1. INTRODUCTION

An unsuspecting tourist was supposedly drugged in his hotel room by a prostitute and woke up the next morning in a bathtub full of ice, minus a kidney. It is a scenario that has been passed around the world in different versions via email to a countless number of people and it is what many people believe to be the phenomenon of trafficking in human organs, while police as well as organ transplant foundations have tried to stop it several times already.¹ Several internet sources as well as several national and international tabloids offer horrifying stories about organ snatchers operating throughout the world. These crime rings supposedly take organs from human beings without their consent and sell them on the black market for enormous amounts of money.

But what is trafficking in human organs really about? Is it a phenomenon that really exists? Or is it just a myth, the public wants to believe in, because mass media and tabloids sell it so well? When talking about trafficking in organs, we first of all have to move away from the idea of crime rings snatching people to take out any kind of transplantable organ available in order to sell it on the black markets because this business is mainly based on living donations. The only similarity between the suspense version and the phenomenon being worked on in this article is the profit-orientated attitude of the actors in the business of trafficking in organs. The forms, this phenomenon actually takes, are far different from the crime legend mentioned above. Still, this phenomenon does include victims as well as organized criminals that get together due to certain socio-economic circumstances as well as fateful decisions to improve their living conditions.

This article will focus on whether the phenomenon of trafficking in organs exists in Europe or countries accessible and relevant to European citizens in this context and to what extent it can be considered as organized crime. It will try to identify supplier and destination countries as well as actors involved in this business and prevailing circumstances smoothing the way for the commerce in organs. In relation to these issues difficulties that scientific research faces in this field when it comes to the accessibility and reliability of data will be discussed. At last regulations, legislations and operational measures to prevent or combat the illicit donation and transplantation of human organs will be elaborated.

2. TRAFFICKING IN ORGANS AS A FACE OF ORGANIZED CRIME?

Just like in cases of any other form of so-called organized crime, such as trafficking in women, drugs, arms, etc., it is difficult to define whether trafficking in organs can actually be categorized as organized crime. Many approaches have been made to define organized crime and there is no agreement on a valid international definition yet. While some scientists defined organized crime by the form of crime involved or the economic motives, others tried to define it by the structure of the criminal group behind the operation. The difference between traditional forms of trafficking in illicit goods, e.g., drugs, and trafficking in organs can be seen in the fact that, while trafficking in drugs for example includes harmful consequences for those receiving and consuming them, this is usually not the case for recipients of illicitly donated organs. Trafficking in organs is rather helpful than harmful for the recipients and the goods can and are actually supposed to be received on a licit market to a certain extent. The following chapter will show if and to which extent trafficking in organs can be categorized as organized crime.

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2.1 The Problem of Defining Organized Crime

Organized Crime is often associated with Mafia-type crimes. Even though different Mafia-organizations are still operating a high amount of organized crime in Europe, this is not the case for all forms and occurrences of this phenomenon.\(^4\) While organized crime used to be marked through a rather monopolistic structure, it is today characterized by a competitive and less visible low-profile structure.\(^5\)

Trends in defining organized crime have changed throughout the past three decades. In the 1970s, it was a rather new phenomenon to most European countries and the leading role in defining this phenomenon was then played by the United States, which was already more familiar with it due to existing crime groups on their territory, such as the Cosa Nostra in New York City.\(^6\) In the late 1980s, a more international discussion about the definition of organized crime flourished among leading scientists and the confusion about a generally accepted definition reached its peak.\(^7\) Several different criteria to categorize organized crime were introduced during the following decade. The most common ones were the hierarchic structure, monetary interests, involvement in illicit business, laundering the proceeds, use of corruption on the level of official authorities and internal systems of punishment for group members.\(^8\)

Until today there is no definition that holds international general validity. While some definitions require a certain number of group members involved, e.g. three, others require a certain period of time over which criminals have to operate within that group. In addition, most definitions still include the use of violence and/or corruption to advance the illegal business.\(^9\) One definition that is often used in scientific research is the definition developed by the German Federal Criminal Office (BKA). It also includes

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\(^7\) C. Fijnaut 1998, *op. cit.*, pp. 11ff.


the monetary means, the organizational structure and its systematic involvement in illicit activities as well as the involvement of corruption and/or violence.10

Two key elements, that remained after all the diverse discussions about an adequate definition and that are still used to define organized crime, are crimes and criminals.

