

# STEPS TOWARDS COMBATING TRAFFICKING IN HUMAN ORGANS IN SOUTH EASTERN EUROPE, WITH PARTICULAR REFERENCE TO THE CASE OF KOSOVO<sup>1</sup>

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## **Abstract**

Trafficking in human organs, trafficking in human misery, is one of the worst crimes of our time and a growing global problem. Due to the constant discrepancies between the available and required organs, illegal and criminal acts of trafficking in human organs are increasingly associated with living donors. What is the actual "dark figure" of this crime? A special emphasis in this paper relates to the case of Kosovo, where in 2011 based on the adopted report by Dick Marty, the Council of Europe representatives ordered an investigation against the Kosovo authorities for organ trafficking and adopted a resolution (Resolution 1782) (2011) Investigation of allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo. Taking into account the international legal documents to combat trafficking of persons, the author will work to explore the extent to which a system is built to combat trafficking in human organs with regards to the criminalization of the sale and purchase of organs and the threat of punishment for donors and recipients as the major measure to stop the illegal market. Is the statutory sentence sufficient and proportionate enough to the committed criminal offense with regard to the consequences that the victim will have for a lifetime? An analysis of the criminal legislation *de lege lata* at the national level compared to other countries of South Eastern Europe that are most faced with the above problem, Serbia, Macedonia, Kosovo and Albania, will try to indicate possible further perspective towards more effective action against trafficking in human organs.

*Key words: Trafficking in human organs, organ transplants, trafficking in human beings, crime*

## **1. INTRODUCTION**

Last twenty years, almost the whole world is facing one of the worst possible crimes against humanity and human dignity, trafficking in human organs. We can safely say that this trafficking in human misery especially finds fertile ground in impoverished transition and legally undeveloped countries, countries in economic crisis as well as in those countries where the competent institutions do not implement the necessary measures

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to combat this kind of cruel crimes. Because of the huge big profits that can be achieved with this type of crime, all social values lose their significance. Every day the number of patients on transplantation waiting lists increases, and the number of deceased organ donors, is not enough to satisfy the demand. It is estimated that in the EU there are around 61,000 people waiting for organ donation, and every day on average 12 people die while waiting for a transplant.<sup>2</sup> Those who are sick see their only hope in organ transplants, and are ready for everything just to survive. Such human desperation to save one's own life is exploited by traffickers in human body parts, who, on the other hand, exploit other human despair, poverty and misery of people who are forced to sell their own body parts just to have some money to survive. Living renal transplantation is still the predominant transplant activity in most countries of the the Balkan region.<sup>3</sup>

The transition to a free market economy, opening of borders, development of the black market and the wars in former Yugoslavia, as the most common causes of the illegal trafficking in Southeast Europe.<sup>4</sup> This paper looks at the most important international legal instruments to combat trafficking in human body parts and, accordingly, draws the attention *de lege lata* to the criminal legislation of the Republic of Croatia, indicating the possible proposals for the successful fight with this kind of crime. Investigated and shown are all comparative criminal law solutions in the light of combating trafficking in human organs our near by countries of South East Europe, Serbia, Macedonia, Albania, and with a special emphasis on the trade in human organs in Kosovo. In the concluding remarks I shall attempt to indicate possible further perspective towards more effective action against trafficking in human organs based on regional and international cooperation as well as finding more sophisticated methods in the detection and identification of victims of trafficking.

## **2. MOST SIGNIFICANT INTERNATIONAL LEGAL FRAMEWORK FOR COMBATING TRAFFICKING IN HUMAN BODY PARTS**

### **2.1 United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**

UN Convention against Transnational Organized Crime with its Protocols, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, represents the most important international legal act since it characterizes the removal of

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<sup>2</sup> Mujović-Zornić, H.: Donation and transplantation of organs, Institute of Social Sciences Center for Legal Research, available at:

<http://www.ius.bg.ac.rs/prof/Materijali/dramar/h.mujovic.transplantacija.pdf>, (15/01/2016)

<sup>3</sup> Rambanova-Busljetic I., Popov Z., Masin-Spasovska J., Sikole A., Selim Gj., Dohcev S., Ivanovski N:

Could living unrelated renal transplantation ameliorate the actual shortage of organs in the Balkan region? *Hippokratia*, 2013, 07-09; 17(3): 243–245

<sup>4</sup> Dimovski Z., Babanoski K., Ilijevski I: Republic of Macedonia as a Transit Country for the Illegal Trafficking in the Balkan Route, *Varstvoslovje, Journal of Criminal Justice and Security* year 15 no. 2 pp. 203–217; Retrieved from: Miloshevska, T: Security aspects of human trafficking in South-eastern Europe. *Contemporary Macedonian defence*, no. 15., 2007, Skopje: Ministry of defence

human organs as the crudest violation of human rights.<sup>5</sup> It was adopted in the period of 12-15/12/2000 at a conference in Palermo.<sup>6</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, known as the Palermo Protocol, gives the internationally recognized definition of trafficking that includes many forms of human exploitation.<sup>7</sup> Former Convention For The Suppression Of The Traffic In Persons and Of The Exploitation Of The Prostitution of Others from 1949<sup>8</sup> was in fact replaced by the Protocol on the grounds that the Convention was still exclusively related to prostitution and did not include other types of exploitation, although the title contained the term trafficking in persons.<sup>9</sup> Protocol is an act of particular international importance in combating and fighting all forms of exploitation and trafficking in women and children, it provides protection and assistance to victims and promotes cooperation between States Parties. It is interesting to note that neither the UN Convention against Transnational Organized Crime or Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, do not contain provisions on the impunity of the victim, such a provision is prescribed only by the Article 5 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime.<sup>10</sup>

## **2.2 Brussels Declaration on preventing and combating trafficking in human beings**

Brussels Declaration on preventing and combating trafficking in human beings<sup>11</sup>, adopted in October 2002, is one of the internationally significant documents because the fight against trafficking in human beings includes all factors that occur in the process of trafficking, countries of origin of victims, transit countries and the destination countries, as

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<sup>5</sup>*Trafficking in persons* shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, art.3. Protocol to prevent, suppress and punish trafficking in persons, especially women and children, Treaty Series, vol. 2225, p. 209

<sup>6</sup>The Republic of Croatia ratified the UN Convention on 24/01/2003, the Law on Ratification of UN Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Protocol against the Smuggling of Migrants by Land, Sea and Air, OG, IA No 14/02, 13/03, 11/04

<sup>7</sup>*Exploitation shall include*, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs,“ art.3. Protocol

<sup>8</sup>Convention for Suppression of traffic in Persons, of Exploitation and Prostitution, UN GA Resolution 317 (IV), 2 December 1949

<sup>9</sup>See more about this in KovčoVukadin, I., D. Jelinić, Human trafficking, criminology and criminal justice aspect, Croatian Annual of Criminal Law and Practice, Croatian Association for Criminal Sciences and Practice, Vol. 10, No. 2, 2003, p.683.

