SUMMARY REPORT

RESPONSES RECEIVED TO THE COUNTRY PROFILE QUESTIONNAIRE ON THE IMPLEMENTATION OF THE COUNCIL OF EUROPE CONVENTION AGAINST TRAFFICKING IN HUMAN ORGANS

Committee of the Parties to the
Santiago de Compostela Convention

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

SUMMARY REPORT
COUNTRY PROFILE QUESTIONNAIRE
Implementation of the Council of Europe Convention against Trafficking In Human Organs

Committee of the Parties
of the Santiago de Compostela Convention

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Council of Europe

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ABBREVIATIONS

CoE	Council of Europe
EDQM	European Directorate on the Quality of Medicines & HealthCare (Council of Europe)
NETTA	Network of National Focal Points on Travel for Transplantation
OCLAESP	Office central de lutte contre les atteintes à l'environnement et à la santé publique (Central office for combating environmental and public-health related crimes) (France)
RITTA	Registry of International Travel for Transplantation Activity

EXECUTIVE SUMMARY

This Summary report illustrates that the Parties to the Council of Europe Convention against Trafficking in Human Organs, known as the Santiago de Compostela Convention (hereinafter, the Convention), have implemented such Convention to a high degree in some areas. This study, which is not a monitoring exercise, provides support to the Parties in indicating areas where implementation has been achieved substantially, or where further work may be required.

The substantive Criminal Law provisions of the Convention (Articles 4-13) are underpinned by definitions (Articles 2 and 4) which, in both areas have been implemented to a high degree. The Summary report covers the general legal framework and alignment of the Convention, Prosecution of perpetrators of trafficking in human organs, and Prevention of and combating against trafficking in human organs.

The Santiago de Compostela Convention has been designed to comprehensively deal through criminal law with threats created by trafficking in human organs. Unless the challenges in identifying the potential instances of this crime are planned and prepared for, the value of the Convention provisions will be weakened. To this end, the report points out that Parties may focus on the development of strategies, plans and other measures beyond the implementation of laws even where no instances of trafficking in human organs have been detected by some Parties.

This study outlines in Chapter 2 the general horizontal issues that are reported by a number of the Parties in their responses to the questionnaire. There follows the study recommendations and conclusions.

I. INTRODUCTION

1.1. CONTEXT

The Committee of the Parties (hereinafter, the CoP) to the Council of Europe Convention against Trafficking in Human Organs (hereinafter "the Santiago de Compostela Convention" or "the Convention") adopted its Rules of Procedure (hereinafter, RoP) on 23 February 2023[1].

Following Article 25 of the RoP, and with a view to providing the CoP with an overview of legislative practice, institutional framework and policies for the implementation of the Convention, every Party to the Convention (hereinafter "the Parties") was requested to reply to the General Overview Questionnaire which constitutes its country profile[2].

In accordance with Rule 27 of the RoP, the Council of Europe Secretariat shall address such questionnaires to the Parties through the representative in the Santiago de Compostela Committee representing the Party to be monitored and who will act as "contact point". Parties shall coordinate with their respective domestic authorities to collect replies within the time limit set by the Santiago de Compostela Committee. Those replies shall be detailed, as comprehensive as possible, answer all questions and contain all relevant reference texts. Moreover, they shall be made public, unless a Party makes a reasoned request to the Santiago de Compostela Committee to keep a reply confidential.

1.2. OBJECTIVE

The purpose of this report is to provide some comments on the replies received from the Parties to the general overview questionnaire on the implementation of the Santiago de Compostela Convention. This report is not a monitoring report.

1.3. METHODOLOGY

The general overview questionnaire was grouped under three main sections. The choice of these sections did not seek to prioritise the various provisions of the Convention. Equal importance was attached to all rights and principles therein. This report was conducted on the basis of the information provided under the headings of:

- General legal framework;
- Prosecution of perpetrators of trafficking in human organs;
- Prevention of and combating against trafficking in human organs.

The Summary Report on horizontal reviews, those issues looking in a horizontal way and not on a country-by-country way, comments only on the issues of greatest importance to the Santiago de Compostela Convention implementation. Many other issues are listed in the questionnaire.

[1] Council of Europe Convention on Trafficking in Human Organs, CETS No 216, Santiago de Compostela, 25/03/2015, Article 1, paragraph 2.
[2] Santiago de Compostela Committee, *Rule of Procedure* (RoP), 23 February 2023, Article 25.2

1.4. PARTIES PARTICIPATING

The Bureau of the CoP decided to concentrate its efforts only on the Parties to the Convention and not to include the signatory countries in this report. A total of 15 Parties replied to the general overview questionnaire: Albania, Belgium, Costa Rica, Croatia, Czechia, France, Latvia, Malta, Montenegro, Norway, Portugal, Republic of Moldova, Slovenia, Spain, and Switzerland.

The responding authorities, either as the authority compiling the responses or those who contributed to them, included the Ministry of Justice, Ministry of Interior, Ministry of Health, Police, Public Prosecutor, and the National Transplantation Agency. This reflected the true spirit of Article 21.1 which envisages that there will be an information flow and cooperation approach between those Ministries/authorities who have responsibilities and an input to implementing the Santiago de Compostela Convention. This is evident in the cooperation between the Ministries and authorities in coming together to compile the responses to the questionnaire such that one national response is provided in a manner that illustrates a coordinated and cohesive implementation of the Convention.

1.5. LIMITATIONS

The number of countries responding to the questionnaire only provides an indication of the general situation in those countries. Quantitative data was not requested, and this study does not seek to assess the impact of the implementation of the Convention other than at Question 12.f relating to the impact of awareness-raising campaigns to the public.

In some responses, the extent of data provided was in excess of that required to respond to the question and included data that was not directly relevant or applicable to the question. In some responses, the data was provided in a consolidated text rather than specific responses to a series of questions or referred to a response to a different question which dealt with a different focus, such as Question 12: Ensuring the quality and safety of human organs. The responses to some questions were provided in the affirmative 'yes' or in the negative 'no' without any supporting information. It was often challenging to make any further assessment, or any at all, on the state of implementation in such cases. This made any comparison challenging and no assessment could be made.

II. GENERAL FRAMEWORK

This horizontal study is intended, following from the responses to the questionnaire from the Parties, to identify issues in common to the Parties for noting and where the implementation process may be enhanced.

2.1. APPLICABLE LAW

In most responses the applicable law on how the Convention could be implemented was appropriately done, either through a replication of the Convention provisions, where appropriate, through a dedicated Act, or through amendments to existing relevant legislation.

2.2. ISSUES ANALYSED

Question 1: Non-discrimination – Article 3

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.

Article 3 – Principle of non-discrimination

The implementation of the provisions of this Convention by the Parties, in particular the enjoyment of measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, age, religion, political or any other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status.

Explanatory Report
Article 3 – Principle of non-discrimination

25. This article prohibits discrimination in Parties' implementation of the Convention and in particular in enjoyment of measures to protect and promote victims' rights. The meaning of discrimination in Article 3 is identical to that given to it under Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

26. The concept of discrimination has been interpreted consistently by the European Court of Human Rights in its case law concerning Article 14 ECHR. In particular, this case law has made clear that not every distinction or difference of treatment amounts to discrimination. As the Court has stated, for example in the *Abdulaziz, Cabales and Balkandali v. the United Kingdom* of 28 May 1985 judgment, "a difference of treatment is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality between the means employed and the aim sought to be realised".

27. The list of non-discrimination grounds in Article 3 is based on that in Article 14 ECHR and the list contained in Article 1 of Protocol No. 12 to the ECHR. However, the negotiators wished to include also the non-discrimination grounds of age, sexual orientation, state of health and disability. "State of health" includes in particular HIV status. The list of non-discrimination grounds is not exhaustive, but indicative, and should not give rise to unwarranted a contrario interpretations as regards discrimination based on grounds not so included. It is worth pointing out that the European Court of Human Rights has applied Article 14 to discrimination grounds not explicitly mentioned in that provision (see, for example, as concerns the ground of sexual orientation, the judgment of 21 December 1999 in *Salgueiro da Silva Mouta v. Portugal*). The reference to "or other status" could refer, for example, to members of refugee or immigrant populations.

All Parties have provisions preventing discrimination corresponding to the grounds listed in Article 3 of the Santiago de Compostela Convention.

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;
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;
c. If there has not been any adoption of a national strategy and/or Action Plan to combat against the trafficking in human organs, whether there is a strategy and /or Action Plan by a particular Ministry or State Agency that leads on this nationally.
d. Regarding compliance with the content of the Convention, does your country's domestic law comply with the concepts of:
    - "trafficking in human organs" (**Article 2**)
    - "human organ" (**Article 2**)
    - "financial gain or comparable benefit" (**Article 4**)?
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"?
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?

