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Removal and trafficking of human organs – analysis from a criminological and human rights perspective

Usuwanie i handel ludzkimi organami analiza zjawiska w ujęciu kryminologicznym i prawnoczułowieczym

Abstract. The removal and trafficking of human organs, as a form of human trafficking, constitutes one of the most serious threats in the modern world. This article aims to comprehensively present this practice as a phenomenon related to human trafficking. The dichotomous analysis included in the article— regarding both the criminological perspective and human rights perspective—proves the validity of the statement that the removal and trafficking of human organs is a global threat that violates human rights and fundamental freedoms.

Keywords: trafficking in human organs, human trafficking, new forms of human trafficking, human rights

Streszczenie. Usuwanie i handel organami ludzkimi, jako jedna z form handlu ludźmi, stanowi jedno z najpoważniejszych zagrożeń występujących we współczesnym świecie. Celem artykułu jest kompleksowe przedstawienie tego procederu jako zjawiska pokrewnego względem handlu ludźmi. Poczyniona w artykule dychotomiczna analiza - dotycząca perspektywy kryminologicznej i praw człowieka - dowodzi słuszności stwierdzenia, że usuwanie i handel ludzkimi organami jest niebezpieczeństwem o charakterze ogólnoświatowym, naruszającym jednocześnie prawa człowieka i jego podstawowe wolności.

Słowa kluczowe: handel narządami ludzkimi, handel ludźmi, nowe formy handlu ludźmi, prawa człowieka

Organ trafficking – an overview

Trafficking in human organs is very often overlooked in favour of studies focusing on human trafficking. While this practice's scale appears small, its dynamics are accelerating due to the development of transplantology and tourism. It is worth noting that organ trafficking is complex and difficult to detect. This crime targets the economic aspects of society, and the poor development of a country allows the spread of the activity of organised crime groups involved in this illegal practice.

Organ trafficking is a multifaceted and complex phenomenon at many levels. One leading cause of the growth of this crime is the rise of diseases of affluence, devastating human organs. The demand for human organs, cells or tissues is increasing in highly developed countries. This is linked to the increasing demands of patients for the development of new treatments. However, the transplant market in every country is facing a shortage of organs. The discrepancy between demand and the number of available organs has led to the creation and development of the so-called red market, where human organs are illegally procured, and transactions concerning such organs are carried out.¹

A major concern is transplant tourism, which is on the rise. The United Network for Organ Sharing, a US organisation, defines this practice as the purchase of an organ for transplantation abroad, which involves access to an organ in circumvention of the laws, rules or processes of any or all of the countries involved.²

It is worth noting that organ trafficking is a relatively new form of trafficking, its rise being linked to the development of transplantation. The second half of the 20th century marked a turning point. Due to its recent emergence and dynamic nature, organ trafficking does not have a legal definition in Polish legislation. According to the literature, organ trafficking is the trafficking of human organs, tissues or other products

¹ E. Smoleń, M. Ścieranka et al., *Aspekty finansowe i prawne związane z transplantacją w opinii studentów z uwzględnieniem czynników socjodemograficznych*, "Problemy Pielęgniarstwa" 2018, vol. 28, No. 1.

² Budiani-Saberi DA, Delmonico FL (2008). "Organ trafficking and transplant tourism: a commentary on the global realities", *American Journal of Transplantation*. 8 (5):925–29. doi: 10.1111/j.1600-6143.2008.02200.x.

derived from the body, usually for illegal transplantation. The World Health Organization considers commercial, for-profit transplantation or transplants performed outside national medical systems to be organ trafficking.³ In addition, the following is considered organ trafficking:

- circulating advertisements for the disposal, acquisition or brokering of the disposal or acquisition of a cell, tissue or organ for transplantation against payment;
- acquiring, disposing of, brokering the acquisition or disposal of another person's cells, tissues or organs, taking part in transplantation or making available cells, tissues or organs procured in contravention of the Act;⁴
- conducting the activities of a tissue establishment without the required authorisation;
- importing or exporting from/to Poland a cell, tissue or organ without the required authorisation;
- failure to report certain information using registration tools.⁵