<sup>10</sup>Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol, <https://www.unodc.org/unodc/en/treaties/CTOC/countrylist-migrantsmugglingprotocol.html>, (15/01/2016)

<sup>11</sup> Brussels Declaration on preventing and combating trafficking in human beings <http://www.belgium.iom.int/STOPConference/Conference%20Papers/brudeclaration.pdf>,(15/01/2016)

well as agents, customers and users. The Declaration is the first document of the EU, which fully regulates the issue of human trafficking.<sup>12</sup>

### **2.3 Convention on Action against Trafficking in Human Beings**

Council of Europe Convention on Action against Trafficking in Human Beings,<sup>13</sup> adopted on 16/05/2005 in Warsaw,<sup>14</sup> applies to all forms of trafficking in people, and includes a provision that states that its application will not affect the rights and obligations arising from the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, but that it is intended solely to enhance the protection provided by the Palermo Protocol and develop the standards contained therein.<sup>15</sup> Its importance is reflected in the fact that it considers trafficking in human beings as a breach of criminal law and as a violation of fundamental human rights, and it offers its signatories a comprehensive legal framework to combat trafficking in human beings: prevention, prosecution, assistance and protection to victims of human trafficking.<sup>16</sup> Convention requires each Contracting State to criminalize human trafficking when it is committed intentionally, and that the use of services that are subject to exploitation of the victim of trafficking is a criminal offense.<sup>17</sup> Each State Party shall adopt legislative measures to establish the acts of forgery of travel documents and identity documents, and procuring or providing such documents, as well as retaining, removing, concealing, damaging or destroying a travel or identity document of another person; which are considered criminal offenses when committed intentionally and for the purpose of facilitating human trafficking.<sup>18</sup> Attempting and aiding criminal offenses stipulated in the Convention, which were performed intentionally, is also a criminal offense.<sup>19</sup> Each State Party shall include in their national legislation criminal responsibility of legal persons for the criminal act.<sup>20</sup> The Convention obliges states parties to put four aggravated forms in their criminal legislation in cases when: offense deliberately or by gross negligence endangers the life of the victim, a criminal offense committed against a child, a crime committed by a public official in the performance of their duties, the offense was committed within the framework of a criminal organization. The obligation of the states is to provide effective and appropriate protection from potential retaliation or intimidation of victims of trafficking in particular during and after investigation and prosecution of

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<sup>12</sup> National Plan for Combating Trafficking in Human Beings, Zagreb, 2002, p.6 <https://vlada.gov.hr/UserDocsImages/Sjednice/Arhiva/17.%20-%206.pdf>, (15/01/2016)

<sup>13</sup> Council of Europe Convention on Action against Trafficking in Human Beings [https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197\\_en.asp](https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp), (15/01/2016)

<sup>14</sup> On 27/06/2007 Republic of Croatia passed the Law on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, OG, IA no. 07/07

<sup>15</sup> Art. 39. Ibid.

<sup>16</sup> See more about this in Derenčinović, D.: Not for sale - on the rights of victims of trafficking after the European Court of Human Rights ruling in the case Rantsev against Cyprus and Russia, Almanac of Academy of Legal Sciences of Croatia No.1/2010, p. 53-72

<sup>17</sup> Art.21/2 Council of Europe Convention on Action against Trafficking in Human Beings [https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197\\_en.asp](https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp), (15/01/2016)

<sup>18</sup> Art.20 Ibid.

<sup>19</sup> Art.21/1 Ibid.

<sup>20</sup> Art.22/1 Ibid.

perpetrators.<sup>21</sup> The Convention also established the *Group of experts on action against trafficking in human beings GRETA*<sup>22</sup> with the task of monitoring the implementation of the Convention.

## 2.4 Declaration of Istanbul on Organ Trafficking and Transplant Tourism

From 30/04 to 02/05/2008 at an international conference adopted was the *Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, which prohibits organ trafficking and transplant tourism. Organ trafficking and transplant tourism violate the principles of equity, justice and respect for human dignity and should be prohibited.<sup>23</sup> Citizens of developing countries and the poor are the people that most often become victims or tourists for the purpose of transplantation. According to the declaration<sup>24</sup> *Organ trafficking is the recruitment, transport, transfer, harboring or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation.*<sup>25</sup> Travel for transplantation is the movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes. *Travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centers) devoted to providing transplants to patients from outside a country undermine the country's ability to provide transplant services for its own population.*<sup>26</sup>

## 2.5 Directive 2011/36/EU

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims<sup>27</sup> prescribes stronger punishment of the crime of trafficking in human beings and confiscation of illegally acquired assets of persons convicted of trafficking in human beings and replaces the Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA).<sup>28</sup> This Directive provides an integrated,

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<sup>21</sup>Art.28/2 Ibid

<sup>22</sup>See more about this in Božić.V: Trafficking in human organs as a form of organized crime, PhD Dissertation, University of Zagreb, Faculty of Law, 2012

<sup>23</sup>The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, <http://www.declarationofistanbul.org> (15/01/2016)

<sup>24</sup>[http://www.coe.int/t/dghl/monitoring/trafficking/docs/news/OrganTrafficking\\_study.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/docs/news/OrganTrafficking_study.pdf); p. 96

<sup>25</sup>[http://multivu.prnewswire.com/mnr/transplantationssociety/33914/docs/33914-Declaration\\_of\\_Istanbul-Lancet.pdf](http://multivu.prnewswire.com/mnr/transplantationssociety/33914/docs/33914-Declaration_of_Istanbul-Lancet.pdf), (15/01/2016)

<sup>26</sup>Ibid.

<sup>27</sup>Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>, (15/01/2016)

<sup>28</sup>Council Framework Decision of 19 July 2002 on combating trafficking in human beings, OJ L 203 of 01/8/2002, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133137>, (15/01/2016)

holistic approach to human rights in the fight against trafficking in human beings, adopts various forms of trafficking and aims to ensure that all forms of human trafficking are solved by the most effective measures.

