Council of Europe Convention against Trafficking in Human Organs

Criminal aspects and relations with other Conventions

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The Convention: historical background

- Council of Europe Convention of Human Rights and Biomedicine (1997) and its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin
- Council of Europe Convention on Action against Trafficking in Human Beings, THOR (Signed in Warsaw on 2005)
- WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation (different versions, 1991-2010)
- Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2008)
Joint Council of Europe/United Nations Study

**The need to distinguish between:**
« Trafficking in Human Organs » (THO) and « Trafficking in human beings for the purpose of the removal of organs » (HTOR)

**Support the principle of the prohibition of making financial gains with the human body**

**The need for an internationally agreed definition of THO**

**The effectiveness of existing international standards and no need for further international legal instruments on HTOR**

**Elaborate an international legal instrument setting out: a definition of THO, the measures to prevent it and protect victims, and criminal law measures to punish the crime**
The Convention

Main basic idea: Criminal Law instrument

- To prevent and combat the trafficking in human organs by providing for the criminalisation of certain acts in coordination with other legal tools, such as THOR;
- To protect the rights of the victims and ensure their support;
- To facilitate co-operation at national and international levels on action against trafficking in human organs.
Complementarity: THOR and THO

- THOR complements THO.
- THOR criminalises organ trafficking related to human trafficking. However, not all sorts of organ trading involves human trafficking.
- THO criminalises organ trading in cases where there has been no human trafficking.
- There are plenty of instances of donors travelling for surgery without being threatened or physically coerced.
- So, building on existing law, the Convention will cover these cases ensuring that our international legal framework is comprehensive and complete.
Creating new offences, closing loopholes, promoting cooperation

• All countries signing the Convention compromise to create new offences that will deal with issues that had not been adequately addressed in the past.

• The Convention closes these loopholes and ensures that anyone guilty of aiding and abetting organ trading can be punished by creating some new offences (articles 4-10, Chapter II).

• It improves international cooperation on organ traffic prevention and prosecution (Chapter III of the Convention).
What Actions Constitute Trafficking In Human Organs?

§ Illicit removal of organs:
§ removal without the free, informed and specific consent of the living donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;
§ 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;
§ 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.

§ Use of illicitly removed organs for implantation or other purposes

§ Illicit solicitation and recruitment (of organ donors or recipients), offering and requesting of undue advantages (to/by health professionals or public officials)

§ Preparation, preservation, storage, transportation, transfer, receipt, import and export of illicitly removed human organs

§ Aiding or abetting and attempt
Support for victims

- The Convention dedicates its Chapter IV to Protection to the victims.
- This includes:
  - Right to compensation
  - Protection
  - Medical treatment
  - Adequate access to criminal proceedings
  - Protection of witnesses
- However, it will be up to states and national courts to define who the victims are => it might be the donors, the recipients or both.
- This might bring in some morally relevant distinctions between the part of the Convention
CONCLUSIONS

- The Convention is an excellent legal tool in order to complement but also to fulfill all the gaps in the previously existing legal framework.
- Thus, we are to congratulate for its signature and to thank the Council of Europe and its Directorate General of Human Rights and Rule of Law for this initiative.
15 Countries signed the Convention in Santiago de Compostela

Albania
Austria
Belgium
Czech Republic
Greece
Italy
Luxembourg
Moldova
Norway
Poland
Portugal
Russian Federation
Spain
Turkey
United Kingdom
Thank you for your attention

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Further questions:

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