



TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF ORGAN REMOVAL

A Case Study Report

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2. Organ recipients who paid for kidney transplantations abroad: a report (November 2014)
- 3. Trafficking in human beings for the purpose of organ removal: a case study report (November 2014)**
4. Indicators to help data collection and identification of trafficking in persons for the purpose of organ removal (August 2015)
5. Recommendations to improve non-legislative response (August 2015)

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1. Introduction

Background and objectives

The present report builds upon the conclusions presented in the HOTT project's literature review, 'Trafficking in human beings for the purpose of organ removal: a comprehensive literature review' (1). This review concluded that a study of the current literature provides limited information and knowledge about the nature and incidence of the crime, and needs to be strengthened by other sources of information.

The HOTT project's objectives are to:

- increase knowledge about trafficking in human beings for the purpose of organ removal
- raise awareness among target groups
- improve the non-legislative response

Purpose of study

This case study report addresses the gaps that were already highlighted in the HOTT project's literature review. This study's purpose is to contribute to existing gaps in knowledge concerning a) the actors and their modus operandi of contemporary organ trafficking networks and b) the experiences of police and prosecution in disrupting and prosecuting the persons involved in these networks.

Selection of countries and cases

To acquire in-depth knowledge about the criminal networks involved in trafficking in human beings for the purpose of organ removal (THBOR), the research team collected information in the field by interviewing people worldwide who were directly involved in and affected by the events that led to prosecutions and convictions. With the financial support of the European Commission Directorate General Home Affairs, the Central Division of the National Police of the Netherlands, the Magnus Bergvalls Foundation (Sweden) and the Royal Physiographic Society (Sweden), the research team travelled to 4 countries to study 3 trafficking cases:

1. South Africa, Durban (November 2012) – Netcare case
2. Republic of Kosovo, Priština (September 2013) – Medicus Clinic case
3. State of Israel, Tel Aviv and Jerusalem (October 2013) – Netcare and Medicus Clinic case
4. United States of America (USA), New York (March 2013) – Rosenbaum case

Visiting these countries made it possible to talk to key persons and to access data that would not have been acquired through literature- or desk research. The countries and cases were selected because of common features: police and prosecution investigated international networks involving (elements of) THBOR and succeeded in gathering sufficient evidence to bring these cases to court that led to convictions of the accused, they relied on assistance from other countries and were able to demonstrate how to achieve successes and overcome obstacles in international criminal collaboration.

Aims of study

The research questions were:

Research questions

1. What were the signals of the illegal activities that led to the police investigation?
2. How was the criminal investigation performed?
3. What were the modus operandi of the actors?
4. Under what laws and charges did the prosecution(s) take place?
5. What were the obstacles to prosecution and how were they addressed?
6. What was the judgment in the case?

Other cases and countries

The cases presented in this report do not fully reflect the current global status quo of the human organ trade. Investigations and convictions of (suspected) networks took/take place in China, India, Greece, Ukraine, Singapore, Jordan, Bulgaria, Turkey, Moldova, Belarus, Costa Rica, Spain and Brazil. These countries are not addressed in this report, but are presented, amongst others, by the Organization for Security and Co-operation in Europe in its report on trafficking in human beings for the purpose of organ removal in the OSCE Region (2), in the United Nations Office on Drugs and Crime (UNODC) Case Law Database (3) and in the media (4). According to Organs Watch, networks also exist in Argentina, Cyprus, Honduras, Panama, Philippines, Ecuador, Bolivia, Colombia, Syria, Iran (where brokers infiltrate a regulated system of organs trafficking), Vietnam, Cambodia, Nepal, Thailand, the Philippines, Pakistan, Egypt and Albania.

Furthermore, recent research reveals that indications and suspicions of organ trafficking occur in many European countries, that are/have not been investigated. For instance, the HOTT project's second report (5) illustrates that patients travel abroad from Sweden, The Netherlands and the former Yugoslav Republic of Macedonia to purchase kidney transplants in China, Pakistan, India, Iran and other countries. A 2013 survey held amongst transplant professionals in The Netherlands found that almost half of the professionals have treated patients in the last 5 years who travelled abroad for kidney transplants, with suspicions or certainty of organ purchase in 70% of cases. These patients are not reported due to doctors' duty of confidentiality and their privilege of non-disclosure.¹ A 2014 report (6) by the Dutch National Police presents signals of trafficking in human beings for the purpose of organ removal in The Netherlands that could not be further investigated, because the signals did not contain sufficient information in order for a police investigation to be performed. The impact of the demand for organs originating in Europe and other regions on the global organ trade should not be underestimated and should be more rigorously addressed. The organ trade is an international crime that is not confined to the regions and countries presented herein.