### 3. TRAFFICKING IN HUMAN BODY PARTS IN THE CROATIAN CRIMINAL CODE

There are three crimes in the new CC of Croatia<sup>29</sup> relating to the trading of human organs. The objective of human trafficking is forcible removal of human body organs and human parts, but not necessarily, also, trafficking in human organs and body parts does not necessarily have to be connected to human trafficking.<sup>30</sup>

#### 3.1 Trafficking in human beings

*Trafficking in human beings for the purpose of the removal of organs*, crime against humanity and human dignity (Art.106. in Title IX). The perpetrator is the one who makes the offense one of the *activities* - the recruitment, transportation, transfer, harboring or receipt of persons, by *means* - threat, use of force or other forms of coercion, abduction, fraud, abuse of power or of a position of vulnerability or giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation in the form of organ removal (one of the forms of exploitation). It is punishable with imprisonment of one to ten years. If the offense is committed against a child or if it is a criminal offense committed by an official in the course of practice or it is committed against a larger number of persons or the lives of one or more persons were knowingly endangered, we are talking about a aggravated form of the offense for which a prescribed punishment is imprisonment of three to fifteen years. The consent of the victim is without prejudice to the existence of a criminal offense.<sup>31</sup> The person who with the aim of facilitating the perpetration of the crime of trafficking in human beings maintains, suspends, hides, damages or destroys a passport or identity document of another person,<sup>32</sup> or tries to do so, shall also be punished by imprisonment of up to three years, which is justified because this person may not be the perpetrator of the crime of human trafficking.

#### 3.2 Trafficking in parts of the human body and human embryos

Trafficking in parts of the human body and human embryos (Art.107.) is also a crime against humanity and human dignity that is perpetrated by a person who *procures, possesses, transports, transmits, stores, receives or transplants human organs, tissue, cells, embryo or fetus*, if the person knew or should have known and could have known that these originate from a person who is a victim of trafficking in human beings for the sake of taking body parts as specified in Art.106.CC.<sup>33</sup> It is punishable with imprisonment of one to ten years. Given that this is a *delictum communium* there is a need in particular to prescribe criminal liability for the offenders who are medical doctors, dentists or other health professionals, and who *procures, possesses, transports, transmits, stores, receives*

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<sup>29</sup>Criminal code of Republic of Croatia, OG No.125/11, 144/12, 56/15, 61/15

<sup>30</sup> Mijalković, S: Trafficking of Human Body Parts, Legal Life, Beograd, 9/2007, p. 109 - 126

<sup>31</sup> Art.106. Par.7. CC

<sup>32</sup> Art.106.Par.5. Ibid.

<sup>33</sup> Art.107.Par.1. Ibid.

or transplants human organs, tissue, cells, embryo or fetus, if they knew or should have known that the organs originate from a person who is a victim of human trafficking for the purpose of taking body parts in accordance with the Article 106.CC, as a aggravated form of the crime. Giving monetary compensation or other comparable benefits for the supply of human organs, tissues, cells, embryos, fetuses or dead bodies, is punishable by imprisonment of six months to five years.<sup>34</sup> Law on Transplantation of Human Organs for treatment<sup>35</sup> prohibits giving and receiving any monetary compensation or other material gains for organs taken, accordingly, it is appropriate to align the aforementioned law with the CC to extend the ban on providing financial compensation or other comparable benefits to tissue, cells, embryos, fetuses and dead bodies. Advertising a need or availability of human organs, tissues, cells, embryos, fetuses or dead bodies in order to offer or seek monetary compensation or other benefits, is punishable.<sup>36</sup> The one who encourages and helps others, for profit, to provide their own organs, tissues, cells, embryos or fetuses for monetary compensation or other benefit shall be punished by imprisonment of six months to five years.<sup>37</sup> Whoever removes or transplants human organs, tissue, cells, embryos or fetuses, if they knew or should have and could have known that the donor received monetary compensation or other benefit, shall be punished by imprisonment of up to three years. However, it is necessary to impose criminal liability of doctors for the aforementioned deed as *delictum proprium* and accordingly prescribe a higher sentence.

### 3.3 Illegal taking and transplanting of human body parts

Illegal taking and transplanting of human body parts, organs, tissues, cells, embryos or fetuses from a living donor, without the prescribed consent or without medical justification, as well as the illegal taking and transplanting of organs of a deceased person, in spite of knowing that the person or his legal representative or guardian has during his life given a written statement against donation, is a crime against human health, placed in Chapter XIX Art.182. CC. It is a *delictum proprium*, which can be committed by a medical doctor, dentist or other health professional. Illegal taking and transplanting of organs from a living donor carries a punishment of imprisonment of one to ten years,<sup>38</sup> and if during this the person dies the punished shall be imprisonment for three to fifteen years.<sup>39</sup>For the illegal taking and transplanting of organs from deceased persons, the penalty is imprisonment of up to one year. Due to the nature of the crime, it would be appropriate to consider prescribing a more severe sanction, namely, the sentence of one to ten years in prison is identical to the offense of trafficking in human body parts and human embryos as *delictum communium*.

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<sup>34</sup>Art.107.Par.3. Ibid.

<sup>35</sup>Law on Transplantation of Human Organs for Treatment, OG No 144/12

<sup>36</sup>Art.107.Par.6. Ibid.

<sup>37</sup>Art.107.Par.4. Ibid.

<sup>38</sup>Art.182.Par.1. Ibid.

<sup>39</sup>Art.182.Par.2. Ibid.

## 4. CRIMINAL CODE SOLUTIONS IN THE LIGHT OF COMBATING TRAFFICKING IN HUMAN ORGANS IN SOME COUNTRIES OF SOUTHEAST EUROPE

### 4.1 Serbia

CC of the Republic of Serbia<sup>40</sup> in Art.388 states a criminal offense of human trafficking, in Title XXXIV among the crimes against humanity and other goods protected by international law. The crime of trafficking in human beings encompasses several forms of exploitation of the victims including the exploitation for the removal of organs or body parts. Imprisonment of three to twelve years is provided for those who by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another person, retaining identity papers or by giving or receiving money or other benefits, recruit, transport, transfer, sell, buy, mediate in sale, hide or hold another person for removal of organs or body parts.<sup>41</sup> The abduction and fraud as well as ways of perpetrating the offense, although covered by the definition in the Protocol, are not mentioned in the CC. In relation to the CC of Croatia, CC of Serbia has prescribed a higher sentence. If the offense resulted in grievous bodily injury, the perpetrator shall be punished by imprisonment of five to fifteen years<sup>42</sup>, and if the death of one or more persons has occurred it shall be punished by imprisonment of at least ten years.<sup>43</sup> Aggravated form of the offense is also provided if the offense is committed by a group or an organized criminal group. The CC does not relieve the illegal migrants of their criminal responsibility if they become the victims of an offense provided in Par.3 of Art.350, which is a departure from the standards prescribed in the Protocol. The current CC no longer considers it an aggravating circumstance if the offense of trafficking for the purpose of taking organs or body parts is committed by a state official performing official duties, which the former law regulated by Art.111.b.2.<sup>44</sup> A separate provision on violent removal of human organs or body parts that existed in the former Serbian criminal legislation<sup>45</sup> is not included in the new Serbian CC, which makes the new CC differ from the international standards laid down in the Recommendation No.1611 (2003) of the Parliamentary Assembly of the Council of Europe on trafficking in human organs.<sup>46</sup> The recommendation stresses the importance of amendments to the relevant provisions of the legislation and punishing of traffickers in human organs, as well as the medical staff involved in transplantation of illegally acquired parts of the human body. Trafficking in human organs is expressly prohibited only by the former *Law on the Conditions for the*

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<sup>40</sup>Criminal code of the Republic of Serbia, OG of RS, No 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14

<sup>41</sup>Art.388 Par.1. bid.