Modus operandi of an organ trafficker

Skilled at working across borders, traffickers take advantage of low economic development in some countries and poor access to medical expertise in other countries. In addition, they operate in an increasingly sophisticated manner, taking advantage of the corrupt environment and then exploiting people living in poverty and deprivation. Cases investigated by the state's national authorities demonstrate that traffickers can operate over a prolonged period with a large number of victims before – if at all – they are apprehended. A curious case showed that one group of traffickers in Africa carried out about 500 kidney transplants in various private homes and hospitals over seven

³ J.H. Tazeen, *Organ Trafficking: Global Solutions for a Global Problem*, American Journal of Kidney Diseases, Volume 54, Issue 6, 2009.

⁴ See Act of 1 July 2005 on the collection, storage and transplantation of cells, tissues and organs (Dz. U. /Journal of Laws/ 2005, No. 169, item 1411).

⁵ E.M. Guzik-Makaruk, *Przestępczość okołotransplantacyjna*, [in:] Kryminologia – Stan i perspektywy rozwoju, ed. K. Zając, Warszawa 2019, pp. 736–737.

years.⁶ The perpetrators of this crime are also involved in pairing donors with recipients through medical testing to ensure donor and recipient compatibility, creating and offering appropriate medical procedures, and providing postoperative treatment. The hallmark of organ traffickers is manipulation and reassurance to victims that selling off a kidney is the only way to cope with poverty. Increasingly, traffickers are using the internet to lure their victims. However, they choose their own country of origin when selecting a victim to make the transaction quick and efficient. In addition, they know their place of business; very often, the perpetrators are not only from the same country but also from the same region as the victims. They exploit the poor education of their victims by offering handsome payments. Male organ traffickers dominate, but women are also increasingly becoming organ traffickers. A curious development with female perpetrators is that they may themselves have been victims of human trafficking in the past. The reason women engage in illicit activities may be due to psychological damage caused by traumatic experiences. The perpetrators choose young and healthy individuals as their victims, who guarantee the best organs for harvesting.⁷

Financial gain is identified as the main motivation for organ traffickers.

Statistics

The unreported crimes will never make it possible to determine accurately their exact number. Specialists who study organ trafficking point out that it is difficult to track the scale of the problem. This is because, very often, illegal transplants take place in reputable medical facilities, and certified doctors perform the procedures. Organ trafficking is estimated to generate around \$1.5 billion annually from

⁶ P. Antosiak, *Handel ludźmi. Współczesne oblicze niewolnictwa*, Libertas Religiosa, Warszawa 2023.

⁷ I. Malinowska, Profil sprawców handlu ludźmi, (in:) *Handel ludźmi przestrzeń prawnokarna i kryminalistyczno-kryminologiczna*, eds. P. Łabuz, I. Malinowska, M. Michalski, T. Safjański, Warszawa 2017

around 12,000 illegal transplants in the face of a worldwide shortage of legally harvested organs.⁸ It should be borne in mind that organ trafficking statistics are inconclusive and divergent, as there is no single database that compiles all the illicit procedures related to the above criminal act. In addition, it should be remembered that research on organ trafficking is scarce. Most studies on organ trafficking come from Western countries.

The United Nations publishes a *Global Report on Trafficking in Person* every two years. The most recent data from 2022 show that organ trafficking accounted for 0.2% of all human trafficking. However, this number ranged from 1% to 2%, depending on the continent.

Studies point to the problem of disclosing the exact number of transplants. An example of a country that distorts the statistics of illegal organ harvesting is China, where organs are harvested from death row inmates. The number of deaths among prisoners has been classified as a military secret, thus concealing the exact number of executions carried out. Punishments are carried out on so-called execution vans, which are located close to medical centres to allow rapid transport of organs.⁹

Removal and trafficking of human organs and international law

The analysis in the previous section shows that the removal and trafficking of human organs is an organised practice carried out on a very large scale in the modern world. Therefore, it should be recognised that the sequence of actions associated with it significantly affects international security, thereby endangering society worldwide. Its effects, both factual and legal, go far beyond the territory of a single state and should be subject to the jurisdiction of international courts. Accordingly, it is accurate to say that human trafficking, in all its forms, should be included among the most serious crimes of concern to