¹ See <http://www.erasmusmc.nl/1172194/2014/4881680nierpatientenbetalenvoororganen?lang=en> (5) [work in progress]

2. Methods and sources

This study is based on the following research methods:

- in-depth interviews
- study of case materials

The interviews were the predominant research method. In addition, the research team collected a large number of documents. The team also conducted one field observation. This took place during a court hearing in South Africa and was recorded in field diaries. The methods are described in more detail below. The research materials were supplemented by published research in scholarly, medical and human rights journals and media reports.

3.1 Interviews

The number of interviews and respondents are listed below. Most interviews were held with more than one person and some respondents were interviewed more than once. The respondents came from a variety of backgrounds. Three interviews were conducted with the help of an interpreter: with a police officer, with a representative of the Ministry of Health and with an organ recipient. The interviews aimed to get insight into the respondents' experiences and perspectives.

Interviews and respondents

Respondents	Number of respondents	Number of interviews
Police officer	8	6
Prosecutor	8	5
Dpt. of International Affairs representatives	2	
Defense lawyer	7	5
Ministry of Health representative	3	3
Ministry of Internal Affairs representative / National Coordinator Human Trafficking	2	1
International organization representative	7	4
Insurance company representative	1	1
Nephrologist / surgeon	4	3
National transplant coordinator	1	1
Social worker	1	1
Organ recipient	3	6
Founders of non-profit organization on organ donation	2	1
Total	49	37

Selection of the respondents

Respondents assisted the team members to get in touch with new involved persons after their arrival in the country. Interviewees were e-mailed and/or phoned with the request for an interview. All were given an information sheet prior to each interview. This sheet described the purpose of the HOTT project, the

aims of this study and presented the names, affiliations and contact details of the members of the research team. It also emphasized that data would be used anonymously and kept strictly confidential.

Data processing and analysis

The interviews were tape-recorded if so permitted by the respondent and transcribed verbatim by the project team. Due to the sensitive nature of the topics, a number of respondents did not allow being tape-recorded. In these cases, the research team took notes during the interview and had written reports based on the notes immediately after the interview.

Questions

The interviews took place using a 15-page, uniform, semi-structured list of prepared questions that addressed different themes, derived from the research questions. Small modifications were made in order to adapt questions to the country in question.

3.2 Case materials

Case materials formed the second source of this study. The following documents were provided by respondents and given to the research team:

- Kosovo: indictment, closing statement, judgment (containing witness- and victim statements), various legislation, defence letters, security council resolutions;
- South Africa: charge sheets, legislation, judgment, a large number of (court) documents including notices of motion, respondents' answering affidavits, applicant's practice notes, admissions of guilt, plea sentence agreement;
- USA: transcript of the sentencing hearing, criminal complaint, pre-sentence memorandum of the defence, charge sheets;
- Israel: Organ Transplant Act, Penal Act, Prohibition of Trafficking in Persons Act (Legislative Amendments), Organ Transplantation Regulations, Memorandum of the Ministry of Health's Director General, indictments, protocols of court sessions, court's rulings and judicial decisions, presentation of the deputy general manager of a health insurance company, presentation of the director of Overseas Surgeries Department in a public healthcare provider and presentations by the Israel Transplant Center.

3. Scope and use of terms

The HOTT project is a response to the call by the European Commission Directorate General Home Affairs for project proposals focusing on *trafficking in human beings* (7). The primary scope of this project is therefore *trafficking in human beings for the purpose of organ removal* (THBOR). Consequently, THBOR is the main focus of this report. However, laws directed against human trafficking were not applied in all of the studied cases. Because these cases contained elements of THBOR, they are addressed in this report.

THBOR is defined and prohibited in Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings (8) and the Directive 2011/36/EU of the European Parliament and of the Council (9). THBOR is also criminalized in Article 3 of the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter Palermo Protocol) which supplements the UN Convention against Transnational Organized Crime (10). THBOR is further prohibited by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (11). In this report the definition is used as laid down in Article 3 of the Palermo Protocol. This protocol defines THBOR as:

Article 3 Palermo Protocol

“For the purposes of this Protocol:

- a) “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. 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;*

- b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used [...].”*

The full article can be found in Article 3 of the Palermo Protocol (10).