Definition by Criminals Involved

This approach refers mainly to the structure of organized crime groups as well as their methods. According to Bovenkerk, one criterion for organized crime is that criminals, operating in the underground economy, are organized to make money through criminal methods.11 This is the case when it comes to trafficking in organs because the organs are supposedly transplanted in private hospitals, usually by internal medical staff, where medical records are not being checked on by the government and often the transplantations take place at night – aside from the licit daily business of the hospitals.12 Due to the growing shortage of donor organs, there is a growing demand for the underground economy of organ transplantations in which buyers as well as sellers are trying to circumvent national laws and to remain undetected.13

Trafficking in organs requires a well organized network due to the complex nature of this business. It requires highly qualified medical professionals to carry out the transplantation, as well as intermediaries or brokers who recruit willing donors, usually out of poor communities, and find well-paying recipients, in many cases supposedly via the internet.14 In addition, the ‘exchange’ of the illicit good cannot take place anywhere, as it is possible in other forms of trafficking in illicit goods, because it requires a setting which provides the entire necessary medical instruments, e.g. an operating theatre.15

14 The methods involved in this business will be discussed in Chapter 4.1 and 4.2 of this paper.
Besides disposing of well organized networks, organized crime is often said to involve violence and corruption. While corruption is involved in most cases of organized crime in order to facilitate the trade and transport in illicit goods, violence is more common when it comes to the abuse or infiltration of legitimate businesses or the attempt of controlling or monopolizing a market.\textsuperscript{16}

**Definition by the Crimes Committed**

Often crimes are typified by the nature of activity and the harm they cause in order to classify them as organized crime. The two main types of activity are the provision of illicit services and goods, e.g., trafficking in human beings, trafficking in narcotics, gambling, prostitution, and the abuse or infiltration of legitimate businesses, e.g., labour racketeering or extortion. While the first category is based on consent between the supplying and demanding parties\textsuperscript{17}, the second category involves non-consensual activities, such as threat, coercion or violence.\textsuperscript{18} Trafficking in human organs fits into the first category because it supplies black markets with illicit organ donations and in most cases it is based on mutual consent between donors and recipients. In addition, it fulfils the main criteria for organized crime, included in the BKA definition, because it involves illicit goods, systematically traded by well organized criminal networks that are profit-orientated and use corruption at certain points, e.g., border control, in order to facilitate the movement of donors across borders.\textsuperscript{19}

Still, the business does not only involve organized crime but also white-collar crime. While the business as a whole is mainly dominated by organized crime, a smaller, but very important, part is mainly operated by white-collar crime. Once again there exists a definition problem. While some scientists consider white-collar crime to be the same as organized crime, others see a lap-over between these two forms


\textsuperscript{17} It might sound odd to talk about consent in cases of trafficking in human beings, especially for sexual exploitation, but mutual consent only refers to the demanding party, e.g., brothel owners, and the supplying party, e.g., traffickers.


and again others draw a clear line between these two phenomena.\(^{20}\) From my point of view, there is a lap-over when it comes to the monetary interest and the violation of national legislations but a clear line should be drawn between the two forms of crime when it comes to the criminals and their methods.

The criminal activity, operated by white-collar crime in the field of trafficking in organs, is the transplantation procedure itself. According to Maltz, who agrees with Sutherland in that case\(^{21}\), white-collar crime is considered to be a form of crime, where a legitimate business – such as organ transplantation – turns into an illegitimate one due to circumventions and violations of national transplant legislations, e.g., the prohibition of transplanting organs for financial gain. This is the case when medical and nursing staff involve themselves in transplanting unregistered and sold, respectively purchased, organs, such as kidneys.\(^{22}\)

### 2.2 The Problem of Gathering Reliable Data – Scientific Sources vs. ‘Suspense Articles’

When it comes to trafficking in organs, hardly any official or reliable data exists.\(^{23}\) As mentioned before, many reports about trafficking in organs can rather be considered as crime legends than as empirically proven and scientifically documented publications.\(^{24}\) It is interesting to see how persistent and effective these stories are. Horrifying stories, promoted by mass media reach far more people than scientifically documented facts about this phenomenon.

The problem is, that scientifically documented and reliable data are rare in the field of organized crime and therefore also in this area. Adequate proof of committed crimes can be either given by the victims or by criminals themselves. In the field of organized crime, the latter are rarely caught and the victims are often scared of testifying or – as it is in this case – not interested in official authorities finding out about their own violation of laws regulating organ donations.\(^{25}\) We usually find out about organized crime at a level, where the ones running the business are not visible anymore. Mainly, organized crime gets visible when illegal immigrants or drug traffickers are caught. The problem is that these people are usually not involved in planning and organizing

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\(^{22}\) T.W. Foster 1997, op. cit., p. 139.


the business. As a consequence, the information they can provide on the ones behind the scheme is rather poor.26

So how do we know that certain incidents fit into the larger picture of the business of organized crime? In order to find out more about a criminal organization and its methods, further investigation is necessary. In comparison to information provided by bystanders and victim-witnesses, information provided by the real offenders, who are involved in planning and organizing the business, is much richer. There are three ways of getting offender information – surveillance, undercover investigation or offenders as informants.