⁸ J.H. Tazeen, *Organ Trafficking: Global...*

⁹ T. Stec, *Handel organami ludzkimi – problem nadal aktualny*. Tarnowskie Studia Teologiczne 1, pp. 83–97.

the international community as a whole,¹⁰ referred to as *delicta iuris gentium*.¹¹

One has to agree with the thesis that the activities undertaken for the removal and trafficking of human organs involve violations of human rights and fundamental freedoms. Above all, the practice described violates a core value of any democratic legal system, which serves as an opening for the most important international act: human dignity.¹² Not only does it provide a common denominator for protecting human rights in the basic law texts of national law and fundamental international agreements, but it is also the source of all other rights and freedoms. Even if a given act does not contain an *expressis verbis* reference to human dignity, as in the case of the European Convention on Human Rights (hereinafter the ECHR),¹³ it must be recognised that the rights guaranteed therein derive precisely from this value,¹⁴ and its protection derives from the individual provisions of the Convention.¹⁵ Indeed, it is notable that all contemporary forms of trafficking go some way to

¹⁰ This view is expressed, among others, by the American scholar Tom Obokata, clearly emphasising the nature of human trafficking and all its forms as a particularly egregious and endangering international community crime, which is reflected in its perception as a *delictum iuris gentium*. For more, see T.Obokata, *Trafficking of Human Beings as a Crime against Humanity: Some Implications for the International Legal System*, 2005, vol. 54, No. 2, pp. 445–457, p. 445.

¹¹ It should be stressed that the most serious crimes of concern to the international community as a whole, or *delicta iuris gentium*, are not the same as international crimes. The latter are listed in Article 5(1). of the Rome Statute of the International Criminal Court (Dz.U. /Journal of Laws/ 2003, No. 78, item 708). It states that international crimes within the jurisdiction of the Court include war crimes, crimes against humanity, the crime of genocide and the crime of aggression.

¹² A. Krzywoń, *Prawa człowieka. Seria akademicka.*, (eds.) W. Brzozowski, A. Krzywoń, M. Wiącek, 4th edn, Wolters Kluwer, Warszawa 2023, pp. 127 et seq.

¹³ Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms done at in Rome, subsequently amended by Protocols Nos. 3, 5 and 8, and supplemented by Protocol No. 2 (Dz. U. /Journal of Laws/ 1993 No. 61, item 284).

¹⁴ A. Krzywoń, *Prawa człowieka...*, p. 128.

¹⁵ In particular, Articles 2 and 3 ECHR.

exposing human rights dynamics. This term should be understood as a constantly evolving interpretation of existing protected rights and the creation of new standards in their understanding. Therefore, there is no doubt that the most important international human rights instruments drafted halfway through the last century, despite the global changes taking place in the modern world and the emergence of new forms of violations of fundamental rights and freedoms, invariably provide such protection.

It should be noted that the practice of removal and trafficking of human organs clearly violates basic international regulations, which cover the issue of preventing and combating trafficking in human beings, their tissues and organs. This refers to both binding international agreements and soft law, which are part of the universal system and regional standards. The identification of the international law instruments concerned and their concise characterisation will follow.

It should be noted that existing acts of international law both criminalise the removal and trafficking of human organs and oblige individual states to take action and introduce appropriate solutions in their national law system. The problem is that these are primarily non-binding acts, containing only generally formulated demands. Nonetheless, it can be said that among the most important, in addition to the numerous UN General Assembly resolutions,¹⁶ are

¹⁶ Particular attention should be paid to the Resolution adopted by the General Assembly on 20 December 2004 [on the report of the Third Committee (A/59/494)]. 59/156 Preventing, combating and punishing trafficking in human organs. It is noteworthy that, in the text of this resolution, the concern about the potential escalation of trafficking and removal of human organs in relation to organised crime and the negative impact on the economic sphere of states is expressed explicitly: "Alarmed at the potential growth of exploitation by criminal groups of human needs, poverty and destitution for the purpose of trafficking in human organs, using violence, coercion and kidnapping, especially kidnapping of children, with a view to exploiting them by means of organ transplant operations, Noting with concern that trafficking in human organs, wherever it occurs, constitutes a gross violation of the human rights, including the integrity, of its victims"; for more, see A. Wedeł-Domaradzka, *Prawnokarne aspekty obrotu komórkami, tkankami i narządami w świetle*