This definition includes 3 key elements: an action (e.g. recruitment and transfer), a means (e.g. coercion and deception) and a purpose (exploitation). These elements have to be present in order for an act to constitute THBOR. If the victim is a child however, the presence of these means does not have to be proven (12). The definition does not prohibit the trade in organs per se. In order to be classified as a criminal act it is not so much the intended sale and purchase of organs, but the exploitative actions and means used to remove a person’s organs that count (13). The HOTT project’s literature review addresses this definition in more detail as well as other terms² and definitions that are used throughout this report (1).

² Chapter 1.5.3. of the literature review presents the terms used throughout this report.

4. Case Studies

5.1 South Africa – The Netcare Case

Start of investigation: 2003

Charges: fraud; forgery; uttering; unlawful acquisition; use or supply of tissue, blood or gamete (minors); use or possession of proceeds unlawful activities; illegal receipt of payments (minors)

Convicted: Netcare represented by Ian Goble, 1 nephrologist, 1 recipient, 1 translator, 1 local coordinator and 1 broker

Remaining accused: 4 transplant surgeons, 2 transplant coordinators

Respondents of the study [R]: police investigators, prosecutors, defense attorney, social worker, representative of the Ministry of Health

Case material: charge sheets [D1], legislation [D2], various court papers from the proceedings [D3]

*Case study by Frederike Ambagtsheer, Susanne Lundin, Martin Gunnarson and Jessica de Jong
23th November – 3th December 2012; Durban, South Africa*

“After seven years of obfuscation and denial, South Africa's largest private healthcare group, Netcare, finally confessed to its role in a cash-for-kidneys scheme and to benefiting from associated international trafficking of living donors. (-) Netcare's conviction in the Durban commercial crimes court is said to be a world first -- no other hospital group has been found guilty of supporting an organised trafficking scheme dealing in organs.” (14)

Signals of illegal activities

In 2003, ‘out of an act of conscience’ a whistle-blower told the police about the illegal transplantations that took place at Netcare’s hospital, St. Augustine’s, located in Durban.³ It was suspected that illegal transplants also took place in Cape Town and Johannesburg. This was the first signal that reached the police, and it was decisive in the sense that it motivated them to initiate an investigation. However, once involved in the investigation, the police realized that there had been other signals of illegal transplants taking place prior to the moment when the whistle-blower contacted the police. One of the first came from the American anthropologist Nancy Scheper-Hughes and her organisation Organs Watch, who had picked up on the illegalities and had reported this to various authorities and organisations. In conjunction, a South African transplant surgeon working at a public hospital in Cape Town, wrote an ‘open’ letter warning his fellow surgeons about “Israeli transplantations”. Furthermore, employees from Netcare’s hospital and a blood bank, where the cross-matching of suppliers and recipients took place, asked their superiors what was going on or shared their suspicions with their superiors. At an international transplantation conference in the USA, surgeons from other countries also accused Netcare and its transplant surgeons [R] (15).

³ According to Nancy Scheper-Hughes, there were simultaneously whistle-blowers reporting the crime in Brazil. These were kidney suppliers who went to the Federal Police in Recife claiming that they had been cheated and exploited (15).

Criminal investigation

When the police found out about the illegal transplantations going on at Netcare's hospital, St. Augustine, they first researched transplantation in general and the law regulating it, The Human Tissue Act. According to one of the respondents, knowing the particularities of legal transplantations was crucial in identifying the ways in which the transplantations at St. Augustine's deviated from this. Following this, the gathering of evidence started. Quite early on however, they decided to limit the investigation to St Augustine's. This was where the evidence was the strongest. Still, it became a major investigation [R].