<sup>42</sup>Art.388.Par.4. Ibid.

<sup>43</sup>Art.388.Par.5. Ibid.

<sup>44</sup>Art.111.b.2. Ibid. OG No 26/77, 28/77, 43/77, 20/79, 24/84, 39/86, 51/87, 6/89, 42/89, 21/90, 16/90, 26/91, 197/87, 75/91, 58/91, 9/92, 49/92, 51/92, 23/93, 67/93, 47/94, 17/95, 44/98, 10/2002, 11/02, 80/02, 39/03 i 67/03

<sup>45</sup>Art.54/1 Ibid

<sup>46</sup>Recommendation 1611 (2003), Trafficking in organs in Europe, [http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17125&lang=en,\(10.01.2016.\)](http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17125&lang=en,(10.01.2016.))



*Removal and Transplantation of Human Body Parts*<sup>47</sup> and, accordingly, the new *Law on Organ Transplantation* that in Art.27 prohibits organ trafficking, a health worker who participates in the process of transplantation, if he/she suspects that the body part to be transplanted is subject to commercial trade, is obliged to refuse participation in the transplant immediately, and orally and in writing to inform the relevant public authorities and the Directorate of Biomedicine.<sup>48</sup> In the process of donating and receiving organs it is prohibited to offer or provide any compensation or other material or non-material benefit to the donor by the recipient, for given, i.e. received organs.<sup>49</sup> According to Art. 26/1 of the Organ Transplant Act, advertising the need for organs is prohibited, as well as advertising of donations, with or without offering or giving monetary compensation or other tangible or intangible benefits, as well as the advertising of health institutions and health workers who perform the transplantation procedure in the media or otherwise. Just like in the Organ Transplant Act, the same is prescribed in a special separate Act on Transplantation of Cells and Tissues.<sup>50</sup> There are some opinions that the sources of organs should not remain the only ones who have not been paid, because in fact, the transplant is not a non-commercial business since hospitals, medical teams and organizations for obtaining organs sell their services.<sup>51</sup> What would have happened if the sale of own body parts would be decriminalized? Why does this at first glance seem like a good solution, but in fact it should not be allowed. If we were to decriminalize the sale of our own body parts; we should certainly criminalize encouraging people to all actions relating and involving the sale of own organs. We should start from the theory that it is not enough just to criminalize trafficking in human organs, it is necessary to limit organ donation between people who are not relatives or in other kinship ties.

Organ Transplant Act<sup>52</sup> and the Act on Transplantation of Cells and Tissues<sup>53</sup> prescribe criminal offenses. Incriminated is to force people, against their free will, to give written consent for organ, cell and tissue transplant during their life for the purpose of transplantation into another person who, on the basis of that written consent is taking the organ, cells or tissue, and if against their own will they sign a written consent to provide organs and tissues after death for transplantation into that other person. Forcing involves force, threat, deception and keeping in deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or receiving money or other benefits, and is punishable by imprisonment of two to ten years. Qualified forms refer to the appearance of serious bodily injury (imprisonment of three to 15 years) or the death of the organ donor during transplantation (a prison sentence of at least ten years), as well as the circumstances if the offense was committed by an organized group (a prison sentence of at least ten years). The same penalties are prescribed for the sale and offering of own organs, cells or tissues or organs, cells or tissues of another person for transplant as well as for the one who recruits, transports, transfers, sells, buys, or otherwise mediates in the transplantation of organs, cells or tissues or participates in the process of

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<sup>47</sup>The law on the conditions for the removal and transplantation of human body parts, OG of SFRJ No 63/90, 22/91, 28/96

<sup>48</sup>Organ Transplant Act, OG of RS, No. 72/09

<sup>49</sup>Art.25/ Par.1 Ibid

<sup>50</sup>Act on Transplantation of Cells and Tissues, OG of RS , 72/09

<sup>51</sup>Ivančić-Kačer B: Legal traffic in human organs, Legal Life, 9/2012, p. 451- 466

<sup>52</sup>Art.78-80

<sup>53</sup>Art. 98-100

transplantation. Also incriminated is unauthorized transplantation, if there is no written consent for organ, cell or tissue transplants, if the organ or tissue are taken from a deceased person where brain death was not diagnosed and established in accordance with the law, if the organ or tissue are taken from a deceased person who has during his life banned the donation of organs or tissues in the event of his death or if written consent is not given by a family member or other close person. The question arises, why these two laws, which regulate virtually the same subject matter, therefore, provide the same provisions, prohibition and criminalization have not been consolidated into a single law, the act on transplantation of organs, cells and tissues.

Serbia has from a country of transit and destination, become a country of origin, transit and exploitation of nationals. There are recorded cases of trafficking for forced begging and committing criminal offenses, but in the territory of the Republic of Serbia not a single case of trafficking in human organs and parts of the human body was prosecuted.<sup>54</sup> In 2014 six criminal charges against 6 citizens of the Republic of Serbia were filed perpetrating an offense as defined by the Art.79 of the Law on the Transplantation of Organs, who have been on the Internet offering their organs for sale,<sup>55</sup> and 26 traffickers were convicted whose sentence were ranging between 3 and 12 years in prison.<sup>56</sup>

## 4.2 Macedonia

In the recent years, Republic of Macedonia is referred to as the country of origin and transit, in which the sub-national human trafficking has developed.<sup>57</sup> In Macedonia, there is no human organs trafficking but it is also true that some citizens travel to India, Pakistan or Egypt with the intention of buying a kidney.<sup>58</sup> Until 2002 there was no separate article in the CC that related to human trafficking, which would include trade in human organs, but in special cases legal provision concerning the crimes of slavery and transport of human beings in servitude was applicable.<sup>59</sup> From 1997 to 2001, according to the report by the prosecutor's office, there were 80 trials for the crime of human trafficking<sup>60</sup>, and the first cases of Macedonian citizens who have become victims of human trafficking were recorded in 2005.<sup>61</sup>

Law on Amendments to the CC<sup>62</sup> introduced the offense: *Trafficking in Human Beings* art.418.a.; *Smuggling of migrants* art.418.b.; *Organization of a group and urging*

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<sup>54</sup>[http://www.mup.rs/cms\\_lat/sadrzaj.nsf/zrtve-i-zastita-zrtava.h](http://www.mup.rs/cms_lat/sadrzaj.nsf/zrtve-i-zastita-zrtava.h) (10.01.2016)

<sup>55</sup><http://www.mup.gov.rs/cms/resursi.nsf/statistika-2014-lat.pdf> (10.01.2016)

<sup>56</sup> Trafficking in Persons Report 2015, <http://serbian.serbia.usembassy.gov/izvestaji/izvestaj-o-trgovini-ljudima-2015-godina.html>, (10.01.2016)

<sup>57</sup> Trafficking in Persons Report, the Office for monitoring and combating trafficking, <http://www.state.gov/g/tip/rls/tiprpt/2006/65989.htm>, (10.01.2016.)

