



Strasbourg, 25 November 2023

T-THO (2023) LD2

# Committee of the Parties Convention against Trafficking in Human Organs (Santiago de Compostela Committee)

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## DRAFT LIST OF DECISIONS 4th Plenary meeting

Strasbourg and hybrid, 25-26 October 2023

Council of Europe  
Agora building, room G01

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The Committee of the Parties (hereinafter, CoP) to the Council of Europe Convention against trafficking in Human Organs (hereinafter, the Convention, the Santiago de Compostela Convention or THO-Convention), meeting in Strasbourg, under the Chairmanship Mr. Radovan Nikolić (Montenegro), took the following decisions:

### 1. Opening of the meeting

- **to take note** of the introductory and welcoming remarks by Hanne Juncher, Director, Information Society and Action against Crime, Directorate General Human Rights and Rule of Law, who shortly reminded the participants on the goals of the Convention. She informed that the THO-Convention entered into force in March 2018 and explained the status of play of the Convention: 15 ratifications so far, including one non-Council of Europe (hereinafter, CoE) state, and 11 signatures. Moreover, she stressed: a) the 4-P principles included in the Convention - prevention, prosecution, protection of the rights of victims and promotion of cooperation at both national and international levels; b) the role of the CoP in monitoring the implementation of the Convention; c) the facilitation of the

collection, analysis and exchange of information, experience and good practices to improve their capacity to prevent and combat the scourge of the THO; d) the promotion of cooperation and collaboration between the Parties and with other bodies such as the European Court of Human Rights (ECtHR), the Parliamentary Assembly (hereinafter, the PACE), the Steering Committee on Human Rights and Biomedicine and Health (CD-BIO), the European Committee on Organ Transplantation (hereinafter, the CD-P-TO) and the CoP and committee of experts to the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter, GRETA ).

- **to take note** of the introductory and welcoming remarks by the Chair, Mr Radovan Nikolić, who welcomed all the Parties and underlined his satisfaction for meeting them in person. He also verified and confirmed the quorum following the Rules of Procedure (Art. 14)<sup>1</sup>. On this regard, all the Parties were present apart from Albania (List of participants enclosed, Appendix I)<sup>2</sup>. He also recalled that the main role of the CoP is both monitoring implementation of the Convention and the collection, analysis and exchange of experiences and good practices between the Parties. Finally, he invited the Parties to a *tour de table* in order to provide the exchange of views on the recent developments and future perspectives, working methods and activities of the Parties (List of presentations of the Parties is enclosed as Appendix III).

## 2. Adoption of the draft agenda

- **to adopt** both the agenda and the order of business of the meeting without amendments (the list of participants and the agenda appear in Appendixes I and II respectively)

## 3. Information by the Chair and the Secretariat

- **to take note** of the information provided by the Chair on both the activities undertaken since the last Plenary meeting as well as on the outcomes of the last CoP Bureau meeting held in Paris on 19 September 2023.
- **to take note** of the information provided by Mr Oscar Alarcón-Jiménez, Executive Secretary to the CoP, who informed:
  - a) that the working documents were provided to Parties by the Secretariat on a short notice (3 weeks' time prior to the meeting) following the Bureau's decision held in September;
  - b) on the CoP's chronology since its set-up, following the new Parties to it<sup>3</sup>;
  - c) on the recent status of play of the signatures and ratifications of the Santiago de Compostela Convention. The Parties were informed that Azerbaijan announced the ratification of the Convention after the CoP.
  - d) that the Bureau discussed means to intensify the Parties' efforts to support the accession of the Convention by neighbouring countries (namely, United Kingdom, Turkey, Italy and Poland).

## 4. Rules of procedure

- **to take note** of: a) the publication in paper version of the RoP of the CoP in English; the publication in French is expected to be printed soon; b) the creation of a website in both languages is online.

<sup>1</sup> *Rules of Procedure*, Committee of the Parties to the Council of Europe Convention against Trafficking in Human Organs, CETS No. 216 (Santiago de Compostela, 25/03/2015). Rule 13 – Quorum: “There shall be a quorum if a majority of the members of the Santiago de Compostela Committee are present.”

<sup>2</sup> Out of 15 Parties 14 were present in the room, and Malta participated online.

<sup>3</sup> The 1<sup>st</sup> CoP meeting (31 January 2022): Parties requested the Secretariat to draft the Rules of Procedures (hereinafter the RoP). The 2<sup>nd</sup> CoP meeting (25-26 October 2022): the RoP were discussed; they were finally adopted by written procedure on 24 January 2023. The 3<sup>rd</sup> CoP meeting (24-25 April 2023): first operational meeting, where Parties discussed issues that allowed setting up the basis of the CoP's future work.

## 5 Exchange of information, experiences and good practices

### 5.1 Exchange of views with the Steering Committee for Human Rights in the fields of Biomedicine and Health (CD-BIO)

- **to have an exchange of views** and take note of the latest work of this Steering Committee.
- **to take note** on the information provided by Ms Laurence Lwoff, Secretary of such Committee, and on the CD-BIO's interest in co-operate with the CoP. The Parties were acquainted with recent activities of the CD-BIO, in particular:
  - the CD-BIO is currently working in its strategic Action Plan on human rights and technology in biomedicine. It also adopted a [Guide on prohibition of financial gain](#) whose translation could be useful for the implementation and monitoring of the Santiago de Compostela Convention.
  - Under the Armenia Action Plan on Human Rights and biomedicine, the CD-BIO is currently implementing a [second cooperation project in Armenia](#), which could help to strengthen Armenia towards the ratification of the Santiago de Compostela Convention. The CoP expressed its interest in cooperating with CD-BIO in this project and in exchanging information, building synergies, participating in the drafting of a new Strategy Action Plan for Armenia.
  - A HELP [course on key human rights principles in Bioethics](#) is an important source of information on transplantation (as an example, more than 1000 health care professionals were trained in Armenia).
  - the CD-BIO has a current [strategic Action Plan on Human Rights and Technologies in Biomedicine](#) which is guiding the Committee in its work. It has already initiated a scanning exercise to identify priorities for a new Action plan to start in 2026;
  - the CoP expressed a particular interest in having translated the Guide on prohibition of financial gain in different languages from the Parties. Thus, the CoP will identify some priority languages and inform the CD-BIO Secretariat to cover the cost of such translations, if possible. Slovenia expressed a particular need of explanation of definitions and terminology.
  - the CoP took into consideration two fundamental principles rooted in the Oviedo Convention that also guide the Santiago de Compostela Convention (principle of consent and prohibition of financial gain).
  - Interest was expressed by the CoP to appoint a representative (liaison representative) to participate in the CD-BIO meetings.