Article 2 – Scope and use of terms

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

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

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.

Explanatory Report
Article 2 – Scope and use of terms

20. Article 2, paragraph 1, defines the scope of the Convention as applying to trafficking in human organs for purposes of transplantation or other purposes and to other forms of illicit removal and of illicit implantation. The negotiators decided that the notion of trafficking in organs covers all the conducts of illicit removal provided in Article 4, paragraph 1, of implantation/use of illicitly removed organs provided in Article 5, and the other conducts provided in Articles 7, 8 and 9. For further explanation on the concept of trafficking in human organs, see paragraph 23. The expression "other forms of illicit removal and of illicit implantation" refers only to actions covered by Article 4, paragraph 4 and Article 6. The legal trade with medicinal products, manufactured from human organs or parts of human organs (such as advanced therapy medicinal products), is not covered by the Convention and shall not be restricted by it.

21. The term "other purposes" is intended to refer to any purpose other than transplantation, for which organs illicitly removed from a donor could now, or in the future, be used. Concerning what constitutes the term "other purposes", the negotiators identified, in particular, scientific research and the use of organs to collect tissue and cells, such as the use of heart valves from a heart illicitly removed, or the use of cells from a organ illicitly removed organ for cell therapy. But taking into account, *inter alia*, the progress of scientific research and the future developments in the use of organs for purposes other than implantation, the negotiators decided to leave this open. Consequently, this list of examples is not exhaustive. However, while this Convention applies to the removal of human organs for purposes other than transplantation, the trafficking of tissues and cells falls outside the scope of the Convention.

22. Article 2, paragraph 2, provides two definitions which are applicable throughout the Convention.

23. Definition of "trafficking in human organs". Given the complexity of the criminal actions comprising "trafficking in human organs", involving different actors and different criminal acts, the negotiators of the Convention considered it less useful to attempt to formulate an all-encompassing definition of the crime to serve as a basis for specifying the description of the offences in Chapter II of the Convention. Instead, the mandatory provisions contained in Chapter II of the Convention on "Substantive Criminal Law" (Article 4 paragraph 1 and Articles 5, 7, 8 and 9) enumerate the criminal acts which, whether committed on their own or in conjunction with one another, all constitute trafficking in human organs. Nevertheless, the negotiators considered it necessary to refer to "trafficking in human organs" as a comprehensive phenomenon in other parts of the Convention. Accordingly, Article 2, paragraph 2, contains such a definition of "trafficking in human organs", which consists of a reference to the substantive criminal law provisions setting out the different criminal acts constituting "trafficking in human organs".

24. Definition of "human organ". As regards the definition of "human organ", the negotiators decided to take over the internationally recognised definition used by the European Union in Article 3, letter (h), of its "Directive 2010/53/EU of the European Parliament and of the Council of 7 July 2010 on standards of quality and safety of human organs intended for transplantation".

Article 4 – Illicit removal of human organs

31. Article 4, paragraph 1, letters a – c, obliges Parties to the Convention to establish as a criminal offence the removal of human organs from living or deceased donors in the following cases: lack of a free, informed and specific consent by the donor or of authorisation by the domestic law of the Party in question (letter a); a financial gain or comparable advantage has been offered or received in exchange for the removal of organs from a living donor (letter b), or a deceased donor (letter c). Though the illicit removal of human organs may in practice involve elements of all the acts described in letters a – c, it is enough that one of the three conditions are fulfilled to establish that the crime described in Article 4, paragraph 1, has been committed. The negotiators have chosen not to include the purpose of implantation or other purposes as an element of the offence, to avoid the proof of the purpose of the removal.

- Parties responding provided, in most cases, a comprehensive listing of the main legislative measures. While the question did not require the Parties, in this question, to enter into detail, some did so.

- The implementation of the meaning of "human organs", "trafficking in human organs" and "financial gain or comparable benefit" has been implemented to correspond with **Articles 2 and 4** of the Convention by all Parties. Only one Party questioned its internal jurisprudence on the extent of correspondence due to its use in the Criminal Code of the word "payment, whatever its form", denoting a monetary transaction only, instead of "profit or comparable advantage".

- In all Parties, their legislation prohibits remuneration relating to organ transplantation and exempts reimbursement for specific legitimate costs associated with the transplantation.

- Donation by persons without capacity is possible in the majority of Parties and subject to varying rules laid down by the respective Parties. The rules are not identical in all cases but follow the principle that no donation may be made without consent and that consent may be provided by parents, or a guardian, and may be subject to scrutiny by others, such as an ethics committee. Only two Parties (**Belgium, Switzerland**) do not permit donations from persons without capacity in any situation, and this is limited only to living organ donations in Switzerland. In Belgium, organ removal is permitted from deceased persons who were incompetent during their lifetime and for whom no declaration of opposition has been made.

- While Parties have taken significant steps toward implementation, an indication that they have not yet reached full implementation of the Convention is the absence of a national strategy, or action plan, or an individual Ministry or other organisation's plan in most cases.

- Five Parties (**France, Malta, Republic of Moldova, Slovenia, Spain**) have indicated that they have taken some steps to achieve this, partly by individual organisation training and other plans (**Albania**, **France, Spain**), or a national strategy and/or action plan in development (**Malta, Republic of Moldova, Slovenia**). The absence of the plan was justified by some Parties on the basis that no instances or reports of suspected organ trafficking had taken place in recent times, or at all in their countries. The lack of action in this area risks not having sufficiently robust coordinated facilities and plans to proactively detect pointers that trafficking in human organs may be ongoing.

Question 3: National cooperation and information exchange - Article 21

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)**);

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)**);

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**);

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

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**);

Article 21 – Measures at domestic level

1. Each Party shall take the necessary legislative and other measures to ensure:
    a. the existence of a transparent domestic system for the transplantation of human organs;
    b. equitable access to transplantation services for patients;
    c. adequate collection, analysis and exchange of information related to the offences covered by this Convention in co-operation between all relevant authorities.

2. With the aim of preventing and combatting trafficking in human organs, each Party shall take measures, as appropriate:
    a. to provide information or strengthen training for healthcare professionals and relevant officials in the prevention of and combat against trafficking in human organs;
    b. to promote awareness-raising campaigns addressed to the general public about the unlawfulness and dangers of trafficking in human organs.

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

Explanatory Report

Article 21 – Measures at domestic level

125. The purpose of Article 21 is to prevent trafficking in human organs by obliging Parties to address some of its root causes. Hence Parties shall in accordance with paragraph 1 ensure the existence of a transparent domestic system for the transplantation organs; equitable access to transplantation services for patients, and finally, adequate collection, analysis and exchange of relevant information pertaining to trafficking in human organs between all relevant domestic authorities. Parties may wish to consider the provisions of Articles 3 – 8 of the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin, when reviewing their current transplantation systems in the light of this Article.

126. The issue of "transparency" is important, because it reduces the risk of illicitly removed organs being introduced into the legitimate domestic transplantation system. "Equitable access to transplantation services" means that Parties should ensure a "level playing field" in terms of the allocation of organs for all patients awaiting implantation. Ensuring a strong co-operation between the many different competent authorities involved in combatting trafficking in human organs is a prerequisite for achieving any measure of success. In this respect, the negotiators decided to put special emphasis on the collection, analysis and exchange of information between these authorities, thus enabling them to take timely action to prevent the crimes set out in the Convention.

127. Paragraph 2, letter a, obliges Parties to take measures, as appropriate, with regard to providing information and strengthening training, e. g. on how to detect indications of trafficking in human organs, for healthcare professionals and relevant officials. According to letter b, Parties are furthermore obliged to promote, as appropriate, awareness-raising campaigns addressed to the general public on the unlawfulness and dangers of trafficking in human organs.

128. Finally, paragraph 3 obliges Parties to prohibit the advertising of the need for, or availability of, human organs "with a view to offering or seeking financial gain or comparable advantage". The negotiators considered this provision necessary, taking into account the existence of e.g. websites on the internet where human organs are put up for sale. The implementation of this provision is left to Parties, but they must obviously ensure that it is carried out while respecting their human rights obligations, especially as set forth in the ECHR, the International Covenant on Civil and Political Rights, and any other obligations under international law. The Parties concerned are in particular expected to take into account the case-law of the European Court of Human Rights which, based on Article 10 of the ECHR, guarantees the right to freedom of expression, the exercise of which may be subject to certain formalities, conditions, restrictions or penalties as prescribed by law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, or for the protection of health or morals. Cf. also paragraph 30. The prohibition to advertise the need for, or availability of human organs, with a view to offering or seeking financial gain or comparable advantage, is intended to target mainly the persons operating as a broker between donors and recipients.