At the outset, the dilemma arose that an immediate search of the transplant clinic and blood bank would reveal to the perpetrators that the police was on their tail. Therefore, the investigating team chose to take "the undercover route" [R]. But this route failed, due to technical problems. However, unexpectedly, one of the organ brokers involved in the illegal activities opened a charge of theft in which he openly stated that an organ supplier had run off with money that he had received in advance, which was subsequently established to be true. Now the police had to act since they were worried that Netcare and their accomplices would start destroying evidence. They stopped the supplier and his wife at the airport and took their statements. Four days later they obtained a search warrant and searched the transplant clinic for the first time. During this search they successfully gathered all the "transplant files", which contained the records of the patients, and the transplant register, in which all the transplantations that had been performed were recorded and where the surgeons were mentioned by name [R]. A couple of weeks later they performed a second search at St. Augustine's hospital as they became aware of the need to gather the records of the patients' entire hospital stay and the documentation pertaining to the operating theatres where the surgeries had taken place. To get access to these files, they brought with them a representative from the Ministry of Health who was authorized under the Human Tissue Act to function as an "inspector of anatomy" with access to all of the hospital's documentation. They also performed a search of the blood bank, where they collected documents that proved that potential recipients were cross-matched against several suppliers which, in turn, indicated that they were not related [R]. The office of a nephrologist was also searched and medical files were confiscated. These were mostly files related to the recipients of kidneys. Computers were also seized. It was established that data entries in these letters provided to recipients were changed from "non-related" to "related". The typist who changed these letters was identified and she provided a statement under oath that she had been instructed to do this.

An organ broker, a local coordinator, a nephrologist, a transplant coordinator and a translator were consequently arrested. These arrests and the hearings that followed also became essential evidence. Furthermore crucial was the investigating team's collaboration with the other involved countries. In Brazil and Romania the team interviewed suppliers and/or local organ brokers. Establishing collaboration with Israel proved more difficult. A request for mutual legal assistance and police assistance was forwarded to Israel in order to obtain statements from suppliers and recipients of kidneys. This was done at an early stage of the investigations. Statements arrived in "*drips and drapes*" over a long period of time. Only later, after the withdrawal of the case against the surgeons and coordinators, the investigating team finally received permission to visit Israel. After this, they collaborated successfully

with the customs officials and received written statements from suppliers and recipients [R]. Despite this vast body of evidence, the South African state decided to provisionally withdraw the charges against Netcare in 2007. According to the respondents, the withdrawal had several causes. Two major causes were the delay in evidence coming from Israel and the failed attempt to have the main organ broker extradited to South Africa. In 2010, however, the charges were reinstated [R].

Modus operandi

The illegal transplants at St. Augustine's started when an Israeli organ broker approached Netcare in 2001. His proposition was that he would provide well-paying Israeli patients in need of a kidney and paid suppliers willing to sell one of their kidneys. What Netcare would bring to the equation was the provision of transplant services [D1].

The vast majority of organ recipients were recruited from Israel. Four recipients came from the USA and South Africa. The price of around \$120,000 included the kidney, the services as well as the travel and accommodation. The suppliers were initially also recruited from Israel and got paid around US\$20,000, but later on the organ brokers became aware that they could acquire cheaper kidneys in Romania and Brazil. Here, the suppliers were willing to take part with a kidney for between US\$3,000 and US\$6,000. In Brazil, from where the vast majority of suppliers came and 2 local recruiters (one an expatriate retired Israeli military officer, the other a retired Brazilian military police captain) also took care of practical tasks such as assisting the suppliers with passports, visas, travel bookings and preparatory blood tests. On arrival in South Africa, the suppliers were chaperoned by local actors. Some of them also acted as interpreters. Initially suppliers were housed in hotels and later, when the number of suppliers increased, in an apartment at the Durban seafront [R, D1].

In South Africa at this time there was a ministerial policy in place that required all transplants between non-related donors and recipients to obtain prior approval from a ministerial advisory committee. In order to circumvent this requirement, Netcare and its accomplices made all suppliers and recipients sign papers that said that they were related when in fact they were not. Taking care of this, 2 transplant coordinators were employed by Netcare. Another crucial actor was a South African nephrologist who was responsible for referring all patients to the transplant clinic. The transplant surgeons were also central players. Four of them were charged. Prior to the operations a blood bank performed the cross-matching of recipients and suppliers [R, D1].

The payments relating to the transplantations were transferred in different ways and at different points in time. The recipients paid the Israeli organ broker in advance, who then paid Netcare, who in turn distributed the money to the various involved actors in South Africa. The nephrologist who was later convicted also received payments directly from the main broker into a bank account in Canada. The suppliers were paid in cash, usually after the operation [R, D1].