### 5.2 Exchange of views with the European Committee on Organ Transplantation (CD-P-TO)

- **to hold** an exchange of views with Ms Anna Pszenny, Chair of a Network of National Focal Points on travel for transplantation (hereinafter, NETTA). The Parties were informed that:
  - the barriers for a more fruitful cooperation are the differences between the different transplant systems;
  - a unified system of data collection was emphasized;

- national focal points should have a role in leading and coordinating efforts at national level;
  - there is a need for both an harmonised legal framework and a better communication and collaboration between health authorities and transplant centres;
  - information was provided on the Registry on international travel for transplantation (RITTA). The access to the data of the RITTA Registry is currently allowed only to users/actors of that country; access to other countries' data is not allowed;
  - CD-P-TO will provide information to CoP on the status of play of the development of the algorithm for classification of transplantations abroad; the algorithm is expected to be ready in January 2024;
- following this exchange of views with the Chair of NETTA, **to consider** that further co-operation between NETTA and the CoP is needed as both aim at combating the trafficking of human organs;
  - **to agree** evaluating how such cooperation shall be established given that both the implantation of organs outside the domestic transplantation system or in breach of essential principles of national transplantation law completely follows under Article 6 of the Santiago de Compostela Convention and Parties shall monitor the implementation of the Convention (Article 25);
  - **to recall** the Chair of NETTA to provide its terms of Reference (hereinafter, ToR) so that the CoP could consider granting observer status to NETTA and also encouraged the CD-P-TO Secretariat to consider inviting the CoP to take part in any activity implemented by the CD-P-TO which may have a concrete impact in the CoP's work to both strengthen the combat against the trafficking in human organs and promote the Convention;
  - **to invite** NETTA members to participate in the national training activities on the Santiago de Compostela Convention to be organised by the CoP;
  - **to welcome** the invitation to participate in forthcoming CD-P-TO and NETTA meetings;

### 5.3 Exchange of views with both GRETA - Group of Experts on Action against Trafficking in Human Beings- and the Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings

- **to hold** an exchange of views with Ms Petya Nestorova, head of Division and Executive secretary of the CoE Convention on Action against Trafficking in Human Beings (hereinafter, THB Convention), on the latest work of both GRETA and its Committee of the Parties, in particular:
  - GRETA counts with 48 states Parties to the THB Convention (all the CoE member states, Belarus and Israel).
  - “trafficking in human beings” for the purpose of organ removal and “trafficking in human organs” are defined in the respective Conventions and are two distinct crimes but they bear the similar root causes: the shortage of organs to meet the demand on transplantation and the poor economic conditions and other conditions that put the recipients in a vulnerable position; this is why the measures to prevent organ trafficking could help prevent trafficking for the purpose of organ removal and vice-versa.
  - human trafficking is taking place primarily for the following purposes: sexual abuse, labour exploitation, forced criminality, forced marriage, forced begging, forced adoptions, forced participation in armed military operations, terrorist actions; organ trafficking is only a latest reason. Thus, GRETA doesn't have such a big number of cases reported in Europe in relation with trafficking for the purpose of organ removal.
  - The Warsaw Convention is based on the following monitoring system:
    - a) An independent Group of experts (GRETA), which consists of 15 impartial experts, mostly with legal background, lawyers, police officers, judges, NGOs representatives,

academics, etc. Given that GRETA has no specific expertise in trafficking for organ removal, it has synergies with other committees.

b) The CoP – consisting of permanent representatives in Strasbourg (ambassadors or deputies) and national experts.

- GRETA has implemented so far three rounds of evaluation (a full cycle of one round lasts around 4-5 years). During the 2nd evaluation cycle (2014-2019), GRETA decided to pay particular attention to the so-called emerging “trafficking”, such as labour trafficking, child trafficking and trafficking for organ removal. In total, 6 countries reported crimes regarding organ removal (Armenia, Finland, Moldova, Spain, Ukraine and United Kingdom); an additional case was reported in Kosovo<sup>4</sup>, but generally there were not many cases reported in Europe.
  - In GRETA evaluation reports, as far as recommendations in the field of trafficking for organ removal were concerned, Ms Nestorova informed that they were mainly targeted to doctors involved in organ transplantation in order to be alerted on those crimes. However, GRETA considers that all the medical professionals shall be informed and trained on this particular issue.
  - Another concern from the evaluation reports is that the majority of health care professionals do not have an obligation to inform the police when they suspect that the patient had an illegal organ transplant abroad and that’s a critical point on which the CoP could reflect.
  - GRETA explained about its sources of information for the cases collected during the monitoring round: GRETA usually sends the questionnaire to the contact person appointed by the government (it can be one of the following ministries: Ministry of Interior, Ministry of Justice, Ministry of Social Policy, Ministry of Foreign Affairs), who sends the questionnaire to the different national stakeholders (prosecutors, court system, Ministry of Health). The contact person has 4-5 months to gather all the information. Moreover, the questionnaire always contains a question on who provided the information.
- The Santiago de Compostela Committee: a) was informed that in the new evaluation round GRETA will be very attentive to the use of technology and social media in exploitation of human trafficking; b) may strengthen cooperation with those countries where some suspicious cases were reported by GRETA;
  - The Santiago de Compostela Committee was invited to participate in the CoP to the Council of Europe Convention on Action against Trafficking in Human Beings.

#### 5.4 Presentation of relevant initiatives of the Parliamentary Assembly of the Council of Europe

- to have an exchange of views with the Secretariat of the PACE Committee on Social Affairs, Health and Sustainable Development and to take note of its latest work, in particular:
  - to take note that organ trafficking is a worldwide phenomenon which goes beyond the CoE and its 46 Member states;
  - to strengthen cooperation with the PACE;
  - the PACE has recently published various reports on the topics, such as [Combating trafficking in human tissues and cells](#), and [recommendations](#), which is very important and can also concern embryos, and Organ transplant tourism;

<sup>4</sup> \* All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations' Security Council Resolution 1244 and without prejudice to the status of Kosovo.

## **5.5 Presentation of relevant activities by national authorities, international governmental organisations as well as other services of the Council of Europe**

- The Parties provided presentations of their respective national systems and:
  - a) informed about the compatibility of their national legislation with the Santiago de Compostela Convention;
  - b) explained how their countries are handling cases of organ trafficking and whether a national platform exists in their countries;
  - c) explained and discuss the collection and analysis of information to improve their capacity to prevent and combat the trafficking in human organs, in particular whether a national registry exists;
  - d) hold an exchange of views on the most recent and significant cases in their national jurisdiction on the fight against organ trafficking;
  - e) shared their experiences and good practices between national interlocutors and states in the fight against organ trafficking;
  - f) were invited to provide their presentations in written to the Secretariat and inform whether their information could be published (a table containing the different presentations and the presentations are attached as Appendix III);
  - g) to take note on Malta 'suggestion that due to the complexity of THO as a crime, it is necessary to strengthen cooperation at international level of multiple stakeholders, who shall report on prosecution and/or conviction of perpetrators, as well as on both the prevention measures and the protection of victims. Malta also requested to receive guidance on how to report and compile data. On this issue, Malta was requested to contact the Secretariat for more explanations.