Surveillance can be either physical or electronic. It has a long tradition in police investigations but is often complicated by a lack of reliable pre-information and proof of planned criminal activities that are needed under some governments’ regulations in order to launch a surveillance investigation. In addition, private spaces, to which criminals can conceal without being kept under surveillance, can further complicate this kind of investigation.27

Undercover observation is rarely used in organized crime cases due to the long-term investigation necessary to get accepted by criminal organizations and to get access to relevant information about them.28

The most common investigative tool is an informant. This can be either a non-criminal or a criminal informant, whereas the latter is the most common. While non-criminal informants are usually people who just want to report criminal behaviour without any personal interest, criminal informants usually cooperate with the police in exchange for criminal immunity or at least for a reduced sentence. While informants mean a great advantage in data gathering for the police, they also cause further care-taking. These witnesses require anonymity in order to guarantee their physical safety.29

The problem of gathering reliable data in the field of trafficking in organs results from the complex business itself. Many countries are aware of the existence of this phenomenon but it is hard to proof it.30 Neither donors nor recipients are interested in making the transplantation public – and some donors do not even seem to be aware of the fact that they are violating legislations on organ transplantation. Since the business is not as expanded as other businesses of trafficking, it is less visible.

The ones carrying out the transplantation itself usually operate in a semi-legal business, e.g., a private hospital at night or a developing country where legislations prohibiting the selling and purchasing of organs do not exist or have not entered into force yet.\(^{31}\) It is therefore less obvious that these particular transplantations are illicit and the ones running the business are operating in the background and are therefore rarely caught. The ones that do get caught and prosecuted every once in a while, are members of the medical staff\(^{32}\) but then again they are only able to provide the information they have on the criminal organization which is, again, just as much information as a bystander or a member without influence in the criminal activities can have.

### 3. ASPECTS AND METHODS INVOLVED IN THE BUSINESS OF TRAFFICKING IN ORGANS

The business of trafficking in organs is far different from the idea of organ snatching criminals, who are willing to kill people in order to sell their organs on the black market. While this phenomenon is rather new and shows a relatively modest scale in European countries, worldwide it has been an issue ever since the 1980s. Back then, experts became familiar with the so-called organ tourism or transplant tourism, which included wealthy Asians traveling to Southeast Asia, e.g. India, to purchase organs from donors living in poverty.\(^{33}\) Meanwhile, the lucrative opportunity of trafficking in organs in some European countries, or at least to European customers, has been identified by international criminal organizations. The disproportion between available transplants and needed organs offers a niche for this kind of business.\(^{34}\)

Trafficking in organs is about living donations from people living in very low socio-economic standards. These people are willing to sell an organ – usually a kidney because it is the most common organ from living donors\(^{35}\) – in order to improve their living standards.\(^{36}\) This phenomenon meets the needs of many people

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\(^{32}\) Council of Europe 2004, *op. cit.*, pp. 60f.

\(^{33}\) Council of Europe 2003a, *op. cit.*, Sec. II, No. 9.


from industrialized countries, desperately waiting for a kidney donation. Just like any other form of trafficking, this business is demand-driven and the demand is high in Europe\textsuperscript{37} but also worldwide.\textsuperscript{38} Main supplier and destination countries as well as prevailing circumstances facilitating the business will be explored in the following two chapters.

3.1 Short Overview of Main European Supplier, or So-called Donor, and Destination, So-called Demanding, Countries

While trafficking in organs started out in developing countries, e.g., India, in the 1980s, today it has reached several European countries as well. As mentioned before, most illicitly donated and transplanted organs originate from people living in poverty. Therefore, the main donor countries are the ones with very low socio-economic standards, high unemployment rates and few chances to cover living expenses through legitimate work.\textsuperscript{39} It can be said that the poorest countries are the ones most likely to be confronted with their citizens selling kidneys to organized criminals who procure them to people supposedly willing to pay prices as high as USD 100,000-200,000.\textsuperscript{40} Within the European context, the countries most often associated with trafficking in human organs are Moldova, The Ukraine and Turkey, whereby the latter is the one where most transplantations are carried out while the first two countries are those where most donors originate from.\textsuperscript{41} Beyond these countries, Bulgaria, Georgia, Romania and Russia have also reported the recruitment of donors for the traffic in organs.\textsuperscript{42}

There are other countries outside of Europe that play a major role as well, when it comes to this phenomenon, such as India and Israel. In India, kidneys from living donors used to be sold more or less openly due to a lack of national legislations regulating transplantations. Recipients are mainly affluent Middle Easterners and Europeans that arrange the transplant procedure and hospital stay with Indian agents – or so-called brokers.\textsuperscript{43} Meanwhile India – and Moldova – have banned the formerly legal selling and purchasing of organs within their territory or among their citizens.