- All Parties provided the legislative information indicating that laws have been put in place for the establishment of transparent systems to regulate the transplantation of human organs, and some Parties (**Belgium, France, Republic of Moldova, Slovenia, Switzerland**) also provided information indicating that operative measures have been put in place (**Article 21, paragraph 1. a).**

- The majority of the Parties indicated that equitable access (**Article 21, paragraph 1, b**) to organ transplantation was guaranteed by legislation and measures affording equal rights for all. One country (**Spain**) indicated that the decision on equitable access was provided by an annual revision of the national criteria for organ distribution under the Ministry of Health.

- Parties have varying approaches to ensuring cooperation between the relevant parties involved in effective prevention and combating trafficking in human organs (**Article 21, Paragraph 1. c; Explanatory Report, paragraph 126**). Six Parties (**Belgium, Costa Rica, Latvia, Malta, Republic of Moldova, Spain**) have systems and structures that involve all relevant parties to ensure the exchange of information. Five Parties (**Czechia, France, Montenegro, Portugal, Switzerland**) rely on more coercive legislative measures mandating cooperation and reporting of crime. One Party (**Norway**) relies on cooperation and information exchange trafficking on human beings with its focus and not specifically on trafficking in human organs. Two Parties (**Malta, Slovenia**) have an action plan, specifically including cooperation and information exchange, in preparation. One Party (**Croatia**) has informal arrangements to trigger reporting to police from suspicions raised by healthcare professionals. One Party (**Albania**) has not provided information on this issue. The adequacy of the collection, analysis and exchange of information related to the offences covered by the Convention in co-operation between all relevant authorities is unclear.

- The provision of training for healthcare professionals and relevant officials (**Article 21, paragraph 2**) involved in prevention methods is not apparent in most of the Parties (**Albania, Costa Rica, Czechia, Latvia, Malta, Republic of Moldova, Montenegro, Norway, Portugal, Slovenia, Switzerland).** This has been justified by some of the Parties due to no instances of trafficking in human organs having been detected in recent times or at all. One Party (**Republic of Moldova**) conducts annual "Round Tables" with transplant coordinators and those institutions authorised to carry out pre-transplant activities. It also arranged educational programmes for teachers and high school students on organ/tissue/cell donation and transplantation. Two Parties (**Croatia, France**) relies on separate authorities/offices to provide training, and it is unclear whether this involves cross-training between them. Croatia relies on basis training in the different institutions and subsequent training through specialised courses and workshops. One Party (**Spain**) has a range of training programmes involving healthcare professionals and relevant officials, and civil society. One Party (**Belgium**) has conducted some training and participated in other training conducted. One Party (**Slovenia**) has a national strategy and action plan in preparation that will include addressing training issues for a platform of institutions involved in this topic. It is unclear in many Parties whether there are programmes for training relevant officials and not only related to healthcare practitioners and providers.

- Promotional campaigns about the unlawfulness and dangers of trafficking in human organs (**Article 21, paragraph 2. b**) is not apparent in the majority of the Parties (**Belgium, France, Montenegro, Norway, Portugal, Slovenia, Switzerland.** One Party (**Albania**) conducts promotional campaigns highlighting the unlawfulness and dangers of trafficking in human organs. These campaigns involve State agencies, NGOs, international

organisations, healthcare professionals, media and local communities. They involve various awareness-raising activities, including public campaigns, education in schools and universities, media involvement and are designed to ensure that the public understands the illegality and risks involved with organ trafficking. One Party (**Croatia**) provides some information during the promotional campaigns of organ donation and transplantation and refers to the punishment for manipulation of the system by offenders. Two Parties (**Costa Rica, Czechia**) focus on promotional campaigns on trafficking in human beings which encompass elements of trafficking in organs. One Party (**Latvia**) delivers information of this nature to medical students and medical workers, and through mass-media campaigns to the public. One Party (**Malta**) organises promotional awareness campaigns on trafficking in human beings that include warnings to the public on the illegality of trafficking in human organs. One Party (**Norway**) provides information to patients on the illegality of organ trafficking

- One Party (**Spain**) provides information for public consumption through annual meetings between journalists and the transplant community funded by the transplantation body. One Party (**Republic of Moldova**) conducts promotional campaigns through promotional materials, events, traditional media outlets, social media, and also by responding to enquiries by phone and email from patients and civil society.

- All Parties prohibit the advertising of the need for, or availability of human organs, with a view to offering or seeking financial gain or comparable advantage (Article 21, paragraph 3).

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

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.

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

3. The expression "financial gain or comparable advantage" shall, for the purpose of paragraph1, b and c, not include compensation for loss of earnings and any other justifiable expenses caused by the removal or by the related medical examinations, or compensation in case of damage which is not inherent to the removal of organs.

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

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

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

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.

Explanatory Report
Article 4 – Illicit removal of human organs

31. Article 4, paragraph 1, letters a – c, obliges Parties to the Convention to establish as a criminal offence the removal of human organs from living or deceased donors in the following cases: lack of a free, informed and specific consent by the donor or of authorisation by the domestic law of the Party in question (letter a); a financial gain or comparable advantage has been offered or received in exchange for the removal of organs from a living donor (letter b), or a deceased donor (letter c). Though the illicit removal of human organs may in practice involve elements of all the acts described in letters a – c, it is enough that one of the three conditions are fulfilled to establish that the crime described in Article 4, paragraph 1, has been committed. The negotiators have chosen not to include the purpose of implantation or other purposes as an element of the offence, to avoid the proof of the purpose of the removal.

32. The negotiators considered that, as a general principle, the concept of consent included in the present Convention should be identical as the one expressed in the Convention on Human Rights and Biomedicine, and its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin.

33. As regards living donors, Article 13 of the Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin draws on the substance of Article
5 of the Convention on Human Rights and Biomedicine regarding consent to an intervention in the health field, complemented by its Article 19, paragraph 2 regarding consent to organ removal from living donors. Article 13 of the Additional Protocol

provides in its first paragraph that "an organ or tissue may be removed from a living donor only after the person concerned has given free, informed and specific consent to it either in written form or before an official body." Its second paragraph specifies that "The person concerned may freely withdraw consent at any time." The fact that consent has to be "specific and given either in written form or before an official body" strengthens the requirements compared to the general rules regarding consent to an intervention in the health field. The Explanatory Report to the Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin specifies the ways of obtaining and withdrawing consent: "the donor's consent must also be specific and given in written form or before an official body, a court, a judge or an official notary for example. The responsibility of this body is to ensure that consent is adequate and informed. The second paragraph provides the freedom to withdraw consent

to the removal at any time. There is no requirement for withdrawal of consent to be in writing or to follow any particular form. The donor needs simply say no to the removal at any time […]. However, professional standards and obligations […] may require that the team continue with the procedure if not to do so would seriously endanger the health of the donor." It appears clear that Article 4 of the Convention applies also to any person deprived of his/her liberty, living or deceased, which was at the time of the negotiation of the Convention a major concern expressed by the Parliamentary Assembly of the Council of Europe and shared by many delegations.

34. As regards deceased donors, Article 17 of the Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin provides that "Organs or tissues shall not be removed from the body of a deceased person unless consent or authorisation required by law has been obtained. The removal shall not be carried out if the deceased person had objected to it." According to the Explanatory Report to this Protocol, "Without anticipating the system to be introduced, the Article accordingly provides that if the deceased person's wishes are at all in doubt, it must be possible to rely on national law for guidance as to the appropriate procedure. In some States the law permits that if there is no explicit or implicit objection to donation, removal can be carried out. In that case, the law provides means of expressing intention, such as drawing up a register of objections. In other countries, the law does not prejudge the wishes of those concerned and prescribes enquiries among relatives and friends to establish whether or not the deceased person was in favour of organ donation."

35. For the purposes of this Convention, in the case of a living donor, the term "specific" means that the consent must be clearly given and with regard to the removal of a "specific" organ that is precisely identified. In the case of a deceased donor, the latter may have given his/her consent during his/her lifetime to the removal of an organ to be carried out after his/her death; such consent may be given with regard to a specific organ or in more general terms. Any removal of organ carried out after the death of the person concerned shall respect the terms of this consent. If the donor has not expressed any wish during his/her lifetime, the removal may only be carried out if the requirements, as defined by domestic law, regarding authorisation for the removal of organs are met.