## **6. Monitoring of the Convention**

### **6.1 Country profile questionnaire**

- to examine, discuss in detail and consider for approval the draft country profile (General overview questionnaire) on the implementation of the Santiago de Compostela Convention. Every question was orally read and voted during the meeting. This being so:
  - to note that the draft country profile (General overview questionnaire) was drafted by the Secretariat according to the request from the Parties at the last Plenary session;
  - to include in such document 3 new items: an introduction; b) some preliminary remarks; c) and a general framework.
  - to agree that the title to the last question 12 was proposed and agreed ("Ensure quality and safety requirements for the transplantation system of human organs"); to discuss and introduce other comments;
  - to agree with the draft country profile, to instruct the Secretariat to introduce all the comments discussed during the Plenary meeting;
  - to agree that the deadline for replying the Country profile questionnaire is of 4 months since its adoption;
  - to acknowledge that focal points are responsible for collecting all the answers and send a consolidated version back to the Secretariat (in English or French);

## 6.2 Exchange of views on the possible themes for the monitoring of the Convention

- **to discuss** and consider the different proposals of themes for its first monitoring round received from the Parties. On this issue, the Committee took note that only two countries, Belgium and Spain, sent their proposals to the Secretariat for examination and approval;
- **to take note** of the Belgian proposals: a) Prevention (mainly training, awareness and detection) aimed at improving the fight against THO; and b) Repression of THO.
- **to take note** of the Spanish proposals aimed at achieving the goals of Article 1 of the Convention: a) Analysis of possible internal protocols for the identification and reporting of organ trafficking cases; b) Mechanisms for the prevention and protection of victims' rights, in particular mechanisms aimed at vulnerable groups and their legal consideration in domestic legislation;
- after taken note of the above-mentioned proposals, and at the request of Spain, **to consider** a new proposal consisting in merging all the four above-mentioned proposals as follows:

### Topic 1: Mechanisms for the prevention and sensibilisation on THO:

- The internal protocols to identify and report THO
- Training programs aimed in preventing THO
- Raise awareness for patients and other groups

### Topic 2: Repression of THO:

- Convictions for organs trafficking crimes
- Judicial cases that have been investigated and dismissed before sentencing

- to adopt topic 1 (above) as its first monitoring round; to instruct the Secretariat to prepare a draft questionnaire for its submission, discussion and possible adoption at the forthcoming plenary meeting;
- Parties agreed to propose experts to the Secretariat for the drafting of such questionnaire (those experts may be members of the CoP or not). The Chair will adjust the drafting calendar accordingly.

## 6.3 Additional topics to be dealt by the Committee of the Parties

- to consider make suggestions of possible new initiatives to be implemented by the CoP;
- to take note of the following topics to be dealt with by different Working Groups of the CoP:
  - International cooperation between medical institutes;
  - International cooperation between other authorities (mainly police and judiciary);
  - National cooperation within different authorities (particular attention to preventive actions in relation with data protection and data collection);
  - Mechanism to protect victims of THO;
  - Collaboration and involvement of civil society.

## 7. Technical co-operation activities

### 7.1 Exchange of views on the possible activities

- to consider drafting a training curriculum on the Santiago de Compostela Convention addressed to both legal and health professionals. Parties agreed to provide the Secretariat with national specialists for the drafting of such a multidisciplinary curriculum. Parties also considered to discuss at the forthcoming plenary meeting about the necessary funds for the drafting of such training;
- to agree the date of 25 March (the day of the opening for signature of the Santiago de Compostela Convention) as the Day against organ trafficking. Parties instructed the Secretariat to check the

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administrative official proceeding to be followed to officialise such day as European/International day;

- In relation with the activities to be organised for the promotion of the Santiago de Compostela Convention, the Parties agreed:
  - **to draft** a brochure that may help to give visibility to the Convention (following the structure of 10 questions and answers); the brochure would be the contribution from the Parties to the Day against Organ Trafficking;
  - **to take note** on the information provided by the Chair according to which the Bureau members agreed the Chair to have meetings with the ambassadors of the signatory countries of the Convention<sup>5</sup> to promote its ratification by such countries;
  - **to instruct** the Secretariat to draft a letter to be signed by the Chair and sent to the Permanent Representations of CoE member states inviting them to join the Convention;
  - **to invite** Costa Rica to promote the Convention in the American region;
  - **to agree** that concrete Parties be in contact with non-Parties to promote the Convention and ask them to provide the text of the Convention in other languages;
  - **to establish** formal and official communication channels with the other countries by keeping informed the Secretariat accordingly;
  - following the request by Spain, **to closely work** with the Ibero-American Network in South America;
- In relation with the National platforms, the CoP recalled its decision of setting-up national platforms and took into consideration the information provided by the three pilot countries (Republic of Moldova, Slovenia and Spain):
  - Spain reported that a meeting of the National Platform is going to be launched on 17 November 2023, gathering the Transplant National Organisation, the Public Prosecutor's Office, law enforcement bodies and the Ministry of the Forensics Doctor Body. The goal is to exchange views among the members and to develop national protocols to identify different actions to be undertaken.
  - Slovenia informed that cooperation will be established with Spain to define further steps about the setting-up of such National platforms (communication procedure, the entity to be responsible of such national platform, social media, etc).
  - Moldova informed that such platform already exists: it is an umbrella platform under the Prime Minister, called National Council for Human Rights; it is an inter-ministerial cooperation working group involving also civil society and the authorities for human rights defenders. This National Council is responsible for examining the recommendations, the questionnaires, the reporting procedures of certain conventions (for example, the Istanbul Convention, the UN Convention on Equality of Women Rights, the Lanzarote Convention, etc.) and Moldova is currently considering to include the Santiago Compostela Convention. In addition, the Programme on preventing human trafficking and its Action plan were adopted in Moldova.
  - Parties are invited to check if a National Platform already exist at national level and inform the Secretariat accordingly;
  - Parties agreed to draft a Strategy to fight against THO and instructed the Secretariat to draft such Strategy which will guide the work of the CoP;

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<sup>5</sup> Armenia, Austria, Greece, Ireland, Italy, Luxembourg, Poland, the Russian Federation, Turkey, Ukraine and United Kingdom.



- In relation with the Network to strengthen international co-operation in criminal matters, to note that at the last plenary meeting Portugal suggested to study the establishment of a network to strengthen international cooperation in criminal matters. Despite being considered a good initiative, the Parties considered to deal with this issue in a later stage;
- As far as other possible activities are concerned, Parties were invited to make suggestions for possible activities the CoP could implement

## **8. Information points**

### **8.1 Participation of the Committee of the Parties in outside events**

- to take note that many events on the THO topic are organised;
- to inform the Secretariat of any upcoming national and/or international event/meeting on THO so that a representation of the CoP in such event could be considered.

### **8.2 List of members of the Santiago de Compostela Committee**

- to agree that the List of members with contact details of the CoP be distributed among the Parties;

## **9. Any other business**

### **9.1 Communication policy**

- following its last request, to take note of the set-up of the CoP's website to increase the visibility of the Santiago de Compostela Convention and of its CoP. Against this background, Parties took note that national information should be provided to the Secretariat to feed the website such as: national laws and regulations implementing the Convention, the translation of the Convention and other materials;
- to invite the Chair, vice-Chair and Bureau members to provide the Secretariat with their picture to be introduced in the website;
- to invite all Parties that did not do so far to provide the Secretariat with the translation of the Santiago de Compostela Convention into its official languages; Parties are invited to check the website to check whether the Convention is translated into its language(s);


### **9.2 Others**

- to take note that Slovenia and Croatia representatives will represent the CoP at the CD-P-TO meetings (Slovenia being an expert member and Croatia as substitute member);
- to take note that the CoP will be represented in the next meetings of the CoP to the Council of Europe Convention on Action against Trafficking in Human Beings (France and Moldova should check the availability of their respective representatives to participate).

