



Strasbourg, 14 December 2022

T-THO (2022) LD-fin

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

List of decisions

2nd Plenary meeting

Hybrid meeting, 27 October 2022
Council of Europe

Item 1: Opening of the meeting

1. The second meeting of the Committee of the Parties (hereafter, CoP) to the Council of Europe Convention against the trafficking in human organs [CETS No. 216] (hereinafter the Santiago de Compostela Convention or the Convention) was opened by Mr Oscar Alarcón-Jiménez, Executive Secretary, Criminal Law and Counter-terrorism division, Directorate General Human Rights and Rule of Law. He welcomed all the participants (the Parties and the representatives from other Council of Europe Committees). In his opening remarks, he recalled that the Santiago de Compostela Convention is the first and only criminal-law instrument dealing *in concreto* with the trafficking in human organs and stressed the multisectoral approach of the convention.
2. Mr Alarcón-Jiménez continued by recalling that at the 1st meeting of the CoP, the Parties requested that the Secretariat draft the Rules of Procedure (hereafter, RoP) and explained the goal of this second meeting: to discuss and possibly adopt the RoP. He highlighted the main role of the CoP, which on one side is to monitor the implementation of the Convention by the Parties and, on the other side, is to collect, analyse and exchange experiences and good practices between them. He also referred to the important role that the CoP should play in removing obstacles to the implementation of the Santiago de Compostela Convention and in advising on the best ways to translate its provisions into effective laws and policy measures. He continued giving information on the state of play of signatures and ratifications of the Convention by welcoming Belgium and Slovenia who ratified the Convention in February and May 2022 respectively. He finished by stating that the Convention has now been ratified by 16 Parties.
3. As the CoP meeting was in hybrid mode and most of the representatives were online, the Executive Secretary invited all delegations to introduce themselves in a *tour de table*. The following representatives were online: Belgium, Costa Rica, Czech Republic, Spain, Switzerland. Other representatives were physically present in the room: Czech Republic, Latvia, Moldova, Portugal. The following Council of Europe (hereafter, CoE) bodies and committees also took the floor: the Parliamentary Assembly of the Council of Europe (hereafter, the PACE), the Steering Committee for Human Rights in the fields of Biomedicine and Health (hereafter, CDBIO), the European committee on Organ Transplantation (hereafter, CD-P-TO).

Item 2: Election of the Chair

4. The Spanish contact point of the CoP proposed the Portuguese representative as a Chair of this meeting taking into consideration that the latter was physically in the room and this would facilitate the work of the meeting. The Portuguese representative expressed her gratitude for the confidence that Spain and the Committee showed in her and agreed to be the Chair of this meeting.

Item 3: Adoption of the agenda

5. The Swiss representative thanked the Secretariat for submitting the preliminary draft RoP but apologised for the delay in the submission of their comments due to difficult internal consultations. Thus, Switzerland proposed to modify the agenda and to not adopt the RoP at the meeting. The representatives from the PACE and CD-P-TO also stated that they had not had enough time to analyse the RoP in detail. In addition, the CD-P-TO representative regretted that they had not been actively involved in the drafting of the RoP and requested further clarifications as to the convocation letter to the CoP sent to the Parties and participants, and to receive the minutes of the meeting sooner after the meeting.
6. Item 5 of the agenda was modified as follows: “*Discussion and possible adoption of the Rules of Procedure*”. The agenda was adopted.

Item 4: Information by the Secretariat

7. The Secretariat explained that the documents were sent late due to some internal administrative concerns (translation into both languages), and apologised underlining that this situation will not happen again in the future. It also mentioned that it had never received any particular request, neither from the Parties nor from any other committee, to actively participate in the drafting of the RoP but reiterated its availability to receive any contribution in writing. As for the convocation letter, the Secretariat explained that the convocation letter used was the existing template used within the Criminal law division and did not want to jeopardise with other CoE departments/entities whose interlocutors are health authorities. Against this background, the Executive Secretary agreed that in the future the convocation letter will be modified accordingly using the text included in Rule 2.1.2 of the Preliminary draft RoP (“*representatives experts of the highest possible rank and expertise in the fields relevant to the Convention*”) as it will show the multisectoral and multidisciplinary approach of this Convention.