the Declaration of Istanbul¹⁷ and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (hereinafter the Palermo Protocol¹⁸). The latter, due to its binding nature, seems the most relevant. Indeed, its content, firmly anchored in the axiology of human rights, constitutes binding regulations for each state party. The motivation for the Palermo Protocol is mentioned explicitly: "Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons, Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected". The Protocol thus remedies a lack of definition in Polish legislation. Article 3(a) defines trafficking in persons as "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. Exploitation shall include, at a minimum,

prawa polskiego w kontekście prawa międzynarodowego, [in:] J. Janikowski, R. Krajewski (eds.), *Aktualne zagadnienia pozakodeksowego prawa karnego i prawa wykroczeń*, Wydawnictwo Uniwersytetu Kazimierza Wielkiego w Bydgoszczy, Bydgoszcz 2019, p. 141.

¹⁷ The Declaration of Istanbul was drafted in 2008 as a joint effort between The Transplantation Society and the International Society of Nephrology in Dubai, initiated by a call from the WHO member states. It is contained in the preamble and calls on member states to "take measures to protect the poorest and vulnerable groups from transplant tourism and the sale of tissues and organs, including attention to the wider problem of international trafficking in human tissues and organs" (https://www.declarationofistanbul.org/images/documents/doi_2008_English.pdf).

¹⁸ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children Dz. U. /Journal of Laws/ of 2005, No. 18, item 158), supplementing the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on 15 November 2000 (Dz. U. /Journal of Laws/ of 2005, No. 18, item 160).

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.”¹⁹

Parallel to the universal international acts, regional regulations should be considered. The European system for protecting human rights will be considered due to the scope of this paper and our country's adherence to European standards. It is important to mention here that the removal and trafficking of human organs became a subject of interest earlier than in the case of acts of the universal system, which is related to their higher level of development.²⁰ This is because they include the most important international acts developed under the auspices of the Council of Europe, such as the European Convention on Human Rights and Biomedicine²¹ (hereinafter ECHR) and its Additional Protocol²² drawn up in 2002, as well as the Council of Europe Convention against Trafficking in Human Organs.²³ These international agreements are intended to extend the protection of human rights and fundamental freedoms in view of concerns that they are being violated due to the development and progress of medical treatments and solutions. The

¹⁹ Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Dz. U. /Journal of Laws/ of 2005, No. 18, item 160). It is worth highlighting that, based on Article 3(a) of the Convention, a definition of trafficking in human organs was included in the Declaration of Istanbul.

²⁰ A. Wedeł-Domaradzka, *Prawnokarne aspekty obrotu komórkami, tkankami i narządami w świetle prawa polskiego w kontekście prawa międzynarodowego*, [in:] J. Janikowski, R. Krajewski (eds.), *Aktualne zagadnienia pozakodeksowego prawa karnego i prawa wykroczeń*, Wydawnictwo Uniwersytetu Kazimierza Wielkiego w Bydgoszczy, Bydgoszcz 2019, p. 143.

²¹ Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (CETS 164), Oviedo, 4.IV.1997.

²² Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings (CETS 168), Paris, 12.I.1998.

²³ Council of Europe Convention against Trafficking in Human Organs (CETS 216), Santiago de Compostela, 25.III.2015.

ECHRb is particularly noteworthy as it is the first Council of Europe convention to include in its scope the protection of human rights in relation to the development of medicine and new technologies.²⁴ With the exception of the core value of human dignity, the content was also based on the protection of human rights, ethics and medicine. The ECHRb's Additional Protocol is of considerable importance in terms of the content of the individual agreements analysed. As it supplements the wording of the Convention, it thus extends its prohibitions; according to the ECHRb, "The human body and its parts shall not, as such, give rise to financial gain."²⁵ Article 22 of the Additional Protocol, on the other hand, explicitly prohibits trafficking in human organs and tissues.²⁶ The referred regulations may be considered to supplement the definitional gaps in national legislation, which, however, does not result in changes from the perspective of the Polish legal order, as Poland has signed the ECHRb but has not yet ratified it.

