



**CRIMINOLOGICAL
PROBLEMS
OF TRANSPLANT
MEDICINE**

ACADEMIC EDITING

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SZCZYTNO 2017

Criminological problems of transplant medicine

Kriminologische Probleme von Transplantationsmedizin

Academic editing

Wissenschaftliche Redaktion

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Szczytno 2017

Reviewer / Gutachterin
dr hab. Izabela Nowicka

Production Editor / technischer Redakteur
Robert Ocipiński

Cover design / Umschlagentwurf
Agnieszka Kamińska



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ISBN 978-83-7462-594-4
e-ISBN 978-83-7462-595-1

Printing and binding:
Publishing and Printing Department
Higher Police School in Szczytno
111 Piłsudski Street, 12-100 Szczytno, Poland
tel. +48 89 621 51 02, fax +48 89 621 54 48, e-mail: wwip@wspol.edu.pl
Size of publication: 9,44 publisher's sheet / Umfang: 9,44 Verlagsbogen

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INTRODUCTION

This publication is the development of aspects related to transplantation medicine in the broadly comprehended issues referred to trafficking in human beings and one of its form — illegal trade in human organs. The illicit trade in human organs and tissues is lucrative comparable to smuggling of weapons and drugs in the context of profits. States must address this growing phenomenon with the implementation of legal and organizational measures. Human trafficking results in many disadvantageous consequences not only for agriculture but also for other fields of social and public life and results in a danger to the security of state.

Trafficking in human beings occurs in all countries of the world and is global. It has become an enormous illegal industry which brings tremendous gains for criminal groups.

The following publication provides readers with observations and opinions emphasized by the representatives of not only polish research centers (University of Białystok, the Police Academy in Szczytno) but also institutions from Belarus and Turkey.

Majority of authors indicate a multifaceted nature of trafficking in organs. It results from relations of criminal world with poor donors, ill recipients and unscrupulous representatives of medical environment. Hence, the questions of a legal and ethical nature rise. The subject matter pointed out by the content of specific articles proves that the phenomenon of trafficking in organs, tissues and embryos involves a constant verification and control for the effectiveness of combating this crime.

The added value of the writing is the formula of two languages — English and German, adopted by editors which enables a wider audience to get familiar with its content.

The publication targets a wide group of recipients, in particular: practitioners (police officers, prosecutors, judges) as well as students of the faculty of law, criminology and internal security.

Editors

COMBATING ILLEGAL HUMAN TRAFFICKING AND ORGAN TRADE CRIME IN INTERNATIONAL LAW

Abstract: The main aim of this article is to present the problem of human trafficking and trafficking in organs in view of the analytical framework of international law. The author pointed out that this is one of the main problems of today, but in the real perspective is mostly historical continuous humanitarian crime that existed centuries ago. Preventing this crime is not easy because the illegal dealings brings billions of dollars to the organizers, who have influence local, European and even on other continents. Organ trafficking is increasing and is one of the most dangerous and lucrative procedures, as well as trafficking in arms, drugs and human beings.

Keywords: human trafficking, organ trade, prevention, international law

Introduction

In spite of after Cold War **human trafficking has been global proliferation** with subject to millions of victim's women, children and men in the entire world. In real term, it is one of the major problems today; but in real perspective it is mostly historical — a **continuous humanitarian crime** — which existed centuries ago.¹ To prevent this illicit crime is not easy since this **way of illegal income makes billions of dollars for smuggling organizers** who could flow mass people either regional or Europe and America continental destinations. Trafficking in organs is a **growing; perhaps have one of the most dangerous lucrative enterprises** much like the illicit markets for weapons, humans, and drugs. It is a deeply complex, international problem with transnational

¹ Rebecca A. Bishop, Charlie V. Morgan & Lance Erickson: “Public Awareness of Human Trafficking in Europe: How Concerned Are European Citizens?”, *Journal of Immigrant & Refugee Studies*, Volume 11, Issue 2, April 2013, pages 113–135.

dimensions and involves the intersection between the world of **organized crime, organ donors, sick recipients and medical staff which needs to be addressed from legal, medical and ethical** perspectives. However, there is little agreement upon definitions, estimates and responses to this problem. The main objective of this paper is to examine the human trafficking and organ trade problems in perspective of the analytical framework of international law.