Item 5 Discussion and possible adoption of the Rules of Procedure

8. The Parties agreed to proceed to the discussion article by article of the preliminary RoP following the proposal made by the Chair.
9. Costa Rica thanked the Secretariat for the drafting of the preliminary draft RoP and did not have any concrete observation or comment. The representative from Costa Rica requested to be consulted should other Parties decide to modify the document.
10. In relation to the Preamble there were no comments.
11. The representative of the Czech Republic took the floor, supported the previous delegation who requested more time to “digest” the document and provided general remarks on the following issues: as for the nature of the CoP itself, he claimed that this CoP should be composed of specialist experts in the field; as for the participation of experts in this CoP, he considered that the CoE budget should cover the expenses of Parties’ representatives as it

will ensure an appropriate quorum of the Parties in the CoP meetings. From an editorial point of view, he requested that consistency with the terminology used in the RoP was ensured in the whole document (e.g., replace Committee of the Parties to Santiago de Compostela Committee).

12. Some general remarks on the RoP were made by the CD-P-TO representative in particular, the lack of both the multisectoral approach of these RoP and an explicit reference to the National Focal Point Network (hereafter, NFPN), whose secretariat is assured by the CD-P-TO. In return, the Executive Secretary invited the CD-P-TO representative to provide a written proposal which could underline even more the multisectoral and multidisciplinary approach of the preliminary draft RoP. Moreover, as to the network, he recalled that the network is welcomed to provide as much information as possible to the CoP and that it was explicitly included in the current preliminary draft RoP in a general way which would allow other entities (other networks) to be included as well.
13. The representative from the Czech Republic questioned the quorum of this 2nd meeting and thus requested that the RoP were not adopted after this discussion. The Secretariat recalled that the quorum of the 2nd meeting of the CoP was respected (8 Parties present out of 14) and that the Parties could concentrate during this meeting on the discussion of the content of the preliminary draft RoP and then to discuss whether or not they should be adopted.
14. Switzerland highlighted that Rule 1.3 (Amendments to the Convention) was a repetition of Art. 27 of the Convention which clearly establishes the process for amending the Convention. There was a request consisting of either modifying the drafting of this rule or completing it by including "Parties should accept the text of any amendment adopted by the Committee of Ministers". The Secretariat clarified that amendments to the Convention was one of the major functions of the CoP and this was the reason to include this article in the RoP.
15. In relation to Rule 2 Moldova requested clarification from the Secretariat in relation to the following issues: a) the participation of Parties in this CoP, in particular whether the delegates to the permanent missions were those targeted to take part in CoP meetings as is the case in other CoPs (e.g. trafficking human beings) or just the experts or a mixed composition; b) the inclusion of an additional paragraph under rule 2.1 RoP to cover the cases of exclusion or suspension of membership within the CoE. The Secretariat recalled that this Convention was of a different nature as the Convention on Action against Trafficking in Human Beings (CETS No. 197) whose monitoring mechanism included the existence of both a CoP (composed of the representatives on the Committee of Ministers of the CoE of the member States Parties to the Convention and representatives of the Parties to the Convention not members of the CoE) and a Group of experts (GRETA). The Secretariat continued by explaining that in this CoP the Parties should nominate an expert to participate in the meetings. As to the inclusion of a new rule under Rule 2.1, the Secretariat finally considered that taking into consideration the current situation of different CoPs in relation to open conventions, which are currently discussing the situation reflected by the representative from Moldova, it would be more advisable to wait for a legal opinion

the Committee of Legal Advisers on Public International Law (hereafter, CADHI) is going to provide.

16. Although the PACE representative requested to include a more holistic approach in Rule 2.1.2, the Secretariat highlighted that the multidisciplinary approach was already honoured when saying “*expert representatives of the highest possible rank and expertise in the fields relevant to the Convention*” leaving each Party the freedom to decide which is the most interesting profile/background of its member to the CoP.
17. The representative from Switzerland requested the deletion of the wording “concerning substantive criminal law” in Rule 2.1.2. For this request, the Secretariat just recalled that Art. 1. a) of the Convention clearly specifies that one of the purposes of this Convention is to prevent and combat the trafficking in human organs “*by providing for the criminalisation of certain acts*”, which meant that the Parties should carry out the provisions of the Convention concerning substantive criminal law and this by no means meant that the CoP should be composed of members with a legal background only. The Secretariat also recalled that the second part of Rule 2.1.2 is literally taken from the Preamble of the Convention. Moreover, it was mentioned that this document is the RoP and not a convocation letter.
18. The Chair made clear that under Rule 2.1.2 there is no obligation for the Parties to appoint representatives from the justice sector only and invited delegations to send any written proposal to the Secretariat if they so wished
19. In relation with Rule 2.3 (observers), Moldova asked the Secretariat the reason why the International Organisation of the Francophonie was included in the RoP. The Secretariat explained that the Santiago de Compostela Convention is an open convention and the CoE’s experience with open conventions showed that other intergovernmental organisations could help to promote and foster the accession of 3rd countries under their jurisdiction to CoE legal instruments and help raise awareness.
20. Switzerland requested to explicitly include the Chair of the National Focal Point Network (hereafter, NFPN) under Rule 2.2 (participants). The Secretariat considered it to be more reasonable to include the National Focal Point Network (NFPN) itself as an entity and not its Chair, and for this inclusion to be made under the Rule 2.3 (“observers”) because Rule 2.2 is devoted to CoE committees and bodies as well as countries.
21. Following the request from both the Swiss and CD-P-TO representatives, and in view of the inclusion of the NFPN within the preliminary RoP, the Secretariat asked the CD-P-TO representative to explain how the NFPN was accepted to participate in the work of the CD-P-TO. This question was indeed relevant in order to consider whether the NFPN could already be included within existing Rule 2.3.1.f)¹, which literally reproduces the