<sup>58</sup> See more about this in Bachanovic O., Bachanovic A.: Trafficking in human organs and/or bodyparts - a form of human trafficking, International Scientific Conference security in the post-conflict (western) Balkans: transition and challenges faced by the republic of Macedonia, 2011, Volume I, Skopje, p. 17-29.

<sup>59</sup> See more about this in Božić, V.: Trafficking in human organs as a form of organized crime, PhD Dissertation, University of Zagreb, Faculty of Law, 2012

<sup>60</sup> Bjelica, J.: Handbook for Journalists, Human Trafficking in the Balkans

<sup>61</sup> Ibid. Combating human trafficking

<sup>62</sup> Republic of Macedonia Criminal Code (consolidated version with the amendments from March 2004, June 2006, January 2008 and September 2009),

<http://www.legislationline.org/documents/action/popup/id/16066/preview> (10.01.2016)

for commitment of the crimes human trafficking, trafficking of juveniles and smuggling of migrants; art.418.c. i *Trafficking in juveniles* art.418.d.<sup>63</sup> The government identified 15 victims of trafficking in 2013, an increase from eight in 2012.<sup>64</sup> In 2013, courts convicted six defendants of sex trafficking of children, and one defendant for labor and sex trafficking of children, a decrease from 20 convictions in 2012. The defendants received sentences ranging from 4 to 10 years imprisonment.<sup>65</sup> The government initiated prosecutions against seven defendants, including six offenders from investigations in 2011 and 2012, in 2013, courts convicted six defendants of sex trafficking of children, and one defendant for labor and sex trafficking of children, the defendants received sentences ranging from four to ten years imprisonment.<sup>66</sup>

Amendments to the CC of 2014, crimes of THB are: *Human trafficking* Art. 418-a, *Trafficking of migrants* Art. 418-b, *Organizing a group and instigating performance of crimes of human trafficking, trafficking in juveniles and migrants* Art. 418-c, *Trafficking a child* Article 418 - d.<sup>67</sup>

The definition of the offense of *Trafficking in Human Beings* is as follows: „whosoever by force, serious threat causes delusions or other forms of coercion, by kidnapping, by deceit and abuse of his own position and abusing the pregnancy or the position of weakness of somebody else, or the physical or mental disability of another, or by giving or receiving money or other benefits in order to obtain agreement of the person that has control over another person, or in any other manner turns, transports, transfers, buys, sells, harbors or accepts persons for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labor or servitude, slavery, forced marriages, forced pregnancy, unlawful adoption or similar relations to it, begging or exploitation for purposes forbidden by law, or illicit transplantation of human organs.<sup>68</sup>

Illicit transplantation of human body parts is one, therefore, a form of the crime of trafficking in human beings. The penalty provided for the illegal transplantation of parts of the human body is at least 4 years of imprisonment that would be imposed on the offender who destroys an ID, passport or other identification document in order to commit the crime of THB. If the perpetrator is an official person they shall be punished with imprisonment of at least eight years.<sup>69</sup> If the crime of illegal transplantation of organs is committed by a legal person, that person shall be fined.<sup>70</sup> Whoever organizes a group that deals with trafficking of human organs shall be punished by imprisonment of at least eight years.<sup>71</sup>

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<sup>63</sup>Ibid.

<sup>64</sup>Trafficking in Persons Report 2014, Macedonia

<http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226767.htm>,<http://www.state.gov/documents/organization/226847.pdf> (10.01.2016.)

<sup>65</sup>Ibid.

<sup>66</sup>Ibid.

<sup>67</sup>Criminal Code of the Republic of Macedonia, OG, No 37/96, 80/99,4/02, 43/03, 19/04, 81/05, 60/06, 73/06, 7/08, 139/08, 114/09,51/11, 135/11, 185/11, 142/12, 166/12, 55/13, 82/13, 14/14, 27/14, 28/14, 41/14

<sup>68</sup>Ibid. OG No. 27/2014

<sup>69</sup>Art.418-a/4.Ibid.

<sup>70</sup>Art.418-a/6.Ibid.

<sup>71</sup>Art.418-c/1.Ibid.

These incriminations in the CC and prescribed penalties are in line with the Act on Removal and Transplantation of Human Body Parts for the Purpose of Treatment<sup>72</sup> that proscribes criminal offenses that can be committed when taking and transplanting organs, tissues or cells of the human body. According to Art. 65 of the Act on Removal and Transplantation of Human Body Parts for the Purpose of Treatment, a prison sentence of no less than four years shall be imposed on a person who orders, purchases, transfers, transports, stores and buys for resale or sale organs, tissues or cells of the human body for transplantation or mediates in these activities in order to achieve illegal material gain. The aggravated form of the offense, which carries a prison sentence of at least eight years, is committed if the organs, tissues or cells are derived from the bodies of minors,<sup>73</sup> and in case of an organized group, gang or other association for the commission of these crimes.<sup>74</sup> Aiding and abetting in the commission of these crimes is an offense. For the member of the group, which exposes the group before they commit new types of crime, the punishment shall be remitted.<sup>75</sup> Everyone who advertises the need and availability of organs, tissues or cells of the human body for transplantation shall be punished by a prison sentence of at least three years.<sup>76</sup> If the appointed National Coordinator for transplantation acts contrary to the provisions of the Act, and if he/she grants the organ to a patient who is not on the waiting list or without the application of certain criteria, he/she shall be punished by imprisonment for one to ten years.<sup>77</sup> It would be beneficial that other countries in the region consider the criminalization of provisions according to which, whoever kills another person for the purpose of removal of organs, tissues or cells for transplantation, shall be punished by imprisonment for not less than ten years or long-term imprisonment.<sup>78</sup>

In 2014, courts convicted only two traffickers, one trafficker was sentenced to two years imprisonment and the other was sentenced to 13 years imprisonment.<sup>79</sup>

### 4.3 Albania

According to Interpol and Europol, the Albanian mafia is among the most secret and most violent mafias in the world, where strict hierarchy and the law of silence is based on blood or marriage. Albania is dominated by fifteen families who hold Elbasan, Durres, Fier, Shengjin, Shkodra, Tirana and Vlora.<sup>80</sup> Vlora, Tirana, Fier, Shkodra, as well as the border of Greece and Macedonia are considered to be areas where trafficked people. Up to 2002 the victims were mainly transported illegally from Albania by sea directly to Italy, with an average of 12 people per day crossing the border illegally.<sup>81</sup> Due to the increased police operations and enhanced control of the border zone towards Italy, today, the trafficking directions go through three areas: first over the mountains to Greece, the other

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<sup>72</sup>Act on Removal and Transplantation of Human Body Parts for the Treatment Purposes, OG No. 47/11, 13/11, 47/13, 91/13, 136/13, 164/13, 27/14, 112/14, 124/13, 144/13, 149/13

<sup>73</sup>Art.65. Par.2.Ibid.