Methodology for understanding nature and scope of the problem

Available information on trafficking in people for the removal of organs is incomplete and often unverified. Currently, the international community **has not responded adequately to the problem** of organ trafficking. Legal provisions exist prohibiting this crime, but, where there are provisions, there are **often weak enforcement policies and few prosecutions**. Governments, international organizations, and private actors aim to bring solutions the causes and consequences of trafficking and organ trade crimes in various ways. International and regional actors' **motivations to 'fight' trafficking** vary. Governments are primarily concerned about links between **human trafficking, organ trade and other forms of crime**, such as money laundering, drug trafficking, the illegal weapons trade, and document forgery, as well as the risk of profits from human trafficking financing terrorist activities.²

Traffickers may force **adults and children to commit crimes in the course of their victimization**, including theft, illicit drug production and transport, prostitution, terrorism, and murder. Smuggling of migrants involves the procurement for **financial or other material benefit of illegal entry of a person into a state** of which that person is not a national or resident. Essentially, we think the most important differences between **trafficking and smuggling** are the use of force/coercion for the purposes of exploitation. **Smuggling** involves "**migrants who have consented to the smuggling**". **Trafficked people**, on the other hand, have not consented or, if they initially consented, that consent has been

² Cornelius Friesendorf: "Pathologies of Security Governance: Efforts Against Human Trafficking in Europe", *Security Dialogue*, September 2007; vol. 38, 3: pp. 379–402.

rendered meaningless by the **coercive, deceptive or abusive means** used by the trafficker. After arrival in the country of destination the involvement of the smuggler completed. However, the trafficker continues to exploit the labor or services of the trafficked person in the country of destination to generate profits for the trafficker.

1. Theoretical perspectives of human trafficking and organ trade have multi-disciplinary framework

First idea combines inside the theories of the emergence of markets in human trafficking often use an **economic approach**. That is, human trafficking is considered simply a **morally suspect business**. Economic models are by necessity based on assumptions. Variables such as cultural norms, corruption, and household time allocation among individual family members can be difficult to model. Because an economic model is a simplification of reality, the exclusion of certain determinants from the model may not fully explain the human trafficking market in its complexity. The model will, however, provide a general guideline for informing policymaking decisions.³ Others argue that trade in persons is best conceived of as an **international crime**. There are three potential sources of **criminal law** involved in human trafficking: international, transnational and national. **International criminal law** can only be applied to human trafficking in a specific context: when it is a crime against humanity. **Transnational criminal law** comes into existence when States agree to use national laws as part of a coordinated and collective effort to criminalize behavior that causes or has the potential to cause detrimental trans-border effects, and to prosecute offenders.

Rational choice theories postulate that criminals are rational beings who make decisions to commit crime based on the costs and benefits involved in the process of crime perpetration. That means the **criminals may first observe the accessibility** to potential victims, **location, the time** at which they are at most vulnerable, the appropriate method that could provide entry with ease and **how to safeguard their criminal activities** from criminal justice authorities and other capable guardians.

³ Elizabeth M. Wheaton, Edward J. Schauer, Thomas V. Galli: "Economics of Human Trafficking", International Migration, <https://www.amherst.edu/media/view/247221/original/Economics+of+Human+Trafficking.pdf>.

A combination of theories should provide an integrated explanation of the occurrence of human trafficking. An integrated model to explain human trafficking appears to be a logical step towards an understanding of the crime.⁴ People are trafficked to be exploited in a range of different sectors: of the detected victims in 2011, **53 per cent were involved in sexual exploitation and 40 per cent in forced labour** which includes exploitation in agriculture, horticulture, construction, textile production in sweatshop conditions, catering and restaurants, entertainment services and domestic servitude. Other forms of exploitation have been found such as **forced marriage, organ removal, illegal adoption and the exploitation of children for begging and as child soldiers.**⁵ 2012 report issued by the United Nations International Labor Organization (ILO) that has been reporting that there are 21 million victims of modern slavery in around the world. The Asia-Pacific region accounts for the largest number of forced laborers' in the world — 11.7 million (56 per cent) of the global total, followed by Africa at 3.7 million (18 per cent) and Latin America with 1.8 million victims (9 per cent).⁶ Many sources estimate profits far greater than the United Nations **total of 32 billion.** Only guns and drugs are more lucrative criminal enterprises. ILO estimates that 55 percent of the victims of forced labor are female, but in the case of victims of sex trafficking, that figure reaches 98 percent. An appalling 26% of all modern slaves or 5.5 million are children under 18, the majority underage girls forced into child prostitution and pornography.

