the defendant and the victim by own initiative or by their request, whenever necessary.

The final amendment relates to the violation by the convicted person of the suspended sentence. Article 495 (2) of the Code of Criminal Procedure now obliges the court to

hear the victim, when necessary, before deciding whether the conditions for applying the provisional suspension of the sentence were breached.

- 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)**)

Victims have a wide range of support services at their disposal, which are guaranteed through cooperation between national authorities and non-governmental organizations through the establishment of agreements or protocols. Some examples of the services available are the existence of Specialised Regional Multidisciplinary Teams (EMTs) for the Assistance of Victims of Human Trafficking, with a hotline available 24 hours a day or the cooperation protocol signed on 20 July 2022, bringing together public and private entities, in conjunction with the judicial system, to strengthen support for victims of crime. This protocol establishes a partnership between the Ministry of Justice, the Prosecutor General's Office, the Association of Women Against Violence (AMCV), the Portuguese Association for Victim Support (APAV) and the Union of Alternative and Responsive Women (UMAR) intended to improve, in a coordinated manner, the response and multidisciplinary support provided to victims of crime.

- 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)**);

When it comes to safeguarding the safety of the victim, it is important to mention Article 4 of Law no. 102/2019, of 6 September, which includes the offence of trafficking in human organs in the list in Article 88 (2) (c) of the Criminal Procedure Code, which prevents the publication, by any means, of the identity of victims of the offences identified therein by the media.

Moreover, according to Article 87 of the Code of Criminal Procedure, there is a possibility to restrict the free attendance by the public to court hearings. On its own initiative or after request by the public prosecutor, the defendant or the assisting party to the public prosecutor, the judge may decide to restrict attendance by the public or decide that the procedural act, or only part of it, takes place with exclusion of publicity.

Still regarding protection of the victim and its family, it is relevant to mention Article 15 (1) of the Victims Statute that establishes the victims and their family members' right to an adequate level of protection when the competent authorities find that there is danger of intimidation, retaliation, repeat victimisation, or a strong indication that the victims' privacy might be disturbed.

Moreover, Article 15 (2) states that contact between the suspect/accused and the victim and his/her family members must be avoided in situations in which it is necessary to have these people present at the same time for the completion of procedural acts. In this line of reasoning, Article 23 of the Victims' Statute prescribes that when the inquiry of victims with specific protection needs implies the presence of the defendant, the questioning can be done through video or phone conference.

Still in this regard it is relevant to mention that Article 4 of Law no. 102/2019, of 6 September, also includes the crime of trafficking in human organs in the list of offences that allow the use of statements for future memory, under the terms of Article 271 of the Criminal Procedure Code. This rule foresees a system that the hearing of the victim happens in a smaller room where the parties to the procedure are present, namely the judge, the defendant's lawyer, the prosecutor and the victim support worker or his/her lawyer. The recording of the enquiry in this more informal and less stressful environment can be used as evidence in trial, thus avoiding a stressful experience and the repetition of statements in order to minimize the risk of secondary victimization.

- 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 access to justice and courts is a Constitutional right foreseen in Article 20 of the Constitution of the Portuguese Republic which establishes that the access to justice cannot be denied for reason of financial hardship. This constitutional right is implemented by Law no. 34/2004, of 29 July, on the access to law and courts, to which Article 13 of the Victims' Statute refers to.

Despite not existing any special legal aid regime for victims, the legal protection foreseen in Law no. 34/2004 is applicable to every Portuguese national, EU citizens, as well as foreigners and stateless people with a valid resident permit in an EU Member State.

This legal protection comprises two types of support to be provided by the State: legal advice and legal aid. As mentioned above, legal advice consists on technical support provided by lawyers in relation to specific legal issues and cases. In turn, legal aid covers different categories: exemption from judicial fees and other eventual expenses resulting from the proceedings; appointment of and payment to a lawyer; allocation of an Implementing Agent.

the right to legal advice and legal aid is dependent on certain circumstances, namely the financial situation of the applicant for legal advice and/or aid. In order to benefit from this right, the interested person needs to demonstrate that they are in a situation of economic insufficiency.

- 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**).

According to article 19 of the Victim's Statute, victims of crimes committed in other countries are guaranteed the possibility of lodging a complaint with the national authorities, whenever they have not been able to do so in the member state where the crime was committed, in which case the national authorities must promptly forward it to the competent authorities of the territory where the crime was committed, under the terms of the applicable legislation.