Laws and charges

At the time of the illegal transplantations at St. Augustine's, South Africa did not have legislation specifically prohibiting trafficking in persons for the purpose of organ removal. Two laws were applied, The Human Tissue Act (dating from 1983), and the Prevention of Organised Crime Act (dating from 1998). None of them were well suited to the situation. The Human Tissue Act "was old and badly written", as one of the respondents expressed it [R]. One of the main loopholes in this law was that it only targeted persons or organizations that received financial remuneration for an organ. The buying of organs was thus not illegal. It was also not illegal for so-called authorized institutions to accept money for an organ [D2]. The charges that were brought, varied to some extent between the defendants. But in the charge sheet issued in 2010 – which contained charges against Netcare, the 2 transplant coordinators, the 4 surgeons, the nephrologist and one of the interpreters – the majority of charges that were used were specified. These were: fraud, forgery, uttering, unlawful acquisition, use or supply of tissue, blood or gamete (minors), use or possession of proceeds from unlawful activities, and illegal receipt of payments (minors) [D1, D2].

Judgment

Since 2003, 12 people have appeared in court records, 12 have been indicted and 6 have been convicted. In 2010 the Netcare health group was convicted. Netcare was fined Rand 4-million (approximately US\$380.000) for its role in 109 illegal operations at St Augustine's involving non-related donors and recipients. Five of these operations involved minors, which is also illegal, even with parental consent. Netcare also forfeited R3,8-million (approximately US\$345.000) to the Assets Forfeiture Unit. In terms of the plea agreement finalised in court, criminal charges were withdrawn against Friedland as Netcare's chief executive [R, D1].

The 4 surgeons and 2 transplant coordinators who were accused of involvement in the illegal transplants were arrested in 2004 and 2005 but released on bail. In 2011 they requested a permanent stay of prosecution⁴ to the Kwazulu-Natal High Court in Durban which was granted to them on 14 December 2012 [R, D3]. The court granted them the permanent stay because of "an inordinate delay in doing what had to be done to facilitate the beginning of the trial and driving it to its conclusion" [D3] and because the evidence was deemed insufficient [R]. At the time of writing it is not known whether prosecution will appeal the court's decision.

⁴ A permanent stay of prosecution is a ruling by the court in civil and criminal procedure, halting further legal process in a trial.

5.2 Republic of Kosovo - The Medicus Clinic Case

Start of investigation: 2008

Charges: trafficking in persons, organized crime, unlawful exercise of medical activity, abusing official position or authority, grievous bodily harm, fraud, falsifying documents, falsifying official documents

Judgment: 29th April 2013 (published 12th November 2013): prison sentence for 5 defendants; acquittal of 2 defendants

Defendants (7): urologist/owner of Medicus Clinic, director of Medicus Clinic (son of the owner/director), 3 medical doctors, specialist anesthesiologist, anesthesiologist, medical doctor/anesthesiologist

Fugitives (2): organ broker and transplant surgeon

Respondents of the study [R]: police investigator, lead prosecutor, defense attorney, senior protection officer UNHCR, officer in charge of inspection at Health Ministry, task manager/rule of law EU Office in Kosovo, head rule of law liaison office UNMIK, senior policy adviser, Interpol officer, Chief of Mission of IOM, national coordinator trafficking in human beings/deputy minister Ministry of Internal Affairs.

Case material: amended indictment [D1], closing statement [D2], judgment [D3], legislation [D4], security council resolution [D5]

*Case study by Frederike Ambagtsheer, Jessica de Jong and Martin Gunnarson
16-20 September 2013; Pristina, Republic of Kosovo*

“An EU-led court in Kosovo has found five people guilty in connection with a human organ-trafficking ring. The five are accused of carrying out dozens of illegal transplants at the Medicus Clinic in the capital, Pristina. Meanwhile two former government officials also charged in the case have been cleared of involvement.” (16)

Signals of illegal activities

Suspicious first arose among the Kosovo Police (KP) and Immigration Services at Pristina Airport (exact date unknown) [R, D1-3]. A KP investigator was assigned to lead the investigation in October 2008. He discovered that foreigners upon arrival in Kosovo brought with them invitation letters from the Medicus clinic. The letters stated that they were coming to Medicus for treatment of heart conditions. This caused suspicion amongst the airport authorities because in the foreigners’ countries of origin, heart treatments are considered to be superior to those in Kosovo [R].