36. The wording "removal being authorised under its domestic law" set out in Article 4, paragraph 1, letter a. covers different concepts as provided for under domestic law which

are based on implicit consent of the deceased person or according to which the relatives of the deceased person are entitled to take the decision.

37. Article 20 of the Convention for the Protection of Human Rights and Biomedicine and Article 14 of its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin prohibit organ removal from persons not able to consent. The provision of paragraph 1 letter a of Article 4 of the Convention against Trafficking in Human Organs corresponds to this principle. As stated in the Explanatory Report to the Convention on Human Rights and Biomedicine regarding Article 6 on the protection of persons not able to consent, the incapacity to consent must be understood in the context of a given intervention and are defined by domestic law. It is for domestic law to determine whether or not a person has the capacity to consent.

38. However, given the specific purpose of the *Convention against Trafficking in Human Organs*, which is a criminal law convention, Article 4, paragraph 2, provides for the possibility of a reservation to the general rule of establishing as a criminal offence conducts referred to in paragraph 1 letter a. The reservation is restrictive, limited to living donors and only to exceptional cases. Certain delegations requested to introduce such a reservation to cover exceptional cases in which the person from whom the organ is removed is not capable of providing consent, as established in paragraph 1 letter a, and where there are thus no other

possible solutions than obtaining consent from a competent institution or an authorised person as provided for in domestic law. This is the case for example for children, people with mental disabilities, or any other person under a tutorship. These states wanted to foresee that in such exceptional cases, consent may be given by other authorised persons or even, by other competent institutions (e.g. courts of law), for the person concerned, in accordance with the safeguards and provisions of internal law. The last sentence obliges any State making use of this reservation option to provide a brief statement of the relevant domestic law, as appears, for example, in the European Convention on Human Rights (Article 57, paragraph 2) and the Convention on Human Rights and Biomedicine (Article 36, paragraph 2).

39. Article 4, paragraph 3, specifies that the expression of "financial gain or comparable advantage" as used in paragraphs 1, b and c does not include compensation for loss of earnings and any other justifiable expenses caused by the removal of an organ or the related medical examinations, or compensation in case of damage which is not inherent to the removal or organs. The negotiators considered it necessary to include this wording, which is taken from the Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin, in order to clearly distinguish the lawful compensation to organ donors in certain cases from the prohibited practice of making financial gains with the human body or its parts.

40. The financial gain or comparable advantage should be understood in a broad context. The gain can be offered to the donor or third person, directly or through intermediaries. The expression "financial gain or comparable advantage" does not apply to an arrangement that is authorised under domestic law such as arrangements for paired or pooled donation.

41. Paragraph 4, obliges Parties to the Convention to consider establishing as a criminal offence the removal of human organs from living or deceased donors, where the removal is performed outside the framework of its domestic transplantation system, or in breach of essential principles of domestic transplantation laws or rules.

42. The last sentence of paragraph 4 clarifies that while it is left to each Party to decide whether or not - and if so in which respect - it will establish criminal offences covering the conduct described in this paragraph, and while a Party which decides to establish any such criminal offences is not legally obliged to apply also Articles 9 to 22 to such criminal offences, the Party is called upon to endeavour to do so.

43. The negotiators were not in agreement over the question whether or not it would be appropriate to require Parties to sanction organ removal or implantation, if it is performed "outside of the framework of the domestic transplantation systems", i.e. outside of the system for procurement and transplantation of organs authorised by the competent authorities of the Party in question, and/or in breach of its domestic transplantation rules or laws. Some States considered that normally any organ removal or transplantation that may be considered to be performed outside of the system (or in breach of transplantation law) would also constitute one of the criminal offences under paragraph 1 of Article 4. Other states did not share this position. Negotiators agreed that it would be appropriate to specifically address these situations in paragraph 4 of Article 4 of the Convention, while recognising that States currently have very different domestic transplantation systems in place, and that the aim of the present Convention is not to harmonise domestic transplantation systems.

44. Similarly, the negotiators recognised that in some States, removal of organs performed outside of the framework of the domestic transplantation system would *per se* not necessarily be considered as more than a regulatory or minor offence, i.e. if the same act does not also fall under paragraph 1 of Article 4.

45. Because of the aforesaid differences in the various domestic transplantation systems and

domestic legal systems of States, the negotiators decided to leave a certain margin of appreciation to Parties with regard to whether or not to establish as a criminal offence the removal of organs from living or deceased donors under the conditions described in Article 4, paragraph 4.

- The majority of the Parties do criminalise the intentional conducts corresponding to Articles 4-5 and 7-9 Convention against trafficking in Human Organs. Aiding or abetting and attempt to commit any of the criminal offences established in accordance with this Convention is also criminalised in all Parties. Parties responded providing, in all cases, a comprehensive listing of the criminal offences integrating at the internal level the mentioned articles of Santiago Convention.

- All Parties require intentional conduct for the offences included at the Convention against trafficking in Human Organs. Only two Parties (**Norway and Switzerland**) criminalise those offences when committed by negligence. In Albania, even the requirement of intent is the general rule, in this context certain, offences connected with trafficking in human organs can be committed by negligence (for example, in the case of criminalisation of healthcare professionals who fail to adhere to medical and legal protocols related to organ transplantation or of institutions failing to report or prevent unlawful organ removal or trafficking due to negligence).

- Few Parties (**Belgium, Spain, and Switzerland**) criminalise recipients for these criminal offences. In Spain, the recipient of the organ is punished with an attenuated penalty provided that they were aware of the illicit origin of the transplant.

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, paragraphs 64-75).**

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.

Article 10 – Jurisdiction

1. Each Party shall take such legislative or other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
   a. in its territory; or
   b. on board a ship flying the flag of that Party; or
   c. on board an aircraft registered under the laws of that Party; or
   d. by one of its nationals; or
   e. by a person who has his or her habitual residence in its territory.

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

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

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

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

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

7. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with view to determining the most appropriate jurisdiction for prosecution. Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.

Explanatory Report Article 10 – Jurisdiction

64. This article lays down various requirements whereby Parties must establish jurisdiction over the offences with which the Convention is concerned.

65. Paragraph, 1 letter a. is based on the territoriality principle. Each Party is required to punish the offences established under the Convention when they are committed on its territory.

66. Paragraph 1, letters b. and c. are based on a variant of the territoriality principle. These subparagraphs require each Party to establish jurisdiction over offences committed on ships flying its flag or aircraft registered under its laws. This obligation is already in force in the law of many countries, ships and aircraft being frequently under the jurisdiction of the State in which they are registered. This type of jurisdiction is extremely useful when the ship or aircraft is not located in the country's territory at the time of commission of the crime, as a result of which paragraph 1, letter a. would not be available as a basis for asserting jurisdiction. In the case of a crime committed on a ship or aircraft outside the territory of the flag or registry Party, it might be that without this rule there would not be any country able to exercise jurisdiction. In addition, if a crime is committed on board a ship or aircraft which is merely passing through the waters or airspace of another State, there may be significant practical impediments to the latter State's exercising its jurisdiction and it is therefore useful for the registry State to also have jurisdiction.

67. Paragraph 1, letter d. is based on the nationality principle. The nationality theory is most frequently applied by countries with a civil-law tradition. Under it, nationals of a country are obliged to comply with its law even when they are outside its territory. Under sub-paragraph d, if one of its nationals commits an offence abroad, a Party is obliged to be able to prosecute him/her. The negotiators considered that this was a particularly important provision in the context of combating trafficking in human organs. Indeed, certain States in which trafficking in human organs takes place either do not have the will or the necessary resources to successfully carry out investigations or lack the appropriate legal framework.

68. Paragraph 1, letter e. applies to persons having their habitual residence in the territory of the Party. It provides that Parties shall establish jurisdiction to investigate acts committed abroad by persons having their habitual residence in their territory, and thus contribute to the punishment trafficking in human organs.

69. Paragraph 2 is linked to the nationality or residence status of the victim. It is based on the premise that the particular interests of national victims overlap with the general interest of the state to prosecute crimes committed against its nationals or residents. Hence, if a national or person having habitual residence is a victim of an offence abroad, the Party shall endeavour to establish jurisdiction in order to start proceedings. However, there is no obligation imposed on Parties, as demonstrated by the use of the expression "endeavour". In the present Convention there are no provisions providing for the elimination of the usual rule of dual criminality.

70. Paragraph 3 provides for Parties to enter reservations on the application of the jurisdiction rules laid down in paragraph 1, d and e.