## **10. Dates of the next meeting (2024)**

- to take note that the forthcoming Plenary meeting will take place in spring 2024; the Secretariat will coordinate the date with the Chair and the Bureau members on the basis of availability of meeting rooms.

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➤ <b>Appendix I – List of Participants</b>	<b>See below</b>
➤ <b>Appendix II- Agenda of the meeting</b>	 T-THO (2023) OJ2_EN.pdf
➤ <b>Appendix III- Tour de table - Presentation of the Parties</b>	<b>See below</b>

**APPENDIX I**



Strasbourg, 12 December 2023

THO (2023) LP2

Committee of the Parties to the Council of Europe Convention  
against Trafficking in Human Organs /

Comité des Parties à la Convention du Conseil de l'Europe contre  
le trafic d'organes humains

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**Draft List of participants /  
Projet de Liste des participants**

4<sup>th</sup> meeting of the Committee of Parties to the THO Convention /  
4<sup>ème</sup> réunion du Comité des Parties à la convention TOH

Room G01, Strasbourg, France, 25 - 26 October 2023 /  
Salle G01, Strasbourg, France, 25 -26 octobre 2023

## 1. MEMBERS / MEMBRES (STATE PARTIES TO THE CONVENTION / ETATS PARTIES A LA CONVENTION)

### ALBANIA / ALBANIE

No nomination / Pas de nomination

### BELGIUM / BELGIQUE

(Apologized / Excusées)

Ms Claire HUBERTS, Juriste au sein du Service public fédéral Justice, Direction générale Législation, Libertés et Droits fondamentaux, Service des principes de droit pénal et de procédure pénale.

Ms Régine WILMOTTE, Juriste au sein du Service public fédéral Santé publique, Direction générale Soins de santé, Service juridique.

### COSTA RICA / COSTA RICA

Dr. Lenny CENTENO, Advisor to the General Directorate of Health, Ministry of Health.

### CROATIA / CROATIE

Ms Marina PREMUŽIĆ, National Transplantation Coordinator, Ministry of Health.

### CZECH REPUBLIC / LA RÉPUBLIQUE TCHÈQUE

Ms Pavla BUREŠOVÁ, Senior Ministerial Counsellor, Ministry of Justice of the Czech Republic.

### FRANCE

Ms Fiona HOUDIN, Rédactrice spécialisée, Bureau du droit économique, financier et social, de l'environnement et de la santé publique, Ministère de la Justice.

### LATVIA / LETTONIE

Ms Rebeka LAVENIECE, Lawyer of the Department of Criminal Law of the Ministry of Justice.

### MALTA / MALTE

Dr. Lynn CHIRCOP FAURE, Senior Manager (Human Rights Directorate), Ministry for Home Affairs, Security, Reforms and Equality.

### MONTENEGRO / MONTENEGRO

**Chair/Président**

Mr Radovan NIKOLIĆ, Head of the Directorate for Health Care, Pharmacology and Regulated Professions, Ministry of Health.

### NORWAY / NORVEGE

Ms Sigrid BEITLAND, Senior Medical Advisor for the Specialised Health Care Services at the Norwegian Directorate of Health

### PORTUGAL / PORTUGAL

**Vice - Chair / Vice- Président**

Mr Manuel Aires MAGRIÇO, Public Prosecutor, Administrative Court of Lisbon

**REPUBLIC OF MOLDOVA / RÉPUBLIQUE DE MOLDAVIE**

Ms Diana DOROȘ, Head of the Human Rights and Cooperation with the Civil Society Directorate, State Chancellery.

**SLOVENIA / SLOVÉNIE**

Ms Danica AVSEC, Deputy director of the Institute of Organ and Tissue Transplantation Slovenia-transplant

**SPAIN / ESPAGNE**

Ms Laura CAMBERO VALENCIA, Prosecutor, Advisor to the Secretary of State, Ministry of Justice of Spain.

Ms Beatriz DOMÍNGUEZ-GIL, General Director of the National Transplant Organization (ONT), Ministry of Health.

Ms Lola PEROJO, Head of the National Transplant Organization, Technical Unit and of the Management Support Unit, Ministry of Health.

**SWITZERLAND / SUISSE**

Ms Salome RYF, Deputy head of Unit / Federal Department of Home Affairs FDHA / Federal Office of Public Health FOPH / Biomedicine Division / Transplantation Unit

**2. COUNCIL OF EUROPE SECRETARIAT / SECRÉTARIAT DU CONSEIL DE L'EUROPE****DGI - HUMAN RIGHTS AND RULE OF LAW /  
DGI - DROITS DE L'HOMME ET ÉTAT DE DROIT**

**Information Society and Action against Crime Directorate / Direction de la Société de l'information et de la lutte contre la criminalité**

Ms Hanne JUNCHER, Director / Directrice

Dr. Oscar ALARCÓN-JIMÉNEZ, Executive Secretary to the Committee of the Parties to the Trafficking in Human Organs Convention, Criminal Law Division / Secrétaire exécutif du Comité des Parties de la convention contre le trafic d'organes humaines, Division du droit pénal

Ms Jasna RODES, Project Manager, Criminal Law Division / Division du Droit Pénal

Ms Ipek DEMIRBUKER, Administrative assistant, Criminal Law Division / Division du Droit Pénal

**Directorate General Human Rights and Rule of Law / Direction générale des droits de l'homme et de l'État de droit**

Ms Laurence LWOFF, Head of Human Rights and Biomedicine Division / Cheffe de Division Droits de l'Homme et Biomédecine

**DG II – DIRECTORATE GENERAL OF DEMOCRACY /  
DG II – DIRECTION GÉNÉRALE DE LA DEMOCRATIE**

**Directorate of Human Dignity, Equality and Governance / Direction de la dignité humaine, de l'égalité et de la gouvernance**

Ms Petya NESTOROVA, Head of Division and Executive Secretary of the Council of Europe Convention on Action against Trafficking in Human Beings

**EUROPEAN DIRECTORATE FOR THE QUALITY OF MEDICINES AND HEALTHCARE (EDQM) /  
DIRECTION EUROPEENNE DE LA QUALITE DU MEDICAMENT ET SOINS DE SANTE (DEQM)**

Dr. Anna PSZENNY, delegate to the European Committee on Organ Transplantation (CD-P-TO), Chair of the Network of National Focal Points on Travel for Transplantation (NETTA)

Mr Jaime MARCO, European Committee on Organ Transplantation (CD-P-TO).

**PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (PACE)  
ASSEMBLÉE PARLEMENTAIRE DU CONSEIL DE L'EUROPE (APCE)**

Mr Jean-Pierre GRIN, ALDE, Switzerland

Ms Anita GHOLAMI, Co-Secretary, PACE Committee on Social Affairs, Health and Sustainable Development / Co-Secrétaire, Commission des affaires sociales, de la santé et du développement durable de l'APCE

Ms Oksana SENJA, Trainee / Stagiaire

Ms Tanja KLEINSORGE (Apologised/Excusée)

**Interpreters:**

Ms Rémy JAIN  
Ms Chloé CHENETIER  
Ms Katia DI STEFANO  
Ms Corinne MCGEORGE

**APPENDIX III****TOUR DE TABLE - PRESENTATION OF THE PARTIES****1. REPLIES RECEIVED FROM THE PARTIES<sup>6</sup> (following the 4<sup>th</sup> CoP Plenary meeting)**

	<b>COUNTRY</b>	<b>Draft CPQ (Blue option selected)</b>	<b>Agreement to the theme of the 1st Monitoring Round</b>	<b>Tour-de-table presentation in written</b>	<b>Answer received</b>
<b>1</b>	<b>ALBANIA</b>				
2	BELGIUM	√	√	√	6/11/23
3	COSTA RICA	√	√	√	2/11/23
<b>4</b>	<b>CROATIA</b>				
5	CZECH REPUBLIC	√	√	√	3/11/23
6	FRANCE	√	√	√	3/11/23
7	LATVIA	√	√	√	19/01/24
8	MALTA	√	√	√	2/11/23
9	MONTENEGRO	√	√		12/01/2024
10	NORWAY	√	√	√	2/11/23 and 13/11/23
11	PORTUGAL	√	√	√	2/11/23
<b>12</b>	<b>R. OF MOLDOVA</b>				
13	SLOVENIA	√	√	√	3/11/23
14	SPAIN	√	√	√	2/11/23
15	SWITZERLAND	√	√	√	8/09/23

<sup>6</sup> E-mail sent by the Secretariat on 30<sup>th</sup> October 2023.

## 2. CONTRIBUTIONS RECEIVED FROM PARTIES

BELGIUM / BELGIQUE	Contribution received on: 6/11/23
<p>Depuis 2019, le Code pénal belge punit spécifiquement le trafic d'organes. Tous les aspects de la convention sont couverts. Le législateur belge va même au-delà de ce qui est prescrit dans la Convention en ce qui concerne la compétence extraterritoriale et l'incrimination du receveur qui accepte un organe illégalement prélevé, en connaissance de cause.</p> <p>Sur le plan national, nous ne disposons pas d'une plate-forme au niveau national spécifique au trafic d'organes. Une telle plateforme existe cependant en matière de traite des êtres humains, sous le nom de Cellule Interdépartementale de lutte contre le trafic et la traite des êtres humains (TEH). Elle est régie par l'arrêté royal du 16 mai 2004 relatif à la lutte contre le trafic et la traite des êtres humains, modifié en 2014 (texte consolidé : <a href="https://www.fgov.be/loi/wet-20040516">LOI - WET (fgov.be)</a>)</p> <p><a href="http://www.ejustice.just.fgov.be/eli/arrete/2004/05/16/2004009376/justel">www.ejustice.just.fgov.be/eli/arrete/2004/05/16/2004009376/justel</a></p> <p>Cette Cellule contribue à l'adoption et au suivi de l'exécution des plans d'actions nationaux de lutte contre la traite des êtres humains pour faciliter l'interaction directe entre tous les partenaires. Dans le cadre de ses missions, elle a entre autres élaboré la circulaire relative à la coopération multidisciplinaire concernant les victimes de la traite des êtres humains et de certaines formes aggravées de trafic d'êtres humains, ou encore l'arrêté royal relatif à la reconnaissance des centres d'accueil. Elle a également développé différents outils de sensibilisation tels que la brochure sur la traite destinée au milieu hospitalier. Le Bureau de la Cellule est notamment la cheville ouvrière de l'organisation de l'Anti-Trafficking Day européen.</p> <p>La Cellule inclut les trois centres spécialisés dans l'accueil des victimes de traite et de certaines formes aggravées de trafic, pour enforcer l'approche multidisciplinaire suivie en Belgique. Par ailleurs, afin d'accentuer l'attention portée au volet financier de cette forme de criminalité, la Cellule de traitement des informations financières ( la CTIF) y est représentée. Les Communautés (entités fédérées qui disposent de compétence en matière de formation et d'aide aux personnes, ce qui inclus l'aide à la jeunesse, l'accueil et l'intégration des personnes) y sont représentées également. Enfin, des magistrats spécialisés du réseau d'expertise TEH du Collège des Procureurs généraux y participent également.</p> <p>En outre, en matière de trafic d'organes, il existe une collaboration entre les Services publics fédéraux de la Santé publique, de la Justice et de l'Intérieur. Il peut être souligné que des magistrats spécialisés du réseau d'expertise TEH du Collège des Procureurs généraux avaient été étroitement impliqués lors de la rédaction de la loi de 2019 précitée. Lors des réunions de réseau d'expertise précité, auquel le SPF Justice participe, le sujet du trafic d'organes est régulièrement abordé pour tenir les magistrats informés. Par ailleurs, le service spécifique au sein de la police judiciaire fédérale qui s'occupe des cas de traite d'êtres humains, suit également la problématique du trafic d'organes (notamment au niveau d'Europol et d'Interpol) et assure une permanence 7j/7 et 24h/24.</p> <p>Jusqu'ici, aucun cas de trafic d'organes n'a été rapporté.</p> <p>Nous disposons de centres de transplantation agréés mais nous déléguons l'allocation d'organes à Eurotransplant, une organisation internationale. Nous n'avons donc pas d'organisation nationale dédiée au prélèvement et à la transplantation d'organes. Nous n'avons également pas de vue sur les patients belges qui se rendraient à l'étranger pour une transplantation et qui rentreraient en Belgique. Les médecins n'ont pas l'obligation de signaler ces patients en Belgique.</p> <p>Des campagnes de sensibilisation pour le don d'organes ainsi que des campagnes contre la traite des êtres humains sont régulièrement organisées. Ces dernières se réfèrent à toutes les formes de traite, en ce compris la traite en vue de prélèvement d'organes. Tout récemment, à l'occasion de la journée européenne de lutte contre la traite, le 18 octobre 2023, les trois centres spécialisés PAYOKE, PAG-ASA et SÛRIA qui accueillent et accompagnent les victimes de traite, ont lancé,</p>	



avec l'aide du Projet AMELIE financé par l'Union européenne, une nouvelle campagne de sensibilisation à l'attention du personnel soignant ("Is jouw patiënt slachtoffer van mensenhandel?" que l'on peut traduire comme suit : Votre patient est-il une victime de traite ?), notamment par le biais d'une formation gratuite en ligne, d'activités et d'affiches.

Nous n'avons cependant pas encore mis en place de campagne spécifique contre le trafic d'organes humains.

<b>COSTA RICA</b>	<b>Contribution received on: 2/11/23</b>
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Costa Rica has been part of it since 2015. It is the only one in the region.

Prevention, fight against trafficking in human organs, Provide protection of victims and their families and promotion of national and international cooperation, through the harmonization of legislation.