¹ The Rule 2.3.1.f):

f. other intergovernmental organisations and any other entity authorised to participate in meetings of steering and ad hoc committees by virtue of a resolution or decision of the Committee of Ministers.

CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference and working methods. As no answer was provided, the Secretariat proposed to introduce additional drafting within the Rule 2.3.3.d) by saying “*or entities with expertise in any field relevant to the Convention*”. Under this new wording all possible existing networks (regardless their background - health, judicial or law-enforcement sector) could easily apply for observer status within the CoP and take part in CoP meetings. Given the level of detail of the issue, the Chair suggested that the Secretariats of both the CD-P-TO and the Santiago de Compostela Committee discuss the issue separately to make sure that this network and others fit in this rule.

22. The CD-P-TO suggested including another observer in the RoP, in particular the “Red Iberoamericana de donación y trasplante” (Ibero-American network of donation and transplantation)² because of their significant work in the fight against organ trafficking and could help promote and foster the accession of 3rd countries to the Santiago de Compostela Convention and help raise awareness. The Secretariat underlined the important value all different networks could provide to the CoP and reiterated that their inclusion could be considered under the new drafting within the Rule 2.3.3.d) (see previous paragraph). The CD-P-TO requested clarification on the reason why different observers were quoted by their names in the RoP and other observers were not. In this regard, the Secretariat explained that only intergovernmental organisations were quoted by their names in the RoP following the normal practice within the CoE. However, the inclusion of a general wording within the RoP allowed any future observer (international organisations, NGOs, civil society, entities, etc) to apply for this status within the CoP. The Chair invited the CD-P-TO representative to contact the Secretariat and make sure that it is clear that these entities (networks) fit in the draft new proposal submitted by the Secretariat.
23. As regards Rule 2, the Secretariat updated the Resolution included in the preliminary RoP.
24. As regards Rule 3, the Parties did not oppose to have a Rule within the RoP dismissing the Chair and the vice-Chair and requested that the Secretariat provide a text on this issue.
25. As regards Rule 4, the Secretariat explained the rationale of having a Bureau within the CoP. The representative from the Czech Republic wondered about the minimum number needed for the Bureau to actively function. In this regard the Secretariat recalled that the preliminary draft RoP mentioned “up to three members”, which - in addition to the Chair and the vice-Chair - would ensure a functional and an effective Bureau. The representative from Moldova argued for the introduction of a concrete number of Bureau members in Rule 4.1 so that countries would know exactly how many Bureau members could be nominated and also that the travel and subsistence expenses of all Bureau members to Bureau meetings should be covered by the CoE and not only to the Chair and vice-Chair, a request which was also supported by the representative of the Czech Republic. The information provided by the Secretariat was that the wording “up to” would cover situations where only two members applied to be elected as Bureau members. In relation to the new request to cover the expenses of all Bureau members, the Secretariat explained that the decision to only

² The Ibero-American network of donation and transplantation is a network composed of representatives of Ministries of Health from Ibero-American countries.

cover the costs of the Chair and vice-Chair was intended to limit expenditure considering the limited budget available, but that a discussion with finances could be envisaged to find out an appropriate solution.