71. Paragraph 4 prohibits the subordination of the initiation of proceedings, which is based on the jurisdiction provided for in paragraphs 1 d. and 1 e. to the conditions of a complaint of the victim or the laying of information from the authorities of the State in which the offence took place. Indeed, certain States in which trafficking in human organs take place do not always have the necessary will or resources to carry out investigations. In these conditions, the requirement of the laying of information by the State or of a complaint of the victim often constitutes an impediment to the prosecution. This paragraph applies to all the offences defined in Chapter II (Substantive Criminal Law).

72. In paragraph 5, the negotiators wished to introduce the possibility for Parties to limit the application of paragraph 4 by entering a reservation. Parties making use of this possibility may thus subordinate the initiation of prosecution of alleged trafficking in human organs to cases where a report has been filed by a victim, or the State Party has received a denunciation from the State of the place where the offence was committed.

73. Paragraph 6 concerns the principle of aut dedere aut judicare (extradite or prosecute). Jurisdiction established on the basis of paragraph 6 is necessary to ensure that Parties that refuse to extradite a national have the legal ability to undertake investigations and proceedings domestically instead, if asked to do so by the Party that requested extradition under the terms of the relevant international instruments.

74. In certain cases of trafficking in human organs, it may happen that more than one Party has jurisdiction over some or all of the participants in an offence. For example, an organ donor may be recruited in one country and have the organ in question removed in another. In order to avoid duplication of procedures and unnecessary inconvenience for witnesses or to otherwise facilitate the efficiency or fairness of proceedings, the affected Parties are required to consult in order to determine the proper venue for prosecution. In some cases it will be most effective for them to choose a single venue for prosecution; in others it may be best for one country to prosecute some alleged perpetrators, while one or more other countries prosecute others. Either method is permitted under paragraph 7. Finally, the obligation to consult is not absolute; consultation is to take place "where appropriate". Thus, for example, if one of the Parties knows that consultation is not necessary (e.g. it has received confirmation that the other Party is not planning to take action), or if a Party is of the view that consultation may impair its investigation or proceeding, it may delay or decline consultation.

75. The bases of jurisdiction set out in paragraph 1 are not exclusive. Paragraph 8 of this article permits Parties to establish other types of criminal jurisdiction to their domestic law.

- In most of the Parties, the applicable jurisdiction rules correspond with those set in Article 10 Convention against Trafficking in Human Organs. Due to Article 10 of the Convention establishing a wide jurisdiction of the Parties over offences included in Articles 4-9 committed abroad, certain Parties (**Belgium, Croatia, Czechia, France, Slovenia** and **Spain**) have formulated Reservations to Article 10 Convention against Trafficking in Human Organs (see Article 10 paragraph 3 and 5) and the Reservations may vary among these parties. In the case of **Montenegro**, even when no Reservation to Article 10 Convention was formulated, Montenegrin judicial authorities can investigate and prosecute only criminal offenses committed on the territory of Montenegro.

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.

Article 11 – Corporate liability

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

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

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

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

Explanatory Report
Article 11 – Corporate liability

76. Article 11 is consistent with the current legal trend towards recognising corporate liability. The negotiators were of the opinion that due to the gravity of offences related to trafficking in human organs, it is appropriate to include corporate liability in the Convention. The intention is to make commercial companies, associations and similar legal entities ("legal persons") liable for criminal actions performed on their behalf by anyone in a leading position in them. Article 11 also contemplates liability where someone in a leading position fails to supervise or check on an employee or agent of the entity, thus enabling them to commit any of the offences established in the Convention for the benefit of the entity.

77. Under paragraph 1, four conditions need to be met for liability to attach. First, one of the offences described in the Convention must have been committed. Second, the offence must have been committed for the entity's benefit. Third, a person in a leading position must have committed the offence (including aiding and abetting). The term "person who has a leading position" refers to someone who is organisationally senior, such as a director. Fourth, the person in a leading position must have acted on the basis of one of his or her powers (whether to represent the entity or take decisions or perform supervision), demonstrating that that person acted under his or her authority to incur liability of the entity. In short, paragraph 1 requires Parties to be able to impose liability on legal entities solely for offences committed by such persons in leading positions.

78. In addition, paragraph 2 requires Parties to be able to impose liability on a legal entity ("legal person") where the crime is committed not by the leading person described in paragraph 1 but by another person acting on the entity's authority, i.e. one of its employees or agents acting within their powers. The conditions that must be fulfilled before liability can attach are: 1) the offence was committed by an employee or agent of the legal entity; 2) the offence was committed for the entity's benefit; and 3) commission of the offence was made possible by the leading person's failure to supervise the employee or agent. In this context failure to supervise should be interpreted to include not taking appropriate and reasonable steps to prevent employees or agents from engaging in criminal activities on the entity's behalf. Such appropriate and reasonable steps could be determined by various factors, such as the type of business, its size, and the rules and good practices in force.

79. Liability under this article may be criminal, civil or administrative. It is open to each Party to provide, according to its legal principles, for any or all of these forms of liability as long as the requirements of Article 12, paragraph 2 are met, namely that the sanction or measure be "effective, proportionate and dissuasive" and include monetary sanctions. Paragraph 4 makes it clear that corporate liability does not exclude individual liability. In a particular case there may be liability at several levels simultaneously – for example, liability of one of the legal entity's organs, liability of the legal entity as a whole and individual liability in connection with one or other.

80. Paragraph 4 makes it clear that corporate liability does not exclude individual liability. In a particular case there may be liability at several levels simultaneously – for example, liability of one of the legal entity's organs, liability of the legal entity as a whole and individual liability in connection with one or other.

- All the Parties establish corporate liability for the offences set in Articles 4-9 Convention against Trafficking in Human Organs.

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**);

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**).

Article 12 – Sanctions and measures

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

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

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

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

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

Article 14 – Previous convictions

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

Explanatory Report
Article 12 – Sanctions and measures

81. This article is closely linked to Articles 4 to 9, which define the various offences that should be made punishable under domestic law. In accordance with the obligations imposed by those articles, Article 12 requires Parties to match their action to the seriousness of the offences and lay down sanctions which are "effective, proportionate and dissuasive". In the case of an individual committing an offence established under Article 4, paragraph 1, and, where appropriate, Article 5, Articles 7, 8 and 9. Parties must provide for prison sentences that can give rise to extradition. It should be noted that, under Article 2 of the European Convention on Extradition (ETS No. 24), extradition is to be granted in respect of offences punishable under the laws of the requesting and requested Parties by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty.

82. Legal entities whose liability is to be established under Article 11 are also to be liable to sanctions that are "effective, proportionate and dissuasive", which may be criminal, administrative or civil in character. Paragraph 2 requires Parties to provide for the possibility of imposing monetary sanctions on legal persons.

83. In addition, paragraph 2 provides for other measures which may be taken in respect of legal persons, with particular examples given: temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; or a judicial winding-up order. The list of measures is not mandatory or exhaustive and Parties are free to apply none of these measures or envisage other measures.

84. Paragraph 3 requires Parties to ensure that measures concerning seizure and confiscation of the proceeds derived from criminal offences can be taken. This paragraph has to be read in the light of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as well as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), which are based on the idea that confiscating the proceeds of crime is an effective anti-crime weapon. As most of the criminal offences related to the trafficking in human organs are undertaken for financial profit, measures depriving offenders of assets linked to or resulting from the offence are clearly needed in this field as well.

85. Paragraph 3, letter a, provides for the seizure and confiscation of proceeds of the offences, or property whose value corresponds to such proceeds may be seized or confiscated.

86. The Convention does not contain definitions of the terms "confiscation", "proceeds" and "property". However, Article 1 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime provides definitions for these terms which may be used for the purposes of this Convention. By "confiscation" is meant a penalty or measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in final deprivation of property. "Proceeds" means any economic advantage or financial saving from a criminal offence. It may consist of any "property" (see the interpretation of that term below). The wording of letter a of paragraph 3 takes into account that there may be differences of domestic law as regards the type of property which can be confiscated after an offence. It can be possible to confiscate items which are (direct) proceeds of the offence or other property of the offender which, though not directly acquired through the offence, is equivalent in value to its direct proceeds ("substitute assets"). "Property" must therefore be interpreted, in this context, as any property, corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property.

87. Paragraph 3 letter b of Article 12 provides for the closure of any establishment used to carry out any of the criminal offences established under the Convention. This measure is almost identical to Article 23, paragraph 4 of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and Article 27, paragraph 3, letter b of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201). Alternatively, the Parties may foresee provisions allowing the perpetrator to be banned, temporarily or permanently, in conformity with the relevant provisions of domestic law, from carrying on the professional activity in connection with which the criminal offence was committed. The negotiators considered it necessary to make a reference to the domestic law of Parties, since differences exist with regard to the exact measures to be applied and procedures to be followed when banning a person from exercising a professional activity. Moreover differences exist as to whether or not certain professions require the issuing of a license or other type of authorisation by public authorities.