Men and women migrate from **poorer and politically less stable countries** to the more secure and affluent countries within or outside the region. Contrary to popular perception, the majority of migrants live in developing countries. In this critical point, trends suggest that international migration is not going to recede, on the contrary it is predicted that **migration is likely to increase over the coming decades.** Simultaneously, **criminal activities have become global.** Transnational syndicates,

⁴ Thozama Mandisa Luty, Mark Lanier: "An Integrated Theoretical Framework to Describe Human Trafficking of Young Women and Girls for Involuntary Prostitution", <http://cdn.intechopen.com/pdfs-wm/36964.pdf>.

⁵ "13th United Nations Congress, On Crime Prevention and Criminal Justice", Doha, 12–19 April, 2015, http://www.unis.unvienna.org/unis/en/events/2015/crime_congress_human_trafficking.html.

⁶ "21 Million People Are Now Victims of Forced Labor, ILO Says", http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang--en/index.htm.

using informational technologies and improved transportation systems, are illicitly trading any commodity across borders from weapons to humans or human organs. Thus, during wars and internal conflicts, regular governmental bureaucracy is collapsed and borders cannot be controlled. While, those elements of globalization enhance migration in a positive sense by increasing opportunities and choices, the downside of globalization is that it has **augmented poverty and inequality in many parts of the world**, mostly in the countries of the so-called ‘South’.

2. Enforcing international law and states responsibility

There are many arguments in terms of the international human trafficking law that developed **various conventions, instruments, and institutions have focused on the fight against all the illegal activities for preventing victims** and eliminate ongoing crimes care and prevention, as well as for prosecution, needed to be realized. In order to examine developments in the XX the century, notable **legal developments against slavery** include the League of Nations **1926 Slavery Convention** and the United Nations 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. The UN’s first convention dealing specifically with trafficking was the 1949 Convention on the Suppression of Trafficking in Women and the Exploitation of Prostitution of Others. Renewed international interest in human trafficking emerged in the late 1980s and 1990s in response to increased **population movements in the wake of war, civil conflict** and, in Central and Eastern Europe, the fall of communism; events which were often accompanied by the illegal movement of people and exploitation of vulnerable populations at the hands of organized crime. In Europe, the **European Parliament adopted its first resolution** on the exploitation of prostitution and trafficking in human beings in 1989, which was followed in 1993 by a parliamentary resolution calling for international co-operation to combat trafficking in women and to improve the situation of victims.⁷

Regarding globalization and after Cold War increasing mass migration waves with civil wars in Middle East and Eurasia, African regions, combating human trafficking and organ trade measures and strategies can be

⁷ Jo Goodey: “Human trafficking: Sketchy data and policy responses”, *Criminology and Criminal Justice*, November 2008; vol. 8, 4: pp. 421–442.

situated within different and, to a certain extent, overlapping frameworks: a migration, criminal law, labor law, gender, human rights, and/or (sexual) morality framework. The UN Protocol, which is relatively strong on law enforcement and weak on human rights protection, has served as a catalyst for coercive initiatives on the regional, national, and local levels. The adoption in Palermo, at the end of 2000, of the Convention Against Transnational Organized Crime and the three Protocols is regarded as a milestone in the global efforts to combat transnational organized crime. **Global attention to the problem** of human trafficking and organ trade began as a result of increased legal, ethical and social awareness of the sexual exploitation of women and children. So far, trafficking has been considered mostly a law enforcement issue. Today, we should look at **trafficking as an economic and social issue, linked with global trends** including migration. Therefore prevention is the key. To prevent trafficking in persons, national authorities should deal with a broader area of exploitation, **in the sex industry, in agriculture, fishery, domestic work, garments, and the tourist industry**. Governments and the private sector must prevent and combat exploitation wherever and whenever it takes place, especially when migrant workers are involved, and tackle the driving factors of exploitation. Among them, one of the most powerful is the lack of regular channels for migration.⁸

Anti-trafficking laws are **problematic to enforce because victims of trafficking are hesitant to identify traffickers for fear of repercussion**. The protection of victims is relatively advanced in some respects, yet remains deficient in others. The international legal response often fails to take into account the social and economic factors that produce movement. It also fails to acknowledge the gendered and political nature of its responses. Another dilemma of enforcing anti-trafficking laws is the lack of training of the local enforcement officers within the state. In terms of the states national legislative framework must ensure that there are no safe havens for traffickers or their assets by (a) enabling the **state to either extradite or prosecute**; (b) providing for the **effective investigation, sequestration, and confiscation** of the proceeds of trafficking; and (c) mandating **effective international investigative and judicial cooperation**.