According to the Santiago de Compostela Convention COSTA RICA has 3 laws and other regulation:

- 9092 Organ donation and transplant law and tissues Law;
- 9095 Law against human trafficking and national coalition against migrant trafficking/ CONATT---- INTERINSTITUC COMISION ABOUT HUMAN TRAFFICKING in Costa Rica  
The CONATT keeps records of cases, nominal and grouped, for decision-making and creation of regulations. Made Periodic meetings are held according to the schedule to monitor cases and actions
- 9991 organ traffickin in human Law (signed in June 2021)
- PENAL code
- Regulation of good medical practices and institution responsibilities of establishments.

Actions to follow and good practices: Socialization of Law 9991 to other institutions involved. Prosecutor's Office and Conatt for the modification of the Penal Code in some of its articles and the CONATT Law to classify crimes.

Regulation of good clinical practices in donation and transplantation to avoid mishandling of organs. In this sense, co-responsibility is shared by both professionals and the establishments where they work. Currently under review.

<b>CROATIA / CROATIE</b>	<b>Contribution received on:</b>
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<b>CZECH REPUBLIC /RÉPUBLIQUE TCHEQUE</b>	<b>Contribution received on: 3/11/23</b>
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The Czech legislation is fully in line with all the Articles of the Santiago de Compostela Convention that the Czech Republic has not made reservations to.

There are currently no recorded cases of organ trafficking in the Czech Republic. The transplantation system in the Czech Republic is very strictly regulated, therefore it would be very difficult to keep organ trafficking a secret. This is mainly contributed to the establishment of the rules for traceability, at every stage of the process from collection to transplantation, as well as the traceability of both the donor and the recipient.

At the present time we do not have a national platform focused specifically on the phenomenon of organ trafficking. However, various other platforms where this topic is being considered exist. As

previously said, there are no known cases of organ trafficking in the Czech Republic. That being said, it is important to note that informal conversations between various actors involved in this topic are ongoing.

## FRANCE

Contribution received on: 3/11/23

### ➤ Les dispositions nationales réprimant le trafic d'organes humains

La France a tout d'abord rappelé que la ratification de la convention du Conseil de l'Europe contre le trafic d'organes humains a été autorisée par la France par une loi n°2022-1032 du 22 juillet 2022. La convention est entrée en vigueur à l'égard de la France le 1<sup>er</sup> mai 2023.

La France a souligné que la ratification de la Convention n'a pas entraîné de modification spécifique du droit interne français, celui-ci étant déjà globalement conforme aux dispositions de ce texte. Des mesures de prévention ont en effet été introduites dans le droit français dès 1994 à l'occasion des premières lois de bioéthique, afin de prévenir toute tentative de trafic d'organes sur le territoire français. La dernière loi bioéthique est récente puisqu'elle date du 2 août 2021.

Les dispositions législatives françaises encadrent ainsi de manière très stricte l'activité de prélèvement et de greffe d'organes, notamment en introduisant comme principes premiers du don et de la greffe, le consentement, l'anonymat et la gratuité. La législation condamne sévèrement la commercialisation d'organes en vue de greffe et le code pénal incrimine également la traite des êtres humains aux fins de prélèvements d'organes.

Enfin, la France a rappelé les réserves émises à l'occasion de la ratification de la Convention.

### ➤ Sur l'existence d'une plateforme nationale

La France a présenté les différents acteurs compétents en matière de trafic d'organes humains :

- L'Agence de biomédecine, agence nationale ;
- Les services enquêteurs spécialisés : l'OCLAESP (Office central de lutte contre les atteintes à l'environnement et à la santé publique) et l'OCRTEH (Office central pour la répression de la traite des êtres humains) ;
- Les juridictions spécialisées : les pôles de santé publique (Paris et Marseille).

La France a mis en avant les bonnes pratiques de l'Agence de biomédecine qui procède à une enquête tous les 2 ans sur la base d'un questionnaire envoyé aux équipes médicales de dialyse et de greffe rénale afin de recueillir des informations sur d'éventuels cas de greffes pratiquées à l'étranger à partir de donneurs vivants rémunérés.

Enfin, la France a rappelé que l'Agence de biomédecine met actuellement en œuvre avec le ministère de la santé français le nouveau cadre stratégique du Plan ministériel 2022-2026 pour le prélèvement et la greffe d'organes et de tissus, qui vise notamment à réduire le taux d'opposition au prélèvement et à améliorer la qualité des pratiques et la sécurité des soins.

### ➤ Sur l'existence d'un registre national

La France a rappelé l'existence d'une liste nationale des malades en attente de greffe et d'un registre national des refus, sur lequel sont inscrits les personnes ayant fait connaître leur souhait de ne pas donner leurs organes et tissus après leur décès, gérés par l'Agence de Biomédecine.

### ➤ Sur les cas récents en matière de trafic d'organes humains

La France a indiqué qu'aucune procédure judiciaire relative à du trafic d'organes n'a été recensée sur les cinq dernières années par le ministère de la Justice.

➤ **Les bonnes pratiques en matière de prévention et de lutte contre le trafic d'organes humains**

La France a mis en avant les campagnes annuelles de sensibilisation effectuées par l'Agence de biomédecine sur le don et la greffe d'organes. L'objectif de ces campagnes est d'ancrer le sujet du don d'organes dans une perspective positive afin de valoriser davantage tous les acteurs mobilisés au quotidien sur ce sujet. Ces campagnes sont aussi l'occasion de faire mieux connaître la loi auprès de la population.

Enfin, la France a souligné un cas où un centre hospitalier a refusé de coopérer avec un hôpital étranger en matière de chirurgie hépatique du fait des liens possibles avec la transplantation de foie illégale.

**LATVIA / LETTONIE**      **Contribution received on: 19/01/2024**

The Ministry of Justice and the Ministry of Health coordinate the implementation of the obligations under the Convention. However, the Ministry of the Interior and the Ministry of Welfare also coordinate the implementation of certain provisions of the Convention within their respective competences.

The procurement of donor organs, monitoring, coordination and cooperation with other countries in organ transplantation is provided by the National Transplantation Coordination Service.

**A small insight into the main amendments made to comply with the requirements of the Convention**

On March 30, 2017, the Minister of Justice signed the Convention on behalf of Latvia, while on February 7, 2019, the Convention was ratified by the Parliament of the Republic of Latvia.

The Ministry of Justice created a working group with experts from various fields to observe the norms of the Convention. It was concluded that, for the most part, the norms of the Convention comply with the Latvian regulatory framework.

The use of organs or bodies is regulated by the law "On the protection of the body of a dead person and the use of human tissues and organs in medicine" also called the Law on Organs.

To ensure compliance of the regulatory framework with the Convention, in 2019 amendments were made to the Law on Organs, which entered into force on 19.06.2019, and in the Criminal Law, which entered into force on 03.07.2019.

Amendments to the Criminal Law were made in Article 139, determining responsibility not only for illegal removal of tissues or organs, but also for illegal use. Likewise, before the amendments to this article, there was a special subject. Liability for such a criminal offense could be imposed only on medical persons. After the amendments, it applies to all persons. Also, in Criminal Law were made a new Article 139.<sup>1</sup>, which was supplemented to provide for liability for recruiting a donor or recipient of human tissue or organs for illegal removal or implantation of organs.