\textsuperscript{37} Council of Europe 2003b, \textit{op. cit.}, No. 9; World Health Organization 2004, \textit{op. cit.}
\textsuperscript{38} U. Schroth 2001, \textit{op. cit.}, p. 877.
\textsuperscript{40} Council of Europe 2003a, \textit{op. cit.}, Sec. II, No. 11; World Health Organization 2004, \textit{op. cit.}; E. Tomiuc 2003, \textit{op. cit.}
\textsuperscript{41} E. Tomiuc 2003, \textit{op. cit.}; Council of Europe 2003a, \textit{op. cit.}, Sec. II, No. 11.
\textsuperscript{42} Council of Europe 2003a, \textit{op. cit.}, Sec. II, No. 15.
\textsuperscript{43} T.W. Foster 1997, \textit{op. cit.}, p. 146.
Still, this business has not vanished. It has just moved further to the underground and has become less visible.\textsuperscript{44}

In Israel, the majority of the recipients are Israeli citizens while the donors again are mainly Eastern European citizens, e.g., from Ukraine, Moldova, Estonia, Russia, Georgia, Romania and Turkey.\textsuperscript{45} Furthermore, several allegations about human rights violations were made against the Chinese government in the 1990s for selling organs of executed prisoners. One of the main discussion points of human rights activists in this field – besides the alleged financial profit gained by the government through selling other people’s body parts – was the question whether prisoners, awaiting execution, are able to give voluntary consent as required by Article 19, chapter VI, of the \textit{Convention on Human Rights and Biomedicine} of 1996.\textsuperscript{46}

While the phenomenon of organ trafficking observed in China did not concern Europe when it came to receiving those transplants, the other locations associated with trafficking in organs did. According to a survey, conducted by the \textit{Steering Committee on Bioethics} and the \textit{European Health Committee}, both committees of the \textit{Council of Europe (COE)}, some European countries are aware of the fact that their citizens travel to so-called donor countries, such as the ones mentioned above, in order to receive a transplant from the black market. Among these are citizens from Belgium, Cyprus, Croatia, France and the UK.\textsuperscript{47} Reasons for the involvement of donors and recipients will be explored in the following chapter.

\section*{3.2 Which Circumstances in Donor and Demanding Countries Smooth the Way for the Commerce in Organs, Predominantly Kidneys?}

As mentioned before, the market of illicit organs is demand but also supply driven. While supply is guaranteed by citizens of the donor countries mentioned in the previous chapter, demand is guaranteed by the shortage of organs all over Europe. These are the main circumstances smoothing the way for the commerce in organs.

The willingness of people to agree on a living donation for financial profit can be understood if taking a look at their living standards. Moldova – being the main European donor country – is one of the poorest in Europe.\textsuperscript{48} The average monthly salary in Moldova lies below EUR 50\textsuperscript{49} and its unemployment rate is estimated to be

\begin{itemize}
  \item \textsuperscript{44} World Health Organization 2004, \textit{op. cit.}
  \item \textsuperscript{45} E. Tomiuc 2003, \textit{op. cit.}
  \item \textsuperscript{46} T.W. Foster 1997, \textit{op. cit.}, p. 147.
  \item \textsuperscript{47} Council of Europe 2004, \textit{op. cit.}, pp. 58f.
  \item \textsuperscript{48} E. Tomiuc 2003, \textit{op. cit.}
  \item \textsuperscript{49} E. Tomiuc 2003, \textit{op. cit.}
\end{itemize}
higher than 50%. Many people still live without running water, heating and adequate food supply. Sums ranging from USD 2,500 to USD 3,000 are offered by organized criminals for the donation of a kidney. Considering that this is more than many of these people will be able to earn within the next few years, no further incentives are needed to convince people to sell an organ such as a kidney.

This business is not only smoothened by donor countries but also by demanding countries, being different European ones. The involvement of European citizens can be best explained by the major shortages of transplants in Europe. In most European countries, transplantations are strictly regulated by transplantation centres that administer the active waiting list for organs that are allowed to be transplanted in Europe, the most common ones being kidneys, livers and hearts, followed by lungs and pancreas. In addition, certain forms of tissue, e.g., cornea, can be transplanted as well. In order to receive an organ from the licit market, one has to be registered on the official waiting list and wait until a suitable organ becomes available.

Currently, about 40,000 people are supposedly waiting for a kidney transplant in Europe, whereof 15-30% die while being on the waiting list, due to the shortage of available organs. The average waiting time for kidney transplantations in Europe is three years, in Germany even five, and is estimated to increase up to 10 years by the year 2010. These numbers are discouraging, especially for those desperately awaiting a kidney donation. In addition to long waiting times, some people are not eligible to get on the waiting list and to receive an organ that way at all. That is the case if someone’s general health condition is poor, if life expectations – even with the new organ – are rather short and/ or if the success of the transplantation is not indicated.

Council of Europe 2003a, op. cit., Sec. II, No. 23.
Eurotransplant 2005, op. cit.
For these reasons people turn to illicit measures because for many, accepting an illicitly donated and transplanted organ can be life-saving.59

As indicated the business of trafficking in organs – predominantly kidneys – is based on despair. On the one end of the trading business there are human beings driven by the desperate need for money in order to cover their living expenses while on the other end there are human beings driven by the desperate need for a donor organ in order to guarantee their survival in the long run. It can therefore be said that the success of this business is built on people’s desperate wish for survival – either from a financial or from a medical point of view.