⁸ Maria Grazia Giammarinaro: "Fighting human trafficking is not just about law enforcement" — World Day Against Trafficking in Persons — 30 July 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16273&LangID=E>.

The legal framework should also **guarantee immediate protection and support to all victims** of trafficking including the right to a remedy as well as enhanced protections for victim witnesses.

3. Eliminating deadly trafficking of organ trade crime

Organ trafficking is perhaps the least understood and investigated form of human trafficking. It is a growing international problem with transnational dimensions. Organ trafficking involves the intersection between the criminal world of traffickers, impoverished donors, sick recipients and unscrupulous medical staff.⁹ A kidney? £84,000. A heart? Up to £1 million. With the number of organs now critical, wealthy patients are spending a fortune on illicit transplants. But it is the desperate **'donors' who are paying the ultimate price.**¹⁰ One another reason is the global impact of transnational crime has risen to unprecedented levels. Criminal groups have appropriated new technologies, adapted horizontal network structures that are difficult to trace and stop, and diversified their activities. The result has been an unparalleled scale of international crime. The main cause of illegal organ trafficking is the insufficiency of available legal donations. Organ transplantation offers help to patients suffering from organ dysfunction. In most cases, patients pay brokers who in return find them willing to sell them their organs. **Brokers reserve most of the money** to themselves while they pay donors very low amounts, which differ through regions. Although this system might be seen as an exchange mechanism, primitive and unhygienic methods used in the **removal of the organ and the transplantation often lead to death or permanent injury.** Moreover another cause of ethical debate is the obligation of economically disadvantaged people to donate organs. Impoverished people sell their organs for prices much less than the money paid by the receptors. Meanwhile **brokers earn money** for managing an illegal act.

⁹ Alexis A. Aronowitz, Elif Isitman: "Trafficking of Human Beings for the Purpose of Organ Removal: Are (International) Legal Instruments Effective Measures to Eradicate the Practice", Groningen Journal of International Law. Vol. 1, No. 2, Human Trafficking, <https://groningenjil.files.wordpress.com/2014/01/03-aronowitz-isitman.pdf>

¹⁰ Julie Bindel: "Organ Trafficking: A Deadly Trade", The Telegraph, 1 July, 2013, <http://www.telegraph.co.uk/news/uknews/10146338/Organ-trafficking-a-deadly-trade.html>.

International organ trade crime is operates **either in force** or to **sell an organ and are cheated** in black market because they are not paid for the organ or are paid less than the promised price ways. These **deadly and dirty trade victims can be kidnapped and forced to give up** an organ; some, out of financial desperation, agree to sell an organ; or they are duped into believing they need an operation and the organ is removed without their knowledge. Some **victims are murdered to order if a large sum has been paid** in advance. This black market [in organs] thrives internationally in many forms, although it is extremely difficult to measure its extent due to its secretive nature.¹¹ On the other hand, this exceptional nature of organized crime, unlike other forms of trafficking, have been needs **professional partnership medical staff assistance-brokers** sharing for pick up and trade the victims organs.

According to a report produced by the United Nations, “**Trafficking in organs is a crime that occurs in three broad categories.**” Organs which are commonly traded are kidneys and the liver. In the first category of **criminal organ trade**, traffickers force or deceive victims into giving up an organ. However, generally victims are exposed to serious consequences to their health either during or after the operation. In the second category, **victims formally or informally agree to sell** an organ and are cheated because they are **not paid for the organ or are paid less than** the promised price. And in the third category, **vulnerable people**, including as migrants workers, the **homeless, or the illiterate**, are treated for an ailment which may not even exist and then **their organs are removed without their knowledge.**¹²

Conclusion and some recommendations for the solution of the ongoing problem:

We must emphasize that in spite of human trafficking and organ trade enlarging negative affects in criminal justice there has **been increasing acceptance between the states** of the need for an effective, internationally coordinated legal response and understanding. Legal background

¹¹ Sheri R. Glaser: “Formula to Stop the Illegal Organ Trade: Presumed Consent Laws and Mandatory Reporting Requirements for Doctors”, <https://www.wcl.american.edu/hrbrief/12/2glaser.pdf>

¹² UN Global Initiative to Fight Human Trafficking, *Trafficking for Organ Trade*, <http://www.ungift.org/knowledgehub/en/about/trafficking-for-organ-trade.html>.