Article 14 – Previous convictions

95. Trafficking in human organs is more often than not perpetrated transnationally by criminal organisations or by individual persons, some of whom may have been tried and convicted in more than one country. At domestic level, many legal systems provide for a different often harsher, penalty where someone has previous convictions. In general, only conviction by a national court counts as a previous conviction. Traditionally, previous convictions by foreign courts were not taken into account on the grounds that criminal law is

a national matter and that there can be differences of domestic law, and because of a degree of suspicion of decisions by foreign courts.

96. Such arguments have less force today in that internationalisation of criminal law standards – as a pendent to internationalisation of crime – is tending to harmonise different countries' law. In addition, in the space of a few decades, countries have adopted instruments such as the ECHR whose implementation has helped build a solid foundation of common guarantees that inspire greater confidence in the justice systems of all the participating States.

97. The principle of international recidivism is established in a number of international legal instruments. Under Article 36, paragraph 2 (iii) of the New York Convention of 30 March 1961 on Narcotic Drugs, for example, foreign convictions shall be taken into account for the purpose of establishing recidivism, subject to each Party's constitutional limitations, legal system and domestic law. Another example: under Article 1 of the Council Framework Decision of 6 December 2001 amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro, European Union member States must recognise as establishing habitual criminality final decisions handed down in another member State for counterfeiting of currency.

98. The fact remains that at international level there is no standard concept of recidivism and the law of some countries does not have the concept at all. The fact that foreign convictions are not always brought to the courts' notice for sentencing purposes is an additional practical difficulty. However, in the framework of the European Union, Article 3 of the Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the member States of the European Union in the course of new criminal proceedings has established in a general way – without limitation to specific offences – the obligation of taking into account a previous conviction handed down in another (EU member) State.

99. Therefore, Article 14 provides for the possibility to take into account final sentences passed by another Party in assessing a sentence. To comply with the provision Parties may provide in their domestic law that previous convictions by foreign courts may, to the same extent as previous convictions by domestic courts would do so, result in a harsher penalty. They may also provide that, under their general powers to assess the individual's circumstances in setting the sentence, courts should take those convictions into account. This possibility should also include the principle that the offender should not be treated less favourably than he would have been treated if the previous conviction had been a national conviction.

100. Under Article 13 of the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30), a Party's judicial authorities may request from another Party extracts from and information relating to judicial records, if needed in a criminal matter. In the framework of the European Union, the issues related to the exchange of information contained in criminal records between member States are regulated in two legal acts, namely Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record and Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between member States. However, Article 14 does not place any positive obligation on courts or prosecution services to take steps to find out whether persons being prosecuted have received final sentences from another Party's courts.

- In all the Parties, sanctions provided by internal law for the criminal offences established in accordance with the Convention with regard to natural persons imply penalties involving deprivation of liberty. Related to legal persons, different penalties can be imposed including fines, prohibition to perform certain activities, dissolution of the legal entity, etc.

- Eight Parties (**Belgium, Croatia, Malta, Norway, Portugal, Republic of Moldova, Spain, Switzerland)** have adopted measures 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. Two Parties (**Czechia, France**) limit this possibility to sentences issued by a court belonging to a member State of the European Union

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**).

Article 13 – Aggravating circumstances

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

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

Explanatory Report
Article 13 – Aggravating circumstances

88. Article 13 requires Parties to ensure that certain circumstances (mentioned in letters a. to e.) may be taken into consideration as aggravating circumstances in the determination of the sanction for offences established in this Convention. This obligation does not apply to cases where the aggravating circumstances already form part of the constituent elements of the offence in the national law of the State Party.

89. By the use of the phrase "may be taken into consideration", the negotiators highlighted that the Convention places an obligation on Parties to ensure that these aggravating circumstances are available for judges to consider when sentencing offenders, although there is no obligation on judges to apply them. The reference to "in conformity with the relevant provisions of domestic law" is intended to reflect the fact that the various legal systems in Europe have different approaches to address those aggravating circumstances and permits Parties to retain their fundamental legal concepts.

90. The first aggravating circumstance, (a), is where the offence caused the death of, or serious damage to the physical or mental health of, the victim. Given the fact that any transplantation carries a significant element of danger for the physical health of both the donor and the recipient, it should be up to the national courts of the Parties to assess the causal link between the conducts criminalised under the Convention and any death or injury sustained as a result thereof.

91. The second aggravating circumstance (b) is where the offence was committed by persons abusing the confidence placed in them in their professional capacity. This category of persons is in the first line obviously health professionals, but also public officials (when acting in their official capacity) would be covered. However, the application of the aggravating circumstance is not restricted to health professionals and public officials.

92. The third aggravating circumstance (c) is where the offence was committed in the framework of a criminal organisation. The Convention does not define "criminal organisation". In applying this provision, however, Parties may take their line from other international instruments which define the concept. For example, Article 2(a) of the United Nations Convention against Transnational Organised Crime defines "organized criminal group" as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit". Recommendation Rec(2001)11 of the Committee of Ministers to member States concerning guiding principles on the fight against organised crime and the EU Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime give very similar definitions of "organised crime group" and "criminal organisation".

93. The fourth aggravating circumstance (d) is where the perpetrator has previously been convicted of offences established under the Convention. By including this, the negotiators wanted to signal the need to make a concerted effort to combat recidivism in the low risk – high financial gain area of trafficking in human organs.

94. The fifth aggravating circumstance (e) is where the offence was committed against a child or any other particularly vulnerable person. The negotiators were of the opinion that most persons who would qualify as victims of trafficking in human organs are by definition vulnerable, e. g. because they are financially severely disadvantaged, which is the case for many persons who agree to have an organ removed against financial gain or comparable advantage, or because they are suffering from severe or even terminal diseases with little chances of survival, which is the case for many recipients of organs. Likewise, children are always particularly vulnerable to crime. Hence the negotiators would reserve the aggravating circumstance set out in letter e. to situations where the victim is a child or otherwise "particularly vulnerable" because of his/her age, mental development or familial or social dependence on the perpetrator(s). The term "child" is not explicitly defined in the Convention, but should be understood as the same as in the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), namely "any person under 18 years of age". This definition is ultimately derived from the UN Convention on the Rights of the Child (1989), where it is found in Article 1.

- Most Parties (**Albania, Belgium, Croatia, Czechia, Latvia, Malta, Montenegro, Portugal, Republic of Moldova, Slovenia, Spain, Switzerland**) have established in their internal criminal law legislation incorporating as aggravating circumstances for the offences included in Articles 4-9 Convention against Trafficking in Human Organs the ones set in Article 13 (letters a. to e.) of the Convention.

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**).

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**)).

Article 15 – Initiation and continuation of proceedings

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

Article 16 – Criminal investigations

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

- No Party subordinate the investigations or prosecutions of offences established in accordance with the Convention to a complaint and in all Parties these offences are prosecuted *ex officio*. Therefore, no complaint is necessary in order to prosecute such offences. In all the Parties that provided information on this topic the proceedings related to offences established in Articles 4-9 of the Convention against Trafficking in Human Organs may continue even if the victim has withdrawn his or her statement. Sometimes, internal law establishes that any official is obliged to report based on a suspicion of a case of organ trafficking, regardless of the victim's decision to report (**Costa Rica**).

- Parties have established a wide set of measures to ensure effective criminal investigation and prosecution of offences established in accordance with the Convention. The Parties integrate different investigative measures in combating offences relating to trafficking in human organs.

Investigative measures include:

- Prosecutors and law enforcement agencies are trained to gather independent evidence, such as medical records, financial transactions, and witness testimony, to build cases that do not solely depend on victim statements.

- Infiltration, anonymity of witnesses, discreet visual checks, maintaining contacts via the Internet and the tracing and location of electronic communications (**Belgium**).

- Covert communications interception and monitoring, monitoring of persons and things, controlled deliveries, exchange and tracking of a shipment, financial investigations (**Czechia**).

- Financial investigators, undercover investigators and special evidentiary actions; interception, collection and recording of computer data; entry into the premises for the purpose of conducting surveillance and technical recording of the premises; secret monitoring and technical recording of persons and objects; simulated sale and purchase of items and simulated giving of bribes and simulated receiving of bribes; simulated business services or simulated legal transactions; supervised transportation and delivery of objects of a criminal offense (**Croatia**).