Even though donors and recipients are those influencing the success of the business, it could not flourish without those who notice that exploitation of this despair can be quite lucrative – the organized criminals procuring the organs and arranging the transplantation procedure as well as the ones carrying out the latter, being medical staff who are willing to circumvent or violate national transplant legislations.

In addition to the demand and supply smoothing the way for this kind of business, a lack of anti-trafficking legislations criminalizing the sale or purchase of organs in certain European countries, such as Bulgaria, Ireland, Lithuania and Malta60 additionally facilitate the business. According to national law, foreigners are granted the same rights as citizens when it comes to selling or purchasing an organ in these countries. Even though it might be prohibited to sell one’s organ in the country of origin, there still exists the niche of doing it in another country. First measures against these gaps in legislations have been taken by some European countries, which will be further evaluated in chapter 5.1.

4. SUPPLYING THE BLACK MARKET WITH THE ‘ILICIT’ GOODS AND SERVICES

The main illicit goods in the business of trafficking in organs are kidneys. The improvement of medical technology has turned organ, and especially kidney transplantation, into a routine medical practice. Increased life expectations after kidney transplantations have caused an increased demand for transplants as well.61 Due to the growing demand of transplants, it has been easier for organized criminals, to establish the lucrative

60 Council of Europe 2004a, op. cit., pp. 22ff.
supplies of illicitly donated organs. In addition to providing the illicit goods and illicit services, the transplantation procedure itself, has to be provided as well since the good are of no use to the recipients if they do not come are with the necessary medical service. Therefore, this business involves several different actors as well as methods, which will be examined more closely in the following chapters. In addition, attention will be paid to the different kinds of victims involved as well.

4.1 Actors Operating this Business

Trafficking in organs requires different kinds of professionals in order to carry out the whole operation – from the recruitment of potential donors all the way to the successful transplantation of organs into a new human system. Therefore, different kinds of actors are involved.

Starting out with the recruitment or broking process, people who approach potential donors and get into contact with interested recipients are needed. Contact with donors and recipients is usually established through advertisements on the internet or in local newspapers but it is also common for desperate donors to approach medical facilities, known for their involvement in the illicit transplantation business, of their own accord. In some cases, depending on where the donors are recruited from and where the transplantation will take place, people arranging and carrying out transportation to and from the hospital are needed as well. Recipients usually travel there themselves. Once at the hospital, highly skilled medical and nursing staff is required because transplantations of human organs cannot be carried out by just anyone.

Furthermore, the ones operating this business are often suspected to have excellent connections to official authorities, e.g., the police or customs services, to facilitate the movement of people across borders, e.g., in cases where donors come from Moldova but transplantations are carried out in Turkey. In addition to those involved in the practical procedure itself, there are people operating in the background. Those are usually the ones taking care of the criminal proceeds, e.g., through money laundering.

4.2 Different Methods Applied by Actors

Even though stories of organized criminals, travelling to poor countries, snatching peoples organs against their will and at the expenses of their lives, putting the trans-

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65 Council of Europe 2003a, op. cit., Sec. II, No. 15.
plants on ice and transporting them back to where the transplantation will take place, still occur in mass media reports every once in a while, this scenario is said to be rather unlikely to take place.\(^{67}\) In general, those donating an organ for the black market are rather lured than forced into selling an organ. According to the *Council of Europe*, organized criminals offer potential donors between USD 2,500 and USD 3,000 for their kidney.\(^ {68}\) The *World Health Organization (WHO)* has published numbers ranging from USD 1,000 to USD 5,000, the latter one supposedly being more common.\(^ {69}\)

Either way, these are offers which someone, living in extreme poverty, can hardly resist. In addition to the practice of luring donors through financial means, there also exist reports on people being lured through false promises of work in the first place. According to these reports, young Moldavians were promised work in Turkey. Due to the fact that the business of trafficking in organs is known in Moldova, many of these men suspected that they will be asked to sell their organs once arriving in Turkey. Still, coming from a country where the monthly income is below EUR 50\(^ {70}\) – if one has an occupation at all – makes people want to believe in promises of work abroad because for many it is the only way out of a life in poverty.\(^ {71}\)

While organized criminals only pay between USD 1,000 and USD 5,000 to those selling a kidney on the black market, they charge those who purchase them afterwards enormous amounts of money. According to the *COE* and the *WHO*, amounts paid for a kidney on the black market range from USD 100,000 and USD 200,000.\(^ {72}\) Both prices, the one being paid by organized criminals in the first instance as well as the ones being paid by the final recipients in the second instance, are regulated by the supply and demand. The higher the number of donations for the black market, the lower the prices for transplants – in the first instance as well as in the second.\(^ {73}\)

Once donors and recipients are located, more or less solid examinations of both kinds of patients are carried out in order to match criteria of a donated and needed transplant. Quality of pre-examinations and matches of required and offered transplant criteria depend on how professional and thorough an organized crime group operates in this field.\(^ {74}\) It has been reported that the transplantations carried out in Turkey are usually of high professional quality.\(^ {75}\)

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\(^{68}\) Council of Europe 2003b, *op. cit.*, No. 1.