Criminal investigation

The principal investigator compared these letters and discovered that 2 individuals, A and S were actually in Kosovo at that time (A would later turn out to be the organ supplier for S). On inspection of A’s flight ticket, the investigator knew when A would return to Istanbul. The KP stopped and questioned A at the airport on 4 November 2008. He was accompanied by an Israeli broker and the brother of S. During questioning KP noticed that A had been coached to provide a particular story, and say that he had undergone heart treatment. “A” made a very “concerned” impression [R]. Eventually he admitted that he had undergone surgery, but he did not (immediately) explain that he had sold his kidney. The investigator asked A to show his scar. He then stated that his kidney had been removed and that he had been promised \$15.000 for his kidney [R]. After medical examination, A was confirmed to be in poor medical condition and incapable of traveling. He was then taken into hospital. Following this, KP

investigators, medical experts, Ministry of Health officials, the Department of Organized Crime and UNMIK International police searched the Medicus clinic. During this search, the recipient of A's kidney, S (an Israeli national) was identified. The director (X) and the owner (U) of the Medicus clinic were arrested on 4 November 2008. Seizure of medical and business records, medical supplies, medications and computers occurred at Medicus until 11 November [D1-3]. At some point (date unknown), UNMIK Police took over the lead of the investigation from the KP due to the "very sensitive nature"⁵.

After the European Union Rule of Law Mission in Kosovo (EULEX) was deployed in Kosovo the case was handed over to EULEX.⁶ The alleged nexus between the owners of the clinic and certain persons within the political elite, made it difficult for local authorities to initiate a robust and independent investigation [R]. A second complication was that a search warrant had not been issued by a pre-trial judge, during police operations at the clinic, due to exigent circumstances concerning patients and medical care. In addition, the actual assistance provided by the local court administration in Kosovo to organize expert and forensic testimony, video link witnesses, key translations and court hearings was "extremely difficult in a very challenging environment" [R]. Receiving international legal assistance was also an issue because Kosovo was not recognized as a sovereign state by a number of countries. For that reason receiving cooperation from countries such as Russia was "dismal and appalling" [R]. Eventually, once personal relationships were established with specialists abroad, international cooperation became "very good" [R]. Evidence included the evidence seized at the clinic, forensic evidence, pharmaceuticals, medical records, e-mail correspondence, customs records, witness- and victim testimonies and most importantly, anesthesiology logs that documented when the transplants took place, which doctors were present and on whom (recipients and suppliers) the surgeries were performed [R].

Modus operandi

In March 2005 the urologist/owner of Medicus Clinic (U) attended the twentieth Annual Congress of the European Association of Urology in Istanbul, Turkey. There he discussed the need to make kidney transplants available for the Kosovar people. These transplants at the time did not take place, due to a lack of medical expertise in transplant surgery.⁷ After expressing his desire to receive assistance in locating a medical expert, he was provided the contact details of a Turkish transplant surgeon (V) [D1].

⁵ According to the project adviser, Sergio D'Orsi, UNMIK had executive functions over a number of Units of the KP at the time of the investigation. The result of subsequent investigations conducted in this phase (including covert measures on the phones used by the suspects), resulted also in the identification, tracing and arrest of the broker M by hand of the UNMIK investigators after having collected evidence on his involvement in the illegal transplant affecting the supplier A and the receiver S. The broker M was traced and located in Pristina while he was ready to leave Kosovo;

⁶ *Following the Kosovo War (1998-1999) a mandate of the United Nations Interim Administration Mission in Kosovo (UNMIK) was established by the UN Security Council (1999). This mandate required the UN to take over the administration and political process in Kosovo. Kosovo declared independence on 17 February 2008 and it has been recognized by more than 100 UN Member States since. In 2008 the UN Secretary-General instructed the Head of UNMIK to facilitate European Union preparations to undertake an enhanced operational role in Kosovo in the rule of law area. Following this, the European Union Rule of Law Mission in Kosovo (EULEX) deployed throughout Kosovo on 9 December 2008. Its mandate runs until June 2014. The Medicus case proceedings took place under the auspices of EULEX.*

⁷ *Section 46(d) of the Kosovo Health Law declares that (private) organ transplantations are forbidden. The reasons for this prohibition are because the medical and legal infrastructure is not in place, the government's health budget is small, there is insufficient expertise, a lack of standards and medical oversight, as well as the absence of a national center to oversee transplants.*

In 2006 U and V contacted each other. Together with X (the director of Medicus) and an Israeli organ broker (M) they planned to perform kidney transplants in Kosovo. In December 2007 U applied for V to be licensed as a non-Kosovar health professional, which was granted by the Ministry of Health (MOH) in January 2008. That same month an employment contract was established between the Medicus clinic and V for him to perform (as a general surgeon) living donor kidney transplants. In March 