All three aforementioned international acts originated from the Council of Europe. Therefore, they refer to the content and values conveyed in the basic international acts and declarations to a large extent, which is reflected in their objectives, namely the protection of human rights with particular emphasis on respect for human dignity, freedom and integrity. It should be emphasised that, in addition to their axiological overtones, these conventions, together with their protocols, exhort and oblige parties to take actual action to enforce the provisions through the tools of national law. The wording of these acts criminalises the removal and trafficking of human organs, making the aforementioned regulations a viable and effective international legal instrument to combat this practice. Such conclusions may be the starting point for reflections concerning, inter alia, the need for Poland to ratify already signed international conventions to implement them into the national legal order.

²⁴ A. Krzywoń, *Prawa człowieka...*, p. 99.

²⁵ Article 21 ECHRb

²⁶ Article 22 of the Additional Protocol to the ECHRb states: "Organ and tissue trafficking shall be prohibited."

Removal and trade of human organs and human rights

As already mentioned, regardless of the system or organisation under whose aegis a particular international act guaranteeing the protection of human rights and freedoms was created, their common denominator is inalienable human dignity. Tadeusz Jasudowicz described this dignity as a starting point, a path and a goal for human rights.²⁷ Hence, it underpins fundamental international legal documents, from the Universal Declaration of Human Rights (hereinafter the UDHR)²⁸ and the European Convention on Human Rights, the International Covenant on Civil and Political Rights (hereinafter the ICCPR),²⁹ and the EU Charter of Fundamental Rights (hereinafter the CFR).³⁰ It is difficult not to accept that human trafficking and other forms of trafficking, which include trafficking in human organs, violate their provisions.³¹ It is worth mentioning that, according to the Strasbourg Court, human trafficking is tantamount to modern slavery, which implies the immanent reduction of another human being to the role of an object, thus constituting a serious violation of dignity.³²

²⁷ T. Jasudowicz, M. Lubiszewski, *Prawa człowieka i ich ochrona*, B. Gronowska, T. Jasudowicz, M. Balcerzak, M. Lubiszewski, R. Mizerski, 1st edn, Wydawnictwo "Dom Organizatora", Toruń 2005, p. 94.

²⁸ Universal Declaration of Human Rights adopted by the UN General Assembly in Paris on 10 December 1948.

²⁹ International Covenant on Civil and Political Rights, opened for signature at New York on 19 December 1966 (Dz.U. / Journal of Laws/ 1977, No. 38, item 167).

³⁰ Charter of Fundamental Rights of the European Union (OJ 2012/C 326/02, p. 389). It should be added that the so-called British and Polish Protocol (Protocol No. 30 to the TEU) complicates defining the exact scope of the CFR. This issue is addressed and discussed comprehensively by Adam Krzywoń; for more, see A. Krzywoń, *Prawa człowieka...*, p. 103.

³¹ Interpelacja nr 24248 do ministra zdrowia w sprawie nielegalnego handlu narządami ludzkimi, <https://orka2.sejm.gov.pl/IZ6.nsf/main/546BC040> (accessed 31 March 2024).

³² ECtHR judgment of 7.1.2010, 25965/04, Rantsev v. Cyprus and Russia; for more, see A. Krzywoń, *Prawa człowieka...*, p. 131.

Analysing the content of each of the above-mentioned international documents, one can come to the conclusion that none of them explicitly prohibits human trafficking or the removal and trafficking of human organs.³³ The exception is Article 3 of the CFR, customarily understood as the right to the integrity of the person (Article 3(2)(c), the wording of which articulates “the prohibition on making the human body and its parts as such a source of financial gain”). Therefore, there is no doubt that, on the grounds of the cited provision of the CFR, the practice in question constitutes a violation. However, violations of the right to physical and mental integrity of the individual do not exhaust human rights violations. Indeed, it significantly violates the prohibition of slavery and servitude³⁴ and, in accordance with the case law of the Strasbourg Court, the ban on torture and inhuman or degrading treatment and punishment and the right to respect for private and family life. By way of conclusion, it is important to echo Zbigniew Lasocik’s view, defining human trafficking and its various forms as a kind of accumulation of violations of fundamental human rights and human dignity.³⁵ These violations concern, inter alia, the already indicated prohibition of torture, inhuman and cruel treatment or punishment³⁶ and the prohibition of slavery and forced labour,³⁷ as