- Searches and seizures and geolocations; investigations into active and passive corruption, and the main special investigation techniques (surveillance, infiltration, interception of correspondence sent by electronic communications, sound recording, fixing of images of certain places or vehicles and capturing of computer data) may be used; in case of the aggravated crimes of trafficking in human beings provided for in Articles 225-4-2 to 225-4-7 of the Criminal Code, full derogation regime applicable to organised crime, including all the special investigative techniques and extended police custody measures (**France**).

- special investigative actions shall be permitted in investigating less serious, serious or especially serious crimes: control of legal correspondence; control of means of communication; control of data in an automated data processing system; control of the content of transmitted data; audio-control of a site or a person; video-control of a site; surveillance and tracking of a person; surveillance of an object; a special investigative experiment; the acquisition in a special manner of the samples necessary for a comparative study (**Latvia**)

- Use of investigative techniques, and financial investigations (**Malta**).

- Use of parallel financial investigations, special investigative measures provided by Law no. 59 of 29.03.2012 regarding special investigative activity, exchange of information with law enforcement bodies from other countries, creation of joint investigation teams (**Republic of Moldova**).

- 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 (**Portugal**).

- Financial investigation, most of the covert operations and other special investigative techniques can also be used (**Slovenia**).

- Some Parties use the full array of criminal investigative measures available to law enforcement in accordance with their Criminal Code (**Switzerland**)

Question 11: Measures of protection of 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.

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**).

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));**

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))**

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**));

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**).

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

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

Article 18 – Protection of victims

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

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

Article 19 – Standing of victims in criminal proceedings

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

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

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

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

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

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

Explanatory Report
Article 18 – Protection of victims

112. Article 18 provides for the protection of the rights and interests of victims, in particular by requiring Parties to ensure that victims are given access to information relevant for their case and necessary to protect their health and other rights involved; that victims are assisted in their physical, psychological and social recovery, and that victims are provided with the right to compensation from the perpetrators under the domestic law of the Parties. As regards the right to compensation, the negotiators also noted that in a number of member States of the Council of Europe, national victim funds are already in existence. However, this provision does not oblige Parties to establish such funds.

113. Article 18, letter c, establishes a right of victims to compensation. The compensation is pecuniary and covers both material injury (such as the cost of medical treatment) and non-material damage (the suffering experienced). For the purposes of this article, victims' right to compensation consists in a claim against the perpetrators of the trafficking – it is the traffickers who bear the burden of compensating the victims. If, in the criminal proceedings, the criminal courts are not empowered to determine civil liability towards the victims, it must be possible for the victims to submit their claims to civil courts with jurisdiction in the matter and powers to award damages with interest.

Article 19 – Standing of victims in criminal proceedings

114. This article contains a non-exhaustive list of procedures designed to victims of crimes established under this Convention during investigations and proceedings. These general measures of protection apply at all stages of the criminal proceedings, both during the investigations (whether they are carried out by a police service or a judicial authority) and during criminal trial proceedings.

115. First of all, Article 19 sets out the right of victims to be informed of their rights and of the services at their disposal and, upon request, the follow-up given to their complaint, the charges, the state of the criminal proceedings (unless in exceptional cases the proper handling of the case may be adversely affected), their role therein as well as the outcome of their cases.

116. Article 19 goes on to list a number of procedural rules designed to implement the general principles set out in the provision: the possibility, for victims, (in a manner consistent with the procedural rules of the domestic law of a Party), of being heard, of supplying evidence, of having their views, needs and concerns presented and considered, directly or through an intermediary, and anyway the right of being protected against any risk of intimidation and retaliation.

117. Paragraph 2 also covers administrative proceedings, since procedures for compensating victims are of this type in some States. More generally, there are also situations in which protective measures, even in the context of criminal proceedings, may be delegated to the administrative authorities.

118. Paragraph 3 provides for access, in accordance with domestic law and free of charge, where warranted, to legal aid for victims of trafficking in human organs. Judicial and administrative procedures are often highly complex and victims therefore need the assistance of legal counsel to be able to assert their rights satisfactorily. This provision does not afford victims an automatic right to legal aid. The conditions under which such aid is granted must be determined by each Party to the Convention when the victim is entitled to be a party to the

criminal proceedings.

119. In addition to Article 19, dealing with the status of victims as parties to criminal proceedings, the States Parties must take account of Article 6 of the ECHR. Even though Article 6, paragraph 3.c. of the ECHR provides for the free assistance of an officially assigned defence counsel only in the case of persons charged with criminal offences, the case law of the European Court of Human Rights (Airey v. Ireland judgement, 9 October 1979) also, in certain circumstances, recognises the right to free assistance from an officially assigned defence counsel in civil proceedings, under Article 6, paragraph 1 ECHR, which is interpreted as enshrining the right of access to a court for the purposes of obtaining a decision concerning civil rights and obligations (Golder v. United Kingdom judgment, 21 February 1975). The Court took the view that effective access to a court might necessitate the free assistance of a lawyer. For instance, the Court considered that it was necessary to ascertain whether it would be effective for the person in question to appear in court without the assistance of counsel, i.e. whether he could argue his case adequately and satisfactorily. To this end, the Court took account of the complexity of the proceedings and the passions involved – which might be incompatible with the degree of objectivity needed in order to plead in court – so as to determine whether the person in question was in a position to argue his own case effectively and held that, if not, he should be able to obtain free assistance from an officially assigned defence counsel. Thus, even in the absence of legislation affording access to an officially assigned defence counsel in civil cases, it is up to the court to assess whether, in the interests of justice, a destitute party unable to afford a lawyer's fees must be provided with legal assistance.

120. Paragraph 4 is based on Article 17, paragraph 2, of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime. It is designed to make it easier for victims to file a complaint by enabling them to lodge it with the competent authorities of the State of residence. A similar provision is also found in Article 38, paragraph 2 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) of 25 October 2007 and in Article 20, paragraph 4, of the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health (CETS No. 211) of 28 October 2011.

121. Paragraph 5 provides for the possibility for various organisations to support victims. The reference to conditions provided for by internal law highlights the fact that it is up to the Parties to make provision for assistance or support, but that they are free to do so in accordance with the rules laid down in their domestic systems, for example by requiring certification or approval of the organisations, foundations, associations and other bodies concerned.

- All the Parties have established different measures (legislative and other types) in order to ensure that victims have access to information relevant to their case and which is necessary for the protection of their health recovery and to provide for the right of victims to compensation from the perpetrators. Differences between Parties correspond to their national specificities related to procedural law and the functioning of support services.

- Some Parties (**Albania**, **Belgium**, **Croatia**, **Czechia, France, Latvia, Portugal, Slovenia, Spain, Switzerland**) have structures in place to assist victims in their physical, psychological and social recovery which is a key aspect in guaranteeing the rights of the victims.

- Different measures (mainly legislative) have been implemented at the internal level in all

the Parties 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:

- All the Parties guarantee by law the rights of the victims to be heard, to supply evidence and the means of having his/her views, needs and concerns presented, directly or through an intermediary.

- Most Parties (**Albania**, **Belgium, Croatia, Czechia, France, Latvia, Malta, Portugal, Spain, Switzerland**) declare the existence at the internal level of support services provided to victims so that their rights and interests are duly presented and taken into account.

- In general, different measures have been established to provide the safety of the victims, their families and witnesses from intimidation and retaliation.

- In all Parties, victims of the offences established according to the Convention under certain conditions set up by law have access to legal aid provided free of charge.

- Finally, in the majority of Parties (**Albania**, **Belgium, Costa Rica, Croatia, Czechia, France, Latvia, Malta, Montenegro, Portugal, Republic of Moldova, Slovenia, Spain, Switzerland**) internal law allows for groups, foundations, associations or governmental or nongovernmental organisations assisting and/or supporting victims to participate in legal proceedings.

PREVENTION OF AND COMBAT AGAINST TRAFFICKING IN HUMAN ORGANS

Question 12: Ensure the 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**)

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

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

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)**

e. Which measures have been taken to provide (**Article 21 para. 2 letter a, Explanatory Report, para. 127**):
   - information for healthcare professionals and relevant officials (including police, legal

professionals in the prevention of and combat against trafficking in human organs?

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

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

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

- All Parties have legislative and other measures to establish a domestic system for transplantation of human organs (**Article 21, paragraph 1. a**).