\(^{69}\) World Health Organization 2004, *op. cit.*

\(^{70}\) E. Tomiuc 2003, *op. cit.*


\(^{75}\) Council of Europe 2003a, *op. cit.*, Sec. II, No. 12.
While those paying high amounts of money for receiving a transplant enjoy a rather good after care, those donating their organ receive less of an adequate aftercare. Transplantations in Turkey foresee an approximate stay of five days at a local private hospital and afterwards the donors receive their money and are sent back to their country of origin, e.g., Moldova. At this stage their health condition is often still unstable and they would require further medical assistance to gain full recovery. Since this is not available in many Moldovan villages, many cannot recover as necessary.76

4.3 Who are the Victims of Trafficking in Organs?

The definition of victims depends on the point of view. While some consider those buying organs on the black market as criminals or at least offenders, they could be categorized as victims as well. Therefore, this chapter will focus on two different kinds of victims. One are the donors, one the recipients – both for different reasons.

The Donor as a Victim

People who sell their kidneys – a part of their system – come from very poor backgrounds where life is cheap and sometimes even worthless. They originate from countries marked by high unemployment rates and low socio-economic standards where the trade in human beings as well as human body parts is no scarcity. Life has its price and if one is willing to sell at least parts of it, it can be a lucrative deal, considering that the opportunities of earning a decent salary are rather poor or non-existent in these areas.77

What is being ignored or forgotten about by the donors, mostly due to a lack of information, is the risk to their own health condition. Coming from and returning to an environment, where medical support is lacking, causes most donors damage to health due to the lack of after-care. In addition, an unhealthy way of life, e.g., due to alcohol abuse or a lack of rest after the transplantation, slows down the healing process and weakens their own organs, which causes the dependence on dialysis or a transplant in the long run for some donors themselves.78

People, who have been victimized through economic failure of their governments, get re-victimized through criminals, interested in using their body parts but not providing them with the necessary after-care. Profits in this field of organized crime are thus gained at human expenses.

76 Council of Europe 2003a, op. cit., Sec. II, No. 11.
The Recipient as a Victim

Recipients of illicitly donated organs are usually wealthy people that can afford the enormous amounts charged for an organ on the black market. Even though they violate national transplant legislations and receive an organ at someone else’s physical expenses, they can also be regarded as victims. As mentioned before, waiting lists for receiving a kidney on the licit market are long and for many people, receiving an organ as soon as possible, can make a difference between life and death. People going through dialysis for years make the decision to buy an organ on the illicit market out of despair and personal necessity, rather than decadence or cold-blooded calculation.79 In addition, they get into a kind of victim status, where organized criminals take advantage of their health condition and charge them enormous amounts of money, just so the recipients can secure their survival.

Although it should be an ethical matter, that wealthy citizens should not improve their health conditions at poor people’s physical expenses, both parties involved can be regarded as victims in this case. It is rather the victimization that differs than the status of the different parties.

5. DISCUSSED AND DEVELOPED MEASURES TO TACKLE THE PHENOMENON

The following two chapters will give an overview of measures developed in the field of policy-making and the complications arising when it comes to implementing operational measures. Furthermore, different ideas and developments regarding the increase of available transplants will be elaborated.

5.1 European Legislations and Conventions to Combat the Phenomenon

As realized by several countries, the phenomenon of trafficking in human organs has become a relevant issue, even for industrialized Western European countries. Even though it still ranges on a rather modest scale, different regulations and recommendations addressing the phenomenon have been developed in the field of policy-making. The Council of Europe, being the most active European institution in this field of organized crime, has passed a convention and additional protocols and recommendations within the past ten years. Among these, the most relevant documents in effort of preventing trafficking in organs are the following:

Trafficking in Human Organs in Europe

Convention on Human Rights and Biomedicine

This Convention was adopted by the Committee of Ministers in November 1996 and, among other issues in the field of Biomedicine, it focuses on guidelines for organ and tissue removal and transplantations. Within this context it includes guidelines to prevent trafficking in organs, such as the prohibition of organ and tissue removal without expressed consent in Chapter VI, Articles 19 and 20 and the prohibition of financial gain through organ and tissue donation under Article 21. The latter being constantly violated by everyone involved in the business of trafficking in organs.

Countries that signed this Convention by 1999, respectively 2001, include the ones that have been identified as some of the main donor and demanding countries earlier in this paper, e.g., Cyprus, Croatia, Estonia, France, Georgia, Moldova, Romania, Turkey, UK and the Ukraine.

Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin

This Protocol, made in January 2002, supplements the Convention and emphasizes some more detailed regulations regarding transplantations. In Chapter II, Article 3 it states that organs should only be allocated ‘among patients on an official waiting list’. In the same chapter, Article 5 states the right to adequate information of risks and consequences involved in donations and transplantation and Article 7 foresees the provision of adequate medical after-care for recipients as well as donors. All three Articles are violated by the procedure involved in trafficking in organs, as chapter 4.3 has shown. In addition, Chapter III, Article 10 of this Protocol solely foresees living donations to people having a ‘close personal relationship as defined by law’ or ‘with the approval of an appropriate independent body’ in lack of this relationship. This Article is also violated in cases of trafficking in organs because this relationship usually does not exist between donors and recipients.

In addition to the Convention and its protocols, established on an international level, there exist national transplant acts and legislations on transplantations within most national criminal codes of European countries, regulating the procedure of

82 Council of Europe 2002, op. cit.
trafficking in human organs keeps on being an issue in Europe, which shows that in some countries the implementation of legislations and operational measures to ensure their obedience still need to be improved, extended and intensified. As with all forms of organized crime the implementation of detection and prosecution measures is rather complicated because this business takes place in an invisible niche. In addition, the detection is complicated through the fact that neither party involved in this business has an interest in uncovering the criminal process. While other forms of organized crime involve victims that may press charges and/or cooperate in the criminal proceedings at some point (e.g., trafficking in human beings) this business involves parties who – to a certain extend – all benefit from the criminal process and who – at some point – all have violated one legislation or another related to the market of illicit transplants. Another difficulty, when it comes to a sufficient enforcement of anti-trafficking legislations is the fact that it often collides with medical regulations such as the right to medical confidentiality and the inaccessibility of medical records. Even though many countries may be aware of the fact that their citizens may donate or receive an organ abroad it is often hard to trace back the medical history of recipients and donors as well as the medical data of institutions carrying out transplantations which complicates the enforcement of prosecution measures.

83 Council of Europe 2004, op. cit., pp. 7ff and pp. 22ff.
85 Council of Europe 2003b, op. cit., No. 5ff.
5.2 Increasing the Number of Available Transplants as a Preventive Measure

The shortage of transplants in Europe is unlikely to change in the near future, unless the field of biomedicine develops xenotransplantations (transplants from an organism other than human)\(^\text{86}\) that will be possible to be transplanted into the human system and in addition will be agreed on by the relevant Commission on Ethics, e.g., in Germany by the Central Commission on Ethics (Zentrale Ethikkommission).\(^\text{87}\) Awareness-raising campaigns on the situation in Europe as well as information about improved medical technology and a decreased risks for living donors on the other hand might not increase available donor organs right away but could increase people’s willingness to donate in the long-run.

Standardization in national transplant legislations, from expressed consent to presumed consent, might increase the number of donations but is up to today still highly controversial. About half of the European countries, such as Denmark, Germany, Ireland, Iceland, Malta, The Netherlands, Romania, UK and former Yugoslavia, still operate on expressed consent, meaning organs can only be removed from deceased persons if those have expressed their consent while still alive or if the next of kin agree on a donation in case the deceased person has neither expressed consent nor objection during his or her lifetime.\(^\text{88}\) While Bulgaria is the only country operating on a regulation where organs can be removed from a deceased person, no matter if s/he objected during his or her lifetime, approximately the other half of European countries operate on presumed consent, a regulation where organs can be removed from a deceased person, unless he or she objected during his or her lifetime. In some countries, such as Cyprus, Liechtenstein, Lithuania, Norway, Sweden, the presumed consent is restricted, meaning that the next of kin have to be informed and asked about a possible donation or multi-organ-explantation\(^\text{89}\) (a form where all transplantable and usable organs, tissues, etc. are being removed).\(^\text{90}\) As long as the controversial discussion about a standardization of presumed consent continues, no increase in available transplants can be expected either.

Another highly controversial idea on how to increase the number of available donor organs, is the legalization of payment for transplants. According to this idea,

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90 Transplantation-Information, Multiorganentnahme – Was kann entnommen werden, URL: <http://www.transplantation-information.de/organspende_organspender/multiorganentnahme_multiorganexplantation.html> (n.d.).
transplantations would still be regulated by official transplantation centres and in accordance with official waiting lists, but it foresees a financial incentive for donors. Advocates of this idea expect that this would result in an increased number of willing donors and therefore in a decreased number of people dying on waiting lists, while opposing parties regard financial incentives as incompatible with basic human values, such as human dignity or the spirit of altruism. Advocates further argue that other donations, such as blood or semen for example, are subject of financial interests, so why should organs and tissues not be treated in the same way. The answer seems rather simple. According to national and international regulations and legislations, reproducible parts of the human system, such as semen, blood, DNA or bone marrow are excluded from the list of parts that are not allowed to become subject of financial interest. It is therefore legal for institutions, operating in the field of science, medical treatment, donations of blood, etc., to sell or purchase those excluded parts of the human system. In addition, the financial interests involved in this field do not constitute a relevant financial benefit to individuals, such as donors. Even if some individual decisions on sperm or blood donations were influenced by the financial compensation some institutes pay, it does not encourage a decision involving health risks because what is donated in this case, is automatically being reproduced by the human system. It is therefore no convincing argument that these parts can be the subject of financial interest while donor organs cannot.