For the citizens residing in other member states who are victims of crimes committed in Portugal shall be guaranteed the taking of a statement immediately after reporting the crime to the competent authority and the application, as far as possible, of the provisions on hearing by videoconference and teleconference, for the purposes of giving evidence.

- 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;

According to Article 12 of the Statute for Victims, unless it is contrary to the interests of the victim or the proper conduct of the proceedings, the victim may be accompanied at any judicial act - investigation, statements for future reference, trial hearing, etc. - by a person of their choice, namely a victim support worker. The aim is to provide them with emotional and practical support that promotes the quality of their participation in the process. This support can be requested by the victim or suggested by a judge or public prosecutor.

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**)

As mentioned above, in the context of guaranteeing transparency in the transplant system, it is important to note the existence of the Portuguese Blood and Transplant Institute, whose mission is to guarantee and regulate, at national level, the activity of transfusion medicine and transplantation and to guarantee the donation, collection, analysis, processing, preservation, storage and distribution of human blood, blood components, organs, tissues and cells of human origin.

As part of this system, it is also important to mention the Entity for Verifying the Admissibility of Harvesting for Transplantation, which is the body designated, under Article 6a of Law no. 12/93, of 22April, to issue a binding opinion in the case of donation and live harvesting of organs, tissues or cells for therapeutic or transplantation purposes. This body exists in each hospital where harvesting takes place, and operates under and as a section of the Health Ethics Committee of the hospital where organ harvesting takes place.

Of particular relevance is the mention of the Transparency Area of the SNS Portal, available online, which records [all transplants carried out](#) and the [number of donations](#).

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

As mentioned above, to guarantee the principles of equitable access, the criteria for organ distribution are defined taking into account two fundamental aspects: regional aspects and clinical aspects.

Regional criteria allow donor organs from a certain region to be transplanted in the same region, in order to minimise ischaemic time (the maximum time that can elapse between the organ being collected and its transplantation into the recipient).

The clinical criteria define donor/recipient compatibility and the severity of the patient. There is one clinical criterion that goes above the regional criteria, which is the urgency/emergency of the patient's need for a transplant. A super-urgent or emergent request has absolute priority throughout the country.

For requests of other kinds, organs are allocated according to territorial criteria. The transplant team decides, consulting the waiting list, which patient is best suited to receive the organ, following clinical criteria: blood group compatibility, anthropometric characteristics, patient severity, etc.

- 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))**

As mentioned above, regarding the collection of data, the Justice Statistics Information System includes information on crime recorded by the police, the movement and characterisation of cases investigated by the Criminal Investigation Police and the activity of the National Institute for Legal Medicine and Forensic Sciences I.P. Information on the crime of organ trafficking is included in the statistical data on crimes against physical integrity.

- 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)**

As mentioned above, according to national criminal law, specifically Article 144-B (3) of the Criminal Code, there is a penalty of 3 to 10 years imprisonment for anyone who, with the intention of obtaining a financial or non-financial advantage for themselves or a third party, solicits, entices, or recruits a donor or recipient for the purpose of extracting or transplanting a human organ.

- 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?
-

In this context, the Seminar on human organs trafficking, held on 14 May 2018 at the Parliament (*Assembleia da República*), promoted by the Institute of Blood and Transplantation, stands out. This event was aimed at doctors and other professionals in the field of transplantation, Inspectors of the Criminal Investigation Police and officials from the Borders and Immigration Service (SEF); Judges and Public Prosecutors.

The seminar made it possible to debate/examine the benefits and challenges of the Council of Europe Convention against Trafficking in Human Organs and to raise awareness and train all professionals with responsibilities in preventing and combating organ trafficking.

- information for civil society in the prevention of and combat against trafficking in human organs?

For the purposes of raising awareness and disseminating information on this topic, it should also be noted that Portugal has established the National Day for Organ Donation and Transplantation on 20 July 2019 (Order no. 5975/2019, of 26 June), which has boosted the organization of annual events that promote the discussion of issues such as the role of globalization and digitalization in organ donation and transplantation, organ trafficking, living donation and cross-donation.

- 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?

Information not available.

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

Information not available.

- 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**);

Information not available.

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:**

Direção-Geral da Política de Justiça (DGPJ)
Ministério da Justiça
Av. Dom João II, n.º 1.08.01 E, Edifício H, Pisos 1/2/3,
1990-097 Lisboa
correio@dgpj.mj.pt (+351) 217 924 000 Fax (+351) 217 924 090

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

(...)