After the amendments to the law, no criminal proceedings under these articles have not been started. Likewise, criminal proceedings on human trafficking related to human organ trafficking have not been initiated.

To promote public awareness of organ transplantation and organ donation, information is published in the unified electronic information system of the health sector, on the websites of the National Health Service and the Ministry of Health, as well as informative booklets are published on the social network accounts of the National Health Service and the Ministry of Health. Training seminars and conferences for healthcare workers are also held regularly.

Before the amendments were made in the Latvian regulatory framework, there was an unclear regulation related to the mechanism of how individuals are notified of the rights set in the Law on Organs.

With compliance with the requirements of the convention, it was determined that an adult has the right to express a will to prohibit or allow the use of his body, tissues and organs after death by making a mark in the health information system.

Residents who wish to express their will regarding organ donation have the opportunity to do so electronically by making an appropriate mark on the national e-health system website [www.eveseliba.gov.lv](http://www.eveseliba.gov.lv). The National Health Service includes and updates the information in the Resident Register. Before that, such information had to be provided officially to the institution. The Law on Organs established that advertising or dissemination of any other public information in which tissue or organs of a living or dead person is offered with the intention of obtaining financial gain or an equivalent advantage, or showing interest in the possibility of obtaining tissue or organs of a living or dead person, is prohibited, thus also covering advertisements posted on classifieds portals, as until then only advertising of such activities, which is a narrower concept, was prohibited.

## **MALTA / MALTE**

**Contribution received on: 2/11/23**

Please find below text of the presentation by Dr Lynn Chircop Faure for Malta during the 4th Plenary meeting of the Committee of the Parties to the Council of Europe Convention against Trafficking in Human Organs.

Art. 248CA of the Maltese Criminal Code Cap. 9 of the Laws of Malta, criminalizes trafficking in human organs when it falls outside the scope of the Human Organs, Tissues and Cell Donation Act (Cap. 558).

The Victims of Crime Act (Cap. 539) and the Criminal Injuries Compensation Scheme Regulations are applicable to this offence as well, and thus provide for protection measures and state compensation in such cases, in addition to other avenues for compensation (via criminal court order upon conviction or via civil courts).

The Human Rights Directorate within the Ministry for Home Affairs, Security, Reforms & Equality has been delegated with the administrative function to implement an electoral manifesto and Budgetary measure to draw the 1st National Strategy against human Trafficking. Malta is currently drafting its 1st National and the next National Action Plan as from 2024 onwards and to do so it has applied for technical support through the European Union's Technical Support Programme.

For the purpose, the human Rights Initiatives Unit has set up an inter-ministerial committee to facilitate the implementation of the State's reporting and coordination functions in relation to the CoE Convention on Action Against Trafficking in Human Beings and the EU Anti-Trafficking Directive. This set-up may be reviewed through legislative changes.

However, information on organ removal for the purpose of human trafficking does not feature in the data & statistics collected by the National Statistics office to date.

In view of Malta's ratification of the Convention of Europe Convention against Trafficking in Human Organs in March 2018, the requirement for specific monitoring and reporting on this illegal activity will be discussed in the Working Groups being set up for the purpose of the design of the new National Action Plan and its implementation.

The questions requested by the Committee of the Parties will be highlighted and discussed as necessary within relevant national fora.

<b>MONTENEGRO</b>	<b>Contribution received on: 12/01/2024</b>

<b>NORWAY/ NORVEGE</b>	<b>Contribution received on: 13/11/23</b>
<p>"Organ trafficking, as well as trafficking of human tissues and cells, was already forbidden in Norway before the ratification of the European Convention Against Trafficking in Human organs in 2017. Only minor adaptations in the legislation were necessary to meet the requirements for ratification. This also applies to the articles that Norway is only obliged to endeavour to implement. See further information here: <a href="#">Prop. 89 L (2016–2017) (regjeringen.no)</a> (in Norwegian language). Among the adjustments were a few amendments of the Transplantation Act available here: <a href="#">The Norwegian act relating of donation and transplantation of organs, cells and tissue )(lovdata.no)</a> (in Norwegian language).</p> <p>So far there are no organ trafficking judgements in Norway.</p> <p>As part of Scandiatransplant and Eurotransplant, Norway is collecting data on transplantations being performed abroad. However, it is difficult to consider if these transplantations are legal, as for instance a living donor sister abroad as a part of an international organ exchange agreement. Transplantation abroad may also be illegal as in commercial organ transplantation arranged as a private initiative."</p>	

<b>PORTUGAL</b>	<b>Contribution received on: 2/11/23</b>
<p><b>1. About the criminalization of the donor or/the receptor, Portugal states the following:</b></p> <ol style="list-style-type: none"> <li>1. Organ shortage has led to several patients seeking transplant opportunities outside of their national transplant system and even outside of their country. This has given rise to a global trafficking in human organs (THO), especially in the case of kidneys, which is generally facilitated by so-called "transplant tourism". In this practice, patients travel to countries where there is no legislation against the trafficking of human organs or any punishment for such illicit conduct. These organ trafficking activities occur under the context of trafficking human beings (THB) and are often motivated by socioeconomic reasons or due to coercion exerted on the victim. According to the World Health Organization, international organ trade accounts for 5% to 10% of organ transplants performed annually.</li> <li>2. The Santiago de Compostela Convention of the Council of Europe against Trafficking in Human Organs lays out specific rules that impose criminal obligations on the States Parties. These rules require the adoption of measures that criminalize certain actions and protect important legal values. The primary values protected by these measures are the physical integrity, freedom, and autonomy of the organ donor in the decision-making process.</li> <li>3. In accordance with Portuguese national law, living organ donation programs are considered safe if the donor's consent is freely given, without any form of coercion. This requires that the donor provides <i>knowledgeable and informed consent</i>. To ensure the safety and well-being of the donor, a medical and psychological evaluation is necessary. This assessment is carried out by a specific ethics committee created for this purpose, known as the Entity for Verifying the Admissibility of Harvesting for Transplantation.</li> <li>4. Organ donation is based on the principle of free of charge (the donation must be voluntary and unpaid), without prejudice to the right of living donors to receive</li> </ol>	