- All Parties reported that their transplantation system provides equitable access (**Article 21, paragraph 1. b**). The majority of Parties (**France, Norway, Portugal, Slovenia, Spain, Switzerland**) report that they use a set of established criteria in the selection process; five Parties (**Costa Rica**, **Norway, Portugal, Slovenia**) refer to operating a waiting list as part of the system; two Parties (**Czechia, Slovenia)** report using specialist committees, and one Party (**Switzerland)** using specialised software as part of the allocation process for transplantations. One Party (**Malta**), while providing for a safe and quality transplantation system, relies on all residents being guaranteed free access to health insurance for healthcare as evidence that this provides an equitable system and process for access to transplantation services. Two Parties (**Albania**, **Republic of Moldova**) reports that equitable access to their transplantation system is provided by law and provides no further details on how this operates. Two Parties (**Croatia, Latvia**) did not expand on this issue beyond providing the legislative provisions.

- The adequacy of the collection, analysis and exchange of information related to the offences covered by the Convention in co-operation between all relevant authorities (**Article 21, paragraph 1. c**) is unclear in the majority of Parties. While Parties reported varying degrees of cooperation and information exchange mechanisms, only two Parties (**Albania**, **Spain**) provided indications on the adequacy of collection, analysis and exchange of information. Some Parties refer to the annual statistical book on all crimes reported during the year. One Party refers to participating in the collection, analysis and exchange of information by the Network of National Focal Points on Travel for Transplantation (NETTA). This data is collected by the EDQM Registry of International Travel for Transplantation Activity (RITTA) to report data on cases of travel for transplantation identified in CoE member States. While not stated by the other Parties, it is likely that most participate in NETTA and RITTA.

- All Parties ensure the quality and safety requirements for their transplantation system is supported by a prohibition of the advertising of the need for, or availability of human organs, with a view to offering or seeking financial gain or comparable advantage (**Article 21, paragraph 3**).

- The provision of information for healthcare professionals and relevant officials and civil society to support the prevention of trafficking in human organs **(Article 21 paragraph 2.**

a, Explanatory Report, paragraph 127) is evident in six Parties (**Costa Rica**, **Croatia**, **France, Portugal, Spain, Switzerland**). Costa Rica provides this information to all stakeholders in the context of the National Coalition against Illicit Migrant Smuggling and Human Trafficking, which incorporates trafficking in human organs. The provision of information is not evident in three Parties (**Albania**, **Montenegro, Norway**). Some Parties (**Belgium, Czechia**) incorporate information on trafficking in human organs within information to law enforcement or civil society in training and awareness raising on the dangers related to human trafficking. One Party (**Latvia**) has developed guidelines for healthcare professionals within the context of the recognising victim of trafficking in human beings and actions that they may take, including communications with police, social services and NGOs. One Party (**Malta**) has an impending National Strategy and Action Plan in the context of combating trafficking in human beings, and regulations that will incorporate information provision to healthcare professionals and relevant officials and civil society on trafficking in human organs. One Party **(Slovenia)** has impending regulations on education that are linked to legislation on the transplantation in human organs, and on tissues and cells. One Party (**Republic of Moldova**) relies on laws to hold health care practitioners and relevant institutions liable for failures to observe the standards relating to transplantation.

- Policies and strategies to promote awareness-raising campaigns targeted at the general public with a specific focus on risks and realities of the unlawfulness and dangers of trafficking in human organs (**Article 21, paragraph 2. b**) is not apparent in the majority of Parties (**Belgium, France, Latvia, Montenegro, Norway, Portugal, Slovenia, Spain, Switzerland**). One Party (**Albania**) conducts promotional campaigns highlighting the unlawfulness and dangers of trafficking in human organs and to promote ethical organ donation practices. These campaigns involve State agencies, NGOs, international organisations, healthcare professionals, media and local communities. They involve various awareness-raising activities, including public campaigns, education in schools and universities, media involvement and are designed to ensure that the public understands the illegality and risks involved with organ trafficking and the legal frameworks available for safe and ethical organ donation. One Party (**Croatia**) conducts public campaigns during the national and European donation day each year and incorporate within this awareness raising information on the unlawfulness of acts related to prohibited acts related to organ donation and transplantation. One Party (**Costa Rica**) conducts awareness raising through radio and television, social networks, brochures, posters and pamphlets. One Party (**Spain**) provides this type of information for public consumption through annual meetings between journalists and the transplant community funded by the transplantation body. One Party (**Malta**) organises awareness campaigns on trafficking in human organs, including warnings to the public about this type of crime. One Party (**Norway**) provides information through a relevant healthcare body to patients on the illegality of organ trafficking in Norway. One Party (**Republic of Moldova**) conducts awareness-raising campaigns targeted at the general public using various methods of media. Planned awareness-raising campaigns to society includes the protection of the rights of donors and to prevent the commercialisation of human body parts.

2.3. CONCLUSIONS

1. The responses to the questionnaire indicated that some aspects, in particular relating to the implementation of the substantive Criminal Law Articles 4-13, and Article 21, paragraph 1. a, and b, of the Santiago de Compostela Convention have been implemented to a high degree, some requiring clarification, and some have yet to be implemented.

2. The Parties provided information on legislative measures, and mechanisms put in place to address non-legal measures to achieve the objective of combating trafficking in human organs.

3. Informal mechanisms used by many Parties for information exchange and cooperation, while effective to an extent, is not a sustainable approach and require formalisation and underpinning by legislation and given life through agreed measures by the authorities and services involved in combating against trafficking in human organs.

4. Actions by Parties required on the implementation of the Convention often rely on mandatory response actions under legislative requirements, such as the reporting of offences, including by healthcare professionals. While information sharing and cooperation need to be supported by formal structures, Parties should adopt a more proactive approach in giving effect to these actions among authorities and services.

5. National strategies and action plans on trafficking in human organs are absent in some Parties and need to be specifically included.

6. Reliance by Parties for not having strategies, plans or processes, based on not having detected instance of trafficking in human organs is insufficient cause to conclude that such trafficking has not or is not taking place involving their countries. Proactive actions are necessary to detect trafficking in human organs.

7. Training on an interagency basis involving a multi-disciplinary and multiskilled approach does not take place by all Parties for all authorities and services involved in combating against trafficking in human organs. Individual authority or service training in this field, while positive, does not benefit a more holistic approach to the trafficking in human organs.

8. There is a significant deficiency by most Parties regarding policies and strategies to promote awareness-raising campaigns targeted at the general public with a specific focus on risks and realities of the unlawfulness and dangers of trafficking in human organs is not apparent in the majority of Parties

9. The Council of Europe remains at the disposal of the Parties' authorities for any further assistance they may need.

2.4. RECOMMENDATIONS

It is recommended that in view of ratification of the Council of Europe Convention against Trafficking in Human Organs:

1. Parties use this study to assist them to fully implement the Santiago de Compostela Convention. The comments in this report are intended to support the Parties towards their full implementation;

2. Given that interagency cooperation measures at a national level are often informal and developed over time to facilitate operational matters, national authorities should formalise the cooperation and information exchange mechanisms to ensure sustainability and avoid being dependent on personalities in individual agencies. This may be done either by legislation and/or by such measures as Memorandums of Understanding and Data Sharing Agreements;

3. Cooperation should go beyond mandating by legislation alone the reporting of actual or suspected instances of criminal activity relating to trafficking in human organs. Cooperation between authorities/Ministries, civil society and the public should be proactive and not reactive or merely fulfilling a legal responsibility;

4. Parties conduct interagency training on all aspects of the Santiago de Compostela Convention to enable confidence in a cohesive approach and a recognition that all those involved have a part in this, not just one authority/Ministry, or the lead authority/Ministry. A multi-disciplined and a multi-agency approach is required to include those with responsibilities under the Santiago de Compostela Convention;

5. Parties adopt a national strategy and action plan to ensure a structured approach to trafficking in human organs covering all relevant authorities, civil society and the public. This will assist avoid risks of not having sufficiently robust and coordinated facilities and plans to proactively detect indicators that trafficking in human organs may be ongoing. Parties should not rely on the absence of suspicion or detection of trafficking in human organs within their jurisdictions as a reason to delay the adoption of a national strategy and action plan;

6. Policies and strategies should be developed to promote awareness-raising campaigns targeted at the general public with a specific focus on risks and realities of the unlawfulness and dangers of trafficking in human organs;

7. The provision of information for healthcare professionals and relevant officials, and civil society to support the prevention of trafficking in human organs should have a specific emphasis and not reliant alone on being included in the provision of information focused on the trafficking in human beings;

8. Parties put in place systems to ensure the adequacy of the collection, analysis and exchange of information related to the offences covered by the Convention in cooperation between all relevant authorities;