26. In relation to Rule 6, the Czech Republic pointed out that Rule 6.2 referred to written documents but also insisted on including any oral address made by Parties during the meetings. The Chair clarified that English and French are the official languages of the CoE and based on this information, and to accommodate the previous request, the Secretariat introduced a new drafting in the RoP "*and any address*".
27. The Secretariat provided the rationale to Rules 7, 8, 9, 10 and 11. No comments were provided by the Parties on these rules. The Secretariat also explained that the information provided from Rule 12 to Rule 18 was the characteristic internal procedural elements similar to the existing in current CoE RoP. The Chair decided that Parties who wish to do so could provide any comments in writing to the Secretariat.
28. The rationale of Rule 19 was provided by the Secretariat who clarified that the inclusion of a simple majority in this Rule was only a proposal that could facilitate the decision making by the CoP by the CoP. No comments were provided by the Parties. Moreover, no comments were made by the Parties to Rules 20 and 21 after the explanation provided by the Secretariat.
29. The Secretariat explained the rationale of Rule 22 (periodic reports). The representative from CDBIO requested that the CDBIO to be included in this rule as they have an organ removal clause in the Oviedo Convention. No Party disagreed to it.
30. As the Santiago de Compostela Convention is an open convention to third countries, the Secretariat explained that it is important that they contribute to the financing of the CoP according to Resolution CM/Res(2022)6 concerning financial arrangements for the participation of the European Union and non-member States in Council of Europe conventions. Rule 23 has been taken from the RoP of the MEDICRIME Committee.
31. The Secretariat explained the rationale of Rules 24 to 26. As for Rule 27, the CD-P-TO asked why the Bureau was the one deciding to carry out an on-site visit in a Party and not the CoP in its full composition. The Chair clarified that the Bureau has been given a legitimate role by the CoP to take any important decisions between plenary meetings. Moreover, the Secretariat underlined that these on-site visits are reflected in the RoP as very particular circumstances to clarify the situation in a Party. It went further by saying that in no way this Rule implied that the Bureau members were those participating in the on-site visits *per se* but the Bureau will provide guidance as to the procedure governing them. Moldova requested that the Secretariat include this new function of the Bureau in Rule 4.2 of the preliminary draft RoP (functions of the Bureau).
32. The Secretariat explained the rationale of Rule 28. The representative from Moldova argued that the reports on the implementation of the Convention by the Parties should be based not only on the questionnaires submitted by Parties but also on answers from others. The

Secretariat replied that Rule 28.1 establishes so when saying “*by any other means the Santiago de Compostela Committee deems necessary*” which made reference to any information that a future network with observer status to the CoP may provide. The Secretariat considered that CDBIO should also be included in Rule 28.5, which was agreed upon by the representative of CDBIO and the Parties.

33. The Secretariat provided the rationale of Rules 29 and 30. The representative of CDBIO requested that CDBIO be introduced in Rule 30. No comments were provided by Parties.
34. No comments were provided to Parts III and IV. In terms of consistency, the representative from the Czech Republic requested to use the same terminology in the whole document (Rules of procedure vs Rules). The Chair agreed that the document should be proofread before sending the final version.
35. The Chair asked all Parties and participants to provide any final general comment on the RoP and also a concrete timing for internal consultation with their capitals on the RoP. The representative from Moldova insisted once more that the CoE should cover the costs of all Bureau members. The PACE representative mentioned that she would consult internally whether PACE would like to be included in Rules 22 and 28.5.
36. The Chair considered that given that some delegations requested more time for internal consultations, the preliminary draft RoP could not be adopted and clarified the procedure to be followed:
 - a) By the 5 November 2022, the Secretariat will distribute both the draft list of decisions of the 2nd meeting of the CoP and the draft version of the RoP (revised version) taking into consideration the comments received and agreed by the Parties during the 2nd CoP meeting.
 - b) All Parties may provide comments to both documents. As far as the draft RoP are concerned, all Parties will have until 5 December 2022 (included) to provide written comments on the revised version of the RoP sent by the Secretariat.
 - c) Based on the written comments provided by the Parties, the RoP will be modified accordingly and will be then finally submitted to Parties by (tentatively) the end of December 2022 for their adoption by written procedure in January.
37. The Chair explained that the reason of this timeline is two-fold: a) to provide the necessary legitimacy to the RoP; and b) to ensure that Parties provide written amendments to the RoP. She considered that for time-saving reasons it would make no sense to gather at the next CoP plenary meeting to discuss the procedural issues of the CoP. The Chair insisted that all Parties agreed to the deadlines. The Secretariat agreed with what the Chair had proposed and requested all Parties to work on the English version only.
38. The CD-P-TO Secretariat requested to be involved in the drafting of the revised RoP. Switzerland suggested that all comments submitted by the Parties be disseminated among

all Parties, suggestion taken into account by the Chair but not feasible, though. In this regard, the Secretariat replied that considering the tight schedule announced following the Chair's proposal, the Secretariat's role would just be limited to introducing the comments agreed upon during the meeting into the RoP as shown on the screen. Moreover, the Secretariat added that when the written contributions are received from the Parties, and before the RoP are sent to the Parties at the end of December, the RoP can be distributed beforehand to all the participants (CD-P-TO, PACE and CDBIO).