³³ It should be emphasised here that both the UDHR and the ECHR are international documents drawn up after the Second World War. Their main focus was to restore faith in fundamental human rights and guarantee world peace for future generations. Thus, it can be assumed that their idea and subsequent work on their content were based on the assumption of drafting solemn and general acts while emphasising the axiology of human rights rather than formulating provisions criminalising specific phenomena or practices.

³⁴ For more, see M. Lubiszewski, T. Jasudowicz, *Prawa człowieka...*, pp. 255–258.

³⁵ Z. Lasocik, *Handel ludźmi – aspekty społeczne i prawne*, [in:] *Studia Socjologiczne*, 2007, No. 4/2007, p. 34.

³⁶ Contained in Article 5 UDHR, Article 3 ECHR, Article 7 ICCPR and Article 4 CFR.

³⁷ Contained in Article 4 UDHR, Article 4 ECHR, Article 8 ICCPR and Article 5 CFR.

well as the right to life,³⁸ the right to security of person³⁹ and the right to the protection of private⁴⁰ and family life.⁴¹

The above enumeration of human rights violations permits drawing conclusions concerning both the scope of protection of individual rights and freedoms and the extent of the effects of the practice in question. This is because it affects a number of fundamental rights and freedoms simultaneously, stemming from international instruments specific to the universal system and regional standards.

Removal of human organs in the case law of the European Court of Human Rights

This paper has already pointed out an important characteristic of human rights as a “living instrument”, subject to a dynamic expansion of the scope of protection justified by society’s continuous development and, consequently, the emergence of new phenomena and violations leading to threats to human rights. It was also emphasised that the broadening of this scope and standards follows new interpretations contained in key international instruments on rights and freedoms. One actor making this interpretation in Europe is the European Court of Human Rights, whose activities are defined by and linked to the European Convention on Human Rights. It is useful to consult the Court’s case law in determining the scope of protection provided by a given provision of the ECHR. This makes it possible to determine which

³⁸ Contained in Article 3 UDHR, Article 2 ECHR, Article 6 ICCPR and Article 2 CFR.

³⁹ Contained in Article 3 UDHR, Article 5 ECHR, Article 9 ICCPR and Article 6 CFR.

⁴⁰ Contained in Article 12 UDHR, Article 8 ECHR, Article 17 ICCPR and Article 7 CFR.

⁴¹ B. Kleboko., *Handel ludźmi jednym z największych współczesnych zagrożeń dla realizacji idei praw człowieka*, [in:] M. Jabłoński, T. Jurczyk, P. Gutierrez (eds.), *Międzynarodowa ochrona praw człowieka – współczesne problemy na świecie*, Wrocław 2015, p. 29, as cited in Z. Lasocik, *Handel ludźmi – aspekty społeczne i prawne*, [in:] *Studia Socjologiczne*, 2007, No. 4/2007.

and if the violation described in the facts of a given complaint violates the invoked provision of the Convention, even though its wording does not correspond to the grounds on which the complaint was brought. This is important for examining violations caused by the removal of human organs, as the European Convention on Human Rights does not explicitly condemn this practice in any of its provisions. Therefore, the Court's interpretative role proves indispensable, as evidenced by two ECtHR judgments: *V.C. v. Slovakia*⁴² and *N.B. v. Slovakia*.⁴³ Although the facts described do not directly concern trafficking in human organs, they do indeed draw attention to the interpretation of the protection guaranteed by the broad right to privacy and the prohibition of torture in the case of the removal of human organs (here, female reproductive organs). It should be emphasised that the judgments cited are somewhat unique in the ECtHR's jurisprudence; the two complaints brought against the same state were dealt with at approximately the same time; moreover, the facts described in them and the profiles of the applicants show similarities.