<sup>74</sup>Art.66.Par.1.Ibid.

<sup>75</sup>Art.66.Par.3.Ibid.

<sup>76</sup>Art.68. Ibid.

<sup>77</sup>Art.69 Ibid.

<sup>78</sup>Art.67 Ibid.

<sup>79</sup>Trafficking in Persons Report 2015 Macedonia

<http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243482.htm>, (05.01.2016)

<sup>80</sup>Rufer, X., Quere, S.:Organised crime, Zagreb, 2008., p.62.

<sup>81</sup>IOM, 2004., *too* Čopić, S.:Routes of human trafficking in Europe and the position of Serbia, Temida, 2008, p.49-68

towards Macedonia, and the third over the Shkoder towards Montenegro and further west over Kosovo and Serbia towards the Republic of Croatia or Bosnia and Herzegovina or towards north to Hungary and then to other EU countries.<sup>82</sup>

Trafficking in persons is punishable pursuant to the CC of 27/01/1995 prescribing penalties of 5 to 15 years. In 2001, the Act 8733 was passed, which in Art.110/a *Trafficking of adult persons*, Art.114/b *Trafficking of Women for prostitution*, Art.128/b *Trafficking of children* regulates offenses punishable by imprisonment for five to twenty years or life sentence.<sup>83</sup> In 2011 GRETA published its first report on Albania,<sup>84</sup> which states that it is necessary to devote special attention to measures aimed at encouraging education and jobs for groups that are vulnerable to trafficking, raise public awareness of equivalence and equality, and promote the principles of non-discrimination, to strengthen child protection and register all children in the state register.

In 2013, the CC was amended to strengthen its anti-trafficking provisions, Art.110/a *Trafficking of adult persons*, Art.114/b *Trafficking of Women*, Art.128/b *Trafficking of Minors*.<sup>85</sup> This law has introduced a new definition of trafficking in accordance with the Palermo Protocol and increased the penalty for trafficking in persons. These penalties are sufficiently stringent and exceed those prescribed for other serious crimes. According to the Art.110/a of CC, trading in human organs is criminalized as a form of trafficking in persons for the purposes of illegal transplantation, in Albania and outside its territory, for which a penalty of eight to fifteen years is prescribed. If the trade in human organs is committed against an adult woman, this is punishable by imprisonment of ten to fifteen years, and if it is committed against a minor it is punishable by imprisonment of ten to twenty years. The aggravated form of trafficking in human organs is the case when the offense is committed with physical and psychological abuse of the victim whose life is being seriously threatened (imprisonment of at least fifteen years), if the case of the death of a victim (a prison sentence of at least twenty years or life imprisonment) and if the offense is committed by using state functions or public service where the penalty is increased by ¼. Organizing and financing of trade in human organs is punishable by imprisonment of seven to fifteen years, and if the victim is a minor by imprisonment of ten to twenty years. The Act on Transplantation of Tissues, Cells and Organs in the Republic of Albania prescribes sanctions and penalty clauses if the procedure of transplanting tissues, cells or organs is performed without obtaining valid consent from donors and if the transplant procedure is not made in accordance with other legal provisions. In 2014, the government increased the number of victims identified, but prosecuted and convicted a small number of trafficking offenders.<sup>86</sup>

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<sup>82</sup>Surtees, R.: Traffickers and Trafficking in Southern and Eastern Europe: Considering the Other Side of Human Trafficking, *European Journal of Criminology*, 5 (1), 2008, p. 39.-68.; too Čopić, S.

<sup>83</sup>Criminal Code of the Republic of Albania, Law No.7895, 8204, 8279, 8733

<sup>84</sup>Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania  
[http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2011\\_22\\_FGR\\_ALB\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_22_FGR_ALB_en.pdf), (05.01.2016)

<sup>85</sup>Consolidated version as of 2013, <http://www.legislationline.org/documents/section/criminal-codes/country/47>, (05.01.2016.)

<sup>86</sup>Trafficking in Persons Report 2014 Albania,  
<http://www.state.gov/j/tip/rls/tiprpt/countries/2014/226665.htm>, (15/01/2016)

## 5. SPECIAL REFERENCE TO THE CASE OF KOSOVO

In 2008 Kosovo has declared independence. In the same year began the investigation on suspicion of trafficking in human organs, organized crime and illegal medical activities. In Kosovo since 1999 UN Mission in Kosovo holds a provisional duty of the civil administration, ensuring law and order, respect for fundamental rights, coordinates the provision of humanitarian assistance, supervises the state border, allows refugees to return to Kosovo under the UN guidance, under Resolution 1244 (1999) Adopted by the Security Council at its 4011th meeting, on 10 June in 1999.<sup>87</sup> Trafficking in persons is a criminal offense, according to Art.171 of CC of the Republic of Kosovo, and whoever engages in trafficking in persons for the purpose of removing organs and tissues shall be punished by a fine and imprisonment of five to twelve years. The aggravated form of the offense is established if the offense is committed by an official person abusing his or her position or authorization,<sup>88</sup> if offense committed by a group of persons<sup>89</sup>, if the offense results in the death of one or more persons.<sup>90</sup> When the offense is committed within a 350 meter radius from a school or other location used by children or when the offense is committed against a person under the age of eighteen, prescribed is a fine and sentence to imprisonment of three to fifteen years.<sup>91</sup>

Whoever withholds another person's personal identification documents or passport knowing that the person is a victim of a criminal offense in Art.171. *trafficking in persons*, shall be punished by imprisonment of one to five years. When the offense committed by an official person abusing his or her position or authorizations, the perpetrator shall be punished by imprisonment of three to seven years.<sup>92</sup>

After nearly three years of investigation on the 10/06/2011 EULEX, the Kosovo Special Prosecutor's Office SPRK filed charges against two people in the so-called MEDICUS case. Yusuf Ercin Sonmez, a Turkish national, and Moshe Harel, from Israel, are listed in the indictment, which was filed in the District Court of Pristina. Yusuf Ercin Sonmez was charged with human trafficking, organized crime and illegal conduct of medical activities and Moshe Harel for trafficking and organized crime covering multiple victims from different countries.<sup>93</sup> The indictment was eventually raised for several criminal offenses: trafficking in persons, organized crime, unlawful exercise of medical activity, abusing official position or authority, grievous bodily harm, fraud, falsifying documents, falsifying official documents and ultimately more accused, owner of the Medicus Clinic, director of Medicus Clinic-son of the owner, 3 medical doctors, specialist anesthesiologist, anesthesiologist, doctor and anesthesiologist. Kosovo police suspects Moshe Harel for on one hand looking for sick people for whom kidney transplant was the only way to extend their life and who did not ask for the price of such an undertaking, and

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<sup>87</sup>Resolution 1244 (1999) (05.01.2016.) <http://www.nato.int/kosovo/docu/u990610a.htm>

<sup>88</sup>Art.171/4/1 Criminal code of the Republic of Kosovo No. 04/L-082<http://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Code.pdf>, (05.01.2016)

The perpetrator shall be punished by a fine and imprisonment of five to fifteen years.