Item 6 Other business

39. The representative from Switzerland insisted on a multisectoral approach to the convocation letter for the next plenary meeting. The Secretariat recalled both what it was said before and the general principle included in Rule 24 where it is stated that "the Santiago de Compostela Committee shall use a multisectoral and multidisciplinary approach".
40. The representative from Moldova requested that the Secretariat ensure enough time is given after the adoption of the RoP and before the next plenary meeting for the Parties to be able to designate the contact person to this CoP.

Item 6 Possible dates of the next meeting

41. The Secretariat announced that no dates have so far been set for the next meeting.
42. The Chair thanked all Parties and participants for their presence at this meeting and thanked the interpreters for their work.

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LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

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

ALBANIA / ALBANIE

BELGIUM / BELGIQUE

Ms Annemie LELIE, Deputy Permanent Representative of Belgium/ Représentante Permanente Adjointe de la Belgique

COSTA RICA / COSTA RICA

Mr Sergio VINOUCOUR FORNIERI, Minister Counsellor, Embassy of Costa Rica in France

Mr Francisco Oviedo

CROATIA / CROATIE

CZECH REPUBLIC / LA RÉPUBLIQUE TCHÈQUE

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

Mr Ondřej Abrham, Deputy Permanent Representative of the Czech Republic to the Council of Europe

LATVIA / LETTONIE

Mr Jānis JUŠINSKIS, MD, PhD, the Head of Latvian Transplantation centre

Mr Eduards DZENĪTIS, Deputy to the Permanent Representative of Latvia to the Council of Europe

MALTA / MALTE

Mr Lorenzo VELLA, Ambassador Extraordinary and Plenipotentiary of Malta to the Council of Europe (Apologised/Excusé)

MONTENEGRO / MONTENEGRO

NORWAY / NORVEGE

PORTUGAL / PORTUGAL

Ms Marta SARAIVA, Deputy Permanent Representative of Portugal to the Council of Europe

REPUBLIC OF MOLDOVA / RÉPUBLIQUE DE MOLDAVIE

Mr Andrei URSU, Deputy Permanent Representative of the Republic of Moldova to the Council of Europe

SLOVENIA / SLOVÉNIE

SPAIN / ESPAGNE

Mr Mario MARAVER, Legal adviser to the Minister of Justice of Spain

SWITZERLAND / SUISSE

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

2. COUNCIL OF EUROPE SECRETARIAT / SECRÉTARIAT DU CONSEIL DE L'EUROPE

**DGI - HUMAN RIGHTS AND RULE OF LAW /
DGI - DROITS DE L'HOMME ET ÉTAT DE DROIT**

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

Mr Jan KLEIJSEN, Director of the Information Society and Action against Crime Directorate / Directeur de la Direction de la Société de l'information et de la lutte contre la criminalité (Apologised /Excusé)

Mr Carlo CHIAROMONTE, Head of Criminal Law Division / Chef de Division du Droit Pénal (Apologised /Excusé)

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

Ms Aroa FANDINO-SERRANO, Project Manager, Criminal Law Division / Division du Droit Pénal

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

Human Rights Directorate / Direction des droits de l'homme

Department for Human Rights, Justice and Legal Cooperation standard setting activities / Service des activités normatives en matière de droits de l'homme, justice et coopération juridique

Ms Laurence LWOFF, Secretary of Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO) / Secrétaire du Comité directeur pour les droits de l'Homme dans les domaines de la biomédecine et de la santé (CDBIO) (Apologised/Excusé)

Mr Lorenzo MONTRASIO, Scientific Administrator, Human Rights and Biomedicine Division /Division Droits de l'Homme et Biomédecine

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

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

Council of Europe Convention on Action against Trafficking in Human Beings (GRETA) / Convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains (GRETA)

Ms Petya Nestorova, Executive Secretary of the Council of Europe Convention on Action against Trafficking in Human Beings / Secrétaire exécutif du Comité des Parties de la convention du Conseil de l'Europe sur la lutte contre la traite des êtres humains

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

Dr Marta Lopez Fraga, Scientific Officer, European Committee on Organ Transplantation (CD-P-TO) / Comité européen sur la transplantation d'organes (CD-P-TO)

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

Ms Tanja KLEINSORGE, Head of the Secretariat, PACE Committee on Social Affairs, Health and Sustainable Development. Council of Europe (Apologised/Excusée)

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