Since ideas on increasing the number of donor transplants, e.g., through changing regulations from confirmed to presumed consent or through introducing financial incentives, are still highly controversial, a relevant increase of donations cannot be expected in the near future.

6. CONCLUSIONS

As it can be derived from different sources used for this paper, stories of organ-snatching criminals, killing people in order to sell their organs to affluent people from industrialized countries, are more an urban legend than anything close to reality. Maybe this form of unscrupulous trafficking in organs did occur in individual cases but since there does not exist any kind of official confirmation through judicial authorities nor any form of scientific evidence, it is rather unlikely that trafficking in organs generally takes place in this form. However, it does take place in another form and

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even though this one does not include selling people’s organs at the expense of their lives, it does include exploiting people’s vulnerable situation and gaining significant financial profits.

In addition, trafficking in human organs constitutes different violations of national legislations as well as human rights. As shown before, it is a phenomenon that works through the existing difference between living standards, especially between industrialized and developing countries. On the one hand, there are still countries with very low socio-economic standards in Europe, where life is cheap and people are willing to sell it or at least risk it in order to make some money. On the other hand, there are affluent societies, where pretty much everything can be purchased with money. One thing that is not purchasable unconditionally is health.

Even though affluent societies dispose of highly skilled medical staff and advanced medical technology, a shortage of transplants and a waiting list, that has by far outgrown the demand, drives those in desperate need of a donor organ to illicit measures. Since organized criminals have spotted the situation on both sides of the phenomenon, an illicit market for organs, specifically kidneys, was possible to establish. Poverty and prosperity gets linked by brokers at the point where some people are willing to pay a fortune to improve their health, while others are willing to accept what seems like a fortune to them at the expense of their health. Taking a look at the consequences of trading organs for money might explain the widespread controversial attitude towards legalizing payments for organs. Payments would constitute an ethical conflict because organ donations are supposed to be altruistic and no profits should be gained through giving away organs or tissues. Once people receive financial benefits through donating an organ, the matter of consent should be questioned. Would those selling a kidney also consent to donations if no financial means were involved? And would decisions on donations not be influenced by socio-economic standards then? Legalizing payments for organs is in fact likely to result in an increased number of donors because, even in industrialized countries, there will always be a considerable number of people that would do anything for money – no matter if needed for survival or simply out of greed. In addition, wealthy people can be expected to take advantage of donors’ situations, once purchasing organs becomes legal. Legalizing the sale of one’s own body parts would degrade the human system to a commodity and therefore result in an infringement of human dignity.

Since the demand for illicit transplants will remain, measures against the illicit supply need to be taken in order to combat the trafficking business efficiently. Legislations criminalizing this activity are a first and important step but that will not keep those from violating these legislations that live on the verge of society and do not have anything to loose. Measures against economic failures, resulting in an extremely high level of poverty, as it is for example the case in Moldova, need to be taken in order to improve the citizens’ living standards. These people need to be given the opportunity of earning money and supporting their family through legitimate means.
in order to prevent them from participating in illegitimate businesses. Therefore, donor countries, as well as the European Member States supporting them, need to focus on combating poverty and high unemployment rates first, before the problem of trafficking in organs can be tackled efficiently.

Trafficking in human organs might not pose a threat to monetary means of the licit markets because donations of organs are supposed to be altruistic and therefore without financial gain. It also does not affect the medical business and its profits in the demanding countries since it does not diminish the demand for licitly donated organs because patients in need of an organ still outnumber available transplants by far. Still, trafficking in organs poses a threat to humanity and the well-being of several people being trapped in the illicit donation procedure. Therefore, it needs to be taken seriously and tackled sufficiently.

When it comes to policy-making, personal situations of donors and recipients should be taken into account, when prosecuting cases of trafficking in organs. Criminalization of selling and purchasing organs and therefore threat of punishment for donors and recipients is one essential measure to disrupt the illicit markets. Hence, punishment for those exploiting the vulnerable position of both, donor and recipient, and gaining the main financial profits in this business, should definitely be harsher than for those that should actually be protected by legislations against trafficking in organs. Therefore, organized criminals, e.g., brokers, and white-collar criminals, e.g., medical staff participating in illicit transplantations or hospital staff manipulating official waiting lists in exchange for financial benefits from patients buying their way up on the waiting list, as was allegedly the case in the United States in the mid-80s, should receive higher sentences than donors and recipients.

Last but not least, further scientific research will have to be conducted on this phenomenon in order to replace crime legends through scientific facts. Only then will this issue be taken seriously by all governments affected and will the results constitute a solid ground for the field of policy-making.

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