<sup>89</sup>The perpetrator shall be punished by a fine of up to five hundred thousand EUR and by imprisonment of seven to twenty years.Ibid.

<sup>90</sup>The perpetrator shall be punished by imprisonment of not less than ten years or life long imprisonment. Ibid.

<sup>91</sup>Art.171./2.Ibid

<sup>92</sup>Art.172. Ibid.

<sup>93</sup>Eulex-Kosovo,<http://www.eulex-kosovo.eu/en/pressreleases/0154.php>(15/01/2016.)

on the other hand bringing organ donors from poor countries to the Pristina clinic with promises of high earnings. 20,000 euros, through false promises, allegedly was the price that was offered to sellers of organs for which from wealthy customers they received up to 200,000 euros.<sup>94</sup> Approximately 30 persons, potential donors of organs, were lured to Pristina from Russia, Moldova, Kazakhstan and Turkey. It is suspected that over thirty illegal organ transplants were performed. According to the lead prosecutor, the victims were “transported by means of threat or use of force or other forms of coercion, by fraud or deception, by the abuse of power or use of the donor victims positions of vulnerability, or by giving or receiving of payments or benefits to achieve the consent of those persons for the removal of their organs (kidneys), for the purpose of the exploitation of the donor victims.”<sup>95</sup> The case was made public when a Turkish national after he donated a kidney was stopped at Pristina airport because he was sick. The director and the owner of the Medicus clinic was arrested on 4 November 2008. The police immediately closed the clinic where she found an Israeli citizen who was recovering after kidney transplantation, and confiscated all the medical equipment. The investigation lasted two years after which an indictment was raised.<sup>96</sup> According to the judgment in April 2013<sup>97</sup>, five of the seven accused were convicted, two defendants were acquitted. The head of the clinic was found guilty with punishment of eight years imprisonment and a fine of 10,000.00 euro and is prohibited to perform his medical calling for two years. His son was sentenced to seven years and three months imprisonment and a fine of 2.500,00 euro. Three medical doctors were sentenced to imprisonment between one and three years.<sup>98</sup> The verdict was appealed and proceedings are at the Court of Appeal.

Representatives of the Council of Europe with 169 votes PRO to 8 CON and 14 ABSTENTIONS, adopted on 25 January 2011 Dick Marty's report<sup>99</sup> on the basis of which an investigation against Kosovo authorities was ordered for organ trafficking and have adopted the Resolution 1782 (2011) Investigation of allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo,<sup>100</sup> calling for an international

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<sup>94</sup>UNODC: Trafficking in Persons for the Purpose of Organ Removal, UN, Vienna, 2015, [https://www.unodc.org/documents/human-trafficking/2015/UNODC\\_Assessment\\_Toolkit\\_TIP\\_for\\_the\\_Purpose\\_of\\_Organ\\_Removal.pdf](https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf), (15/01/2016)

<sup>95</sup>Art.3, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>, (15/01/2016)

<sup>96</sup>See: Trafficking in human beings for the purpose of organ removal, A Case Study Report, 2014, <http://hottproject.com/userfiles/Reports/3rdReportHOTTProject-TraffickinginHumanBeingsforthePurposeofOrganRemoval-ACaseStudyReport.pdf>, (15/01/2016.)

<sup>97</sup>Judgement, BASIC COURT of Pristina, P 309/10, P 340/10, 29 April 2013, [http://www.eulex-kosovo.eu/eul/repository/docs/\(2013.04.29\)\\_JUD\\_-\\_L.D.\\_et\\_al.\\_\(BC\\_Pristina\)\\_ENG.pdf](http://www.eulex-kosovo.eu/eul/repository/docs/(2013.04.29)_JUD_-_L.D._et_al._(BC_Pristina)_ENG.pdf), (15/01/2016)

<sup>98</sup>UNODC: Trafficking in Persons for the Purpose of Organ Removal, UN, Vienna, 2015

<sup>99</sup>Dick Marty came to a large amount of evidence including witnesses who will reveal the Kosovo mafia dealing with trafficking in human organs.

<sup>100</sup>Resolution 1782 (2011) Investigation of allegations of inhuman treatment of people and illicit trafficking in human organs in Kosovo, <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta11/eres1782.htm>, (05.01.2016.)

investigation of these allegations. With the resolution the international community and the authorities in Belgrade, Pristina and Tirana are called upon to take all measures to investigate trafficking in human organs and other crimes that occurred during and after the Kosovo conflict. According to Point 4 of the said Resolution many indications confirm that, in the period immediately after the end of the armed conflict, before international forces had really been able to take control of the region and re-establish some semblance of law and order, in a clinic on Albanian territory, near the town of Fushe Kruje, some prisoners organs were removed and sent abroad for transplantation. ICTY, which began initial review at the scene to find traces of possible trafficking in organs, suspended the investigation. Parts of evidence collected in the town of Ripe in Albania have been destroyed and can not be used for more detailed analysis. The State Department report for 2010 about the Dick Marty's report<sup>101</sup> states that persons were disappearing in the period from July 1999 to mid-2000 in Albania at informally established location near the towns Bicaq, Burrel, Rripe and Fushe-Kruje, and a small number of these people became the victims of organized crime, whose kidneys were extracted for the purpose of trafficking in human organs and it is believed that these people were later killed. Five members of the so-called Drenica group within the KLA are considered to be involved in these events, and these are Hashim Thaci, Xhavit Haliti, Kadri Veseli, Azem Sylja, and Fatmir Limaj who gave out the orders, and in some cases and personally supervised murder, imprisonment, beatings and tests in the context of the operations that were conducted in Albania between 1998 and 2000 under the command of the KLA. It also stated that it is suspected that the *head* of the entire Drenica Group was Hashim Thaci who gave them support and participated in it.<sup>102</sup> The State Department report for 2010 states that there were no reports of politically motivated disappearances, however, according to the International Committee of the Red Cross (ICRC), from the end of August, there were 1,822 persons still missing from the conflicts in 1998-99, of which 70 percent were Kosovo Albanians and 30 percent of Kosovo Serbs and other minorities.<sup>103</sup> EULEX<sup>104</sup> in late 2008 took over certain functions in the justice sector from UNMIK structures, and inherited a difficult and sensitive situation, particularly in the fight against serious crime: incomplete files, lost documents, witness statements that were not collected. EULEX Resolution calls to investigate criminal activities relating to disappearances, the indications on trafficking in organs, corruption and collusion between organized criminal groups and political circles, and the ICTY to fully cooperate with the EULEX.<sup>105</sup>

Ramush Haradinaj, the former Kosovo prime minister and commander of the Kosovo Liberation Army (KLA) and his associate Idriz Balaj, the commander of the KLA special unit the Black Eagles in 2008 were acquitted of charges for the liquidation of at

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<sup>101</sup><http://www.assembly.coe.int/CommitteeDocs/2010/ajdoc462010prov.pdf>, Inhuman treatment of people and illicit trafficking in human organs in Kosovo, Rapporteur Mr Dick Marty, (05.01.2016.)

<sup>102</sup>2010 Human Rights Report: Kosovo, <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154432.htm>, Committee on Legal Affairs and Human Rights, (05/01/2016)

Inhuman treatment of people and illicit trafficking in human organs in Kosovo, Draft report Rapporteur: Mr Dick Marty <http://assembly.coe.int/nw/xml/News/FeaturesManager-View-EN.asp?ID=964> (05/01/2016)

<sup>103</sup>Ibid.

<sup>104</sup>[http://www.eulex-kosovo.eu/en/front/\(15/01/2016\)](http://www.eulex-kosovo.eu/en/front/(15/01/2016))

<sup>105</sup>UN S/2013/72, Security Council: Report of the EU High Representative for Foreign Affairs and Security Policy to the Secretary-General on the activities of the EU Rule of Law Mission in Kosovo <http://www.unmikonline.org/SGReports/N1321969.pdf> (15/01/2016)



least 40 Serbs, Roma and Albanians during the Kosovo war, as well as torture, rape and expulsion of the civilian population, while Lahi Brahimaj was convicted and sentenced to six years in prison.<sup>106</sup> Apparently a lot of the prosecution witnesses changed their testimony or have withdrawn from testifying because of fear for their lives. The prosecution therefore filed an appeal against the judgment holding that legal procedures have not been carried out due to intimidation of witnesses. The first instance verdict was annulled and the process was restored. The prosecution should have proved that the KLA forces commanded by Ramush Haradinaj and the *Black Eagles*, commanded by Idriz Balaj, tortured and expelled civilians in the area between the village of Glodjane and Decani and killed those who refused to leave their homes. In the camp, which was established in May 1998 in Jablanica, as alleged in the indictment, the detainees were starved, physically abused, some have died from such consequences, and some were killed by the orders of the accused. The so called *Yellow House*<sup>107</sup>, a rural house on two floors, in Rripe, close to Burrella, in central Albania, is provided as a place where they carried out operations removing organs and as a place where the Kosovo Liberation Army led the trapped people from Kosovo and Metohija. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, on 29/11/2012 announced a public judgment,<sup>108</sup> according to which Ramush Haradinaj, Idriz Balaj and Lahi Brahimaj were acquitted of all charges.

## 6. CONCLUSION

It is essential that the strategy to combat trafficking in human organs is focused on three sides, to offer by potential living donors who do it for money to survive, the demand by the wealthy sick people who naturally do not ask about the price of organs that could save their lives and the traffickers as a link between these two sides. States should warn the public about the dangers of human trafficking for the purpose of organ removal and point out all forms of possible exploitation and to conduct public awareness campaigns on the issue. States should cooperate more closely to deny traffickers legal sanctuary and facilitate their extradition for prosecution. Such cooperation should have the aim to facilitate the voluntary and humane repatriation of victims. Successful regional and international cooperation and coordination will lead to the identification and interception of routes for human trafficking, which will facilitate the voluntary and humane return of victims to their homeland. Due to the constantly changing methods of recruitment and methods of exploitation of victims and the routes that the traffickers use, it is necessary to constant upgrade the knowledge of police officers and training staff to recognize victims of trafficking within the risk groups in order to send them to appropriate care. It is necessary to increase the cooperation of all institutions, from the moment of identification of victims

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<sup>106</sup>Case HARADINAJ et al., [http://www.icty.org/x/cases/haradinaj/cis/en/cis\\_haradinaj\\_al\\_en.pdf](http://www.icty.org/x/cases/haradinaj/cis/en/cis_haradinaj_al_en.pdf)  
Judgement Hardinaj, [http://www.icty.org/x/cases/haradinaj/tjug/en/121129\\_judgement\\_en.pdf](http://www.icty.org/x/cases/haradinaj/tjug/en/121129_judgement_en.pdf)  
(15/01/2016)

<sup>107</sup>Inhuman treatment of people and illicit trafficking in human organs in Kosovo, Rapporteur: Mr Dick Marty

<sup>108</sup>Public judgement 29 November 2012 PROSECUTOR v. RAMUSH HARADINAJ IDRIZ BALAJ LAHI BRAHIMAJ, [http://www.icty.org/x/cases/haradinaj/tjug/en/121129\\_judgement\\_en.pdf](http://www.icty.org/x/cases/haradinaj/tjug/en/121129_judgement_en.pdf),  
(15/01/2016)

to prosecution of the perpetrators, and to strengthen the existing cooperation between the police officers, judges and prosecutors. Conducting research on the issue of human trafficking and trafficking in human organs and the latest trends and statistical data collection contributes to combating trafficking. Legal persons should also be held accountable for committing a THB crime. In order to prevent transnational trafficking for the purpose of organ removal it is necessary, first of all, to *de lege ferenda* provide stronger oversight and control at the borders. There is a need in the countries of Southeastern Europe to introduce a provision in the CC of impunity for victims who commit crimes that are a direct result of being exposed to the trade and to appoint a national coordinator to fight against human trafficking as an independent body. It is not enough just to criminalize trafficking in human organs, but it is necessary to limit organ donation between people who are not relatives or in other kinship relationship by law. In order to increase the number of legally harvested organs for transplantation, and to reduce the figure of potential live donors, the states must increase the number of people who will bring to life a decision to donate their own organs after death. Accordingly, it is necessary to promote organ donation after death and improve cadaveric transplantation program, to reduce the need for organs from unrelated living donors. We should prevent manipulations of the waiting lists, conduct investigations into advertising availability and offering certain organs on the market, particularly through the Internet and printed advertisements. Finally, one should consider passing laws that would regulate the matter of trafficking in human organs and transplantation of organs by living donors, as *lex specialis*.

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