- compensation strictly limited to cover the expenses incurred and the loss of income related to the donation.
5. The law no. 12/93 of April 22 prohibits the commercialization of human organs, tissues, and cells for therapeutic or transplant purposes. The principle of free of charge is expressly enshrined in the law, which means that the donation of these organs cannot be paid under any circumstances. This ensures that human organs are outside the legal commerce.
  6. In the Portuguese Criminal Code (**Article 144. -B**), the conduct of human organ extraction is described whenever it occurs without compliance with the provision of *consent* – as legally permitted – and whenever it occurs within the framework of an exchange (*commercialization*).
  7. THO is a phenomenon that involves both the donor and the recipient, who may unwittingly participate in illegal activities. This is because the organized groups can manipulate them to seek to profit from the trade. The donor provides the necessary organ, while the recipient requires it to save/improve quality of their life.
  8. It is crucial to comprehend that human organ trafficking is a severe offense. In Portugal, individuals who receive organ transplants can face punishment if they have been involved in such illegal activities. However, the court may consider their health condition and their level of cooperation in revealing the truth during the investigation, which can benefit them in certain cases. There are several reasons why those who receive human organs may be subject to punishment, including
    - a) Under Portuguese law, human organs are outside legal commerce, and its commercialization is illicit.
    - b) The THO arises from the need for the recipient to receive a human organ transplant due to his health condition:
    - c) Committing a crime requires significant financial resources and access, limiting its feasibility to individuals of high financial standing.
    - d) THO violates the legal rights of the donor to physical integrity and freedom of choice. Any such act disregards the donor's right to make independent decisions about his/her body.
  9. According to Portuguese law, human organ donors are not penalized if their organs are extracted without their consent or if the extraction is done after receiving payment. The law's main objective is to safeguard organ donors who might be victims of a crime. Furthermore, Portugal's legal system strictly prohibits the commercialization of human organs, which is in line with the principles of humanity, solidarity and human dignity and. Essentially, this approach highlights Portugal's commitment to prioritizing the well-being and protection of individuals, particularly those who are vulnerable.
  10. The legal system in Portugal recognizes the idea that donating a human organ can make someone a victim of a crime or a hero, depending on the circumstances. If the donation process negatively affects the donor's freedom and autonomy or if they are exploited due to their vulnerability by a third party, then they are considered a victim of a crime. However, if someone voluntarily provides an organ for a legal transplant to save someone's life, they are considered a hero by the Portuguese society.

## 2. Application of Portuguese criminal law in space

Regarding the application of Portuguese criminal law in space, the principle of territoriality is observed; that is, the Portuguese State exercises *ius puniendi* concerning facts that constitute crimes committed in its national territory, regardless of the nationality of the agent, and the acts

committed on board Portuguese vessels or aircraft (flag or flag principle). And, regarding the locus commissi delicti criterion, we will say that, due to the scope of its formulation, it allows an extensive application of Portuguese criminal law, as it is sufficient with a minimum connection of these same facts with the national territory.

Portuguese criminal law applies to acts committed outside the national territory in a complementary manner. This creates situations of extraterritoriality in the application of Portuguese criminal law, which are provided for in Article 5 of the Penal Code. These situations are grounds on implementing various principles, such as the principle of defence of national interests, the principle of nationality, the principle of universality and the principle of supplementary administration of criminal justice.

The application of Portuguese criminal law to situations provided for in that normative presupposes the *extraterritorial practice of facts*. This highlights the balance between the need to trigger criminal action and the repression of criminal conduct, on the one hand, and the objective of an effective criminal investigation and efficient investigative acts, on the other hand.

To apply Portuguese law to actions that occur outside of its territory, it is necessary to consider the process of extradition and other methods of international judicial cooperation in criminal cases. This procedure is established by Law no. 144/99, which approves the law on international judicial cooperation in criminal matters. An integrated reading of the relevant provisions, such as the principle of *ne bis in idem*, is required to ensure proper application of the law.

To comply with Article 10 of the Santiago de Compostela Convention, the Portuguese Law modified Article 5 of the Penal Code by adding the offence of trafficking in human organs (Article 144.º-B) to paragraph 1:

#### **Article 5: Acts committed outside the Portuguese territory**

1 - Unless provided otherwise in an international treaty or convention, the Portuguese criminal law is also applicable to acts committed outside the national territory:

- a) [...]
- b) [...]
- c) When constituting the crimes foreseen in articles 44.º-A, **144.º-B**, 154.º-B e 154.º-C, 159.º a 161.º, 278.º a 280.º, 335.º, 372.º a 374.º, provided that the agent is found in Portugal and cannot be extradited or handed over as a result of the execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State;
- d) [...]
- e) [...]
- f) [...]
- g) [...]

2 - [...]

<b>MOLDOVA / MOLDAVIE</b>	<b>Contribution received on:</b>

<b>SLOVENIA / SLOVENIE</b>	<b>Contribution received on: 3/11/23</b>

<b>SPAIN / ESPAGNE</b>	<b>Contribution received on: 2/11/23</b>
<p>The Spanish legislation complies with the requirements of the Santiago de Compostela Convention, in accordance with the principles of voluntariness, gratuity, nonprofit, anonymity, without the possibility of obtaining financial or other type of compensation, and traceability.</p> <p>There have been no new developments in our legislative framework, after the latest reform of the Spanish penal code in 2019.</p> <p>Nevertheless, one measure at the national scope, promoted by the National Organization of Transplants, that should be highlighted, is the inclusion, in March 2023, in the Medical Code of Ethics, the obligation of physicians to disclose professional secrecy in cases of suspected trafficking in human beings or trafficking in human organs. This is an important milestone due to the fact that, it is the physicians who may first become aware that a transplant has taken place could be suspected of a crime.</p> <p>The latest case we have become aware of a possible organ trafficking case of a Pakistani woman, resident in Spain, who travelled to her country of origin for a kidney transplant, and died on the return journey, due to complications arising from the transplant. This case was judiciary raised and dismissed for lack of evidence, because the difficulty in carrying out research in other countries.</p> <p>Another of the actions carried out in the fight against trafficking in human organs is the creation of a national platform, where are involved, the National Organization of Transplants, the Public Prosecutor Office, the law enforcements bodies, and the Ministry of Justice forensics doctor's body. In this first stage the objective of this platform is to enforcement the exchange of views and the cooperation between de National Platform's members, with the desirable goal in the near future of developing a protocol to identify and prevent de THO between all organizations represented on the national platform.</p> <p>Finally, it is worth noting that there are two types of registers related to the THO:</p> <ul style="list-style-type: none"> <li>• The Central Registry of criminals and Rebels, where the convictions for the crimes of trafficking in human organs are recorded.</li> <li>• The Registry of Donations and Transplantations, where are recorded all organ transplantations performed in Spain, with all the organ donor (deceased and living) and recipient's data. Every organ recovered is traced from donor to recipient and <i>vice versa</i>.</li> </ul>	

<b>SWITZERLAND / SUISSE</b>	<b>Contribution received on: 8/11/23</b>
<p>As highlighted in the first meeting, organ trafficking – as well as trafficking in human tissues and cells - was already forbidden in Switzerland by the constitution and the Transplantation Act before the ratification of the Convention. Therefore, only small adaptations in the legislation were necessary to meet the requirements for ratification. Among the adjustments, we introduced the extraterritorial jurisdiction in the Transplantation Act.</p> <p>The use of illicitly removed organs for <i>other purposes than implantation</i> according to article 5 of the Convention was complicated to implement. It was decided to only regulate it in areas already covered by Federal Law (Human research Act, Therapeutic Products Act) but not areas like Art or Education.</p> <p>The Transplantation Act is under cantonal jurisdiction. The Cantons have to report all judgements on organ trafficking to the national contact point. So far there are 0 organ trafficking judgements in Switzerland. As part of NETTA, Switzerland has been collecting data on transplantations abroad since 2015.</p>	