The complaints of *V.C.* and *N.B.* against Slovakia were brought after both women were sterilised in a Slovakian hospital without their consent after the birth of the second child. These interventions were allegedly intended to prevent these women or their unborn children from facing life-threatening risks should the women become pregnant again. Ultimately, the Court found that two provisions of the Convention had been violated: Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) and Article 8 (right to respect for private and family life). Violation of Article 3, according to the Court, was due to gross interference with physical integrity, as well as the mental anguish⁴⁴ caused by the deprivation of the applicants' reproductive capacity. The second violation concerned, in turn, the state's failure to comply with its positive obligations to ensure that the applicants realised their right to respect for family life by affecting their

⁴² ECtHR judgment of 8.2.2012, 18968/07 *V.C. v. Slovakia*.

⁴³ ECtHR judgment of 12.9.2012, 29518/10, *N.B. v. Slovakia*.

⁴⁴ <https://www.globalhealthrights.org/v-c-v-slovakia/> (accessed 28 March 2024).

reproductive life. As V.C. and N.B. were women of Roma origin, both complaints also alleged a violation of Article 14 of the ECHR, which prohibits discrimination. The facts presented, however, did not make it possible to clearly determine whether the doctors' motivation was based on grounds of race⁴⁵ and, therefore, did not establish a violation under Article 14 of the Convention.

It should be emphasised that the ECtHR's consistently created jurisprudential standards are relevant to more than the state concerned. In the case of jurisprudential precedents, they are addressed to all states parties.⁴⁶ However, it cannot be overlooked that the entirety of the Court's jurisprudential *acquis* plays a significant role in interpreting and determining the scope of protection of the various rights and freedoms indicated in the text of the ECHR, as is the case of violations related to the practice of removal of human organs. Moreover, as one might intuitively assume, these violations are not limited to the right guaranteed by Article 3 of the Convention. It is clear from the foregoing that they are also concerned with the right to privacy in its broadest sense and fundamental rights and freedoms under other instruments of international law created outside the Council of Europe.

Conclusions

The removal and trafficking of human organs is one of the new forms of human trafficking that is steadily escalating in the modern world. From a criminological point of view, it is a highly elaborate and multifaceted phenomenon, especially when considering the *modus operandi*. Given that it is often a cross-border crime, it violates national laws and, above all, human rights.⁴⁷ Thus, the extent of this illegal practice, which clearly endangers the international community, leads one to reflect

⁴⁵ <https://www.globalhealthrights.org/n-b-v-slovakia/> (accessed 28 March 2024).

⁴⁶ A. Krzywoń, *Prawa człowieka...*, p. 95.

⁴⁷ S. Meyer, *Trafficking in Human Organs in Europe: A Myth or an Actual Threat?*, [in:] *European Journal of Crime, Criminal Law and Criminal Justice* 14(2), Brill Nijhoff, Leiden 2006, p. 228

on its recognition as a type of *delicta iuris gentium*.⁴⁸ This, in turn, is reflected in the creation of international legal mechanisms governing the protection of human rights in the face of the threat of human trafficking. We are talking about both basic international documents drafted in the previous century under the aegis of the UN General Assembly and the Council of Europe and binding acts of European Union law,⁴⁹ which, apart from the axiological dimension of protection, impose significant obligations on Member States related to compliance with the regulations in question.

There is no doubt that the removal and trafficking of human organs is a new form of human trafficking. Therefore, it remains an area for analysis and research, especially in criminology. The reports and statistics will likely lead to pessimistic predictions about this practice. However, it is essential to note the existence of a number of international regulations and agreements that, at present, are intended to provide a practical foundation for demonstrating violations and enforcing liability arising therefrom.

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⁴⁸ T. Obokata, *Trafficking of Human Beings as a Crime against Humanity: Some Implications for the International Legal System*, [in:] *International and Comparative Law Quarterly*, 2005, vol. 54, No. 2, pp. 445–457, p. 445.

⁴⁹ C. Rijken, E. de Volter, *The European Union's struggle to realize a human rights-based approach to trafficking in human rights: Call on the EU to Take THB-Sensitive Action in Relevant Areas of Law* [in:] *Connecticut Journal of International Law*, 25(49), Hartford, Connecticut 2010, p. 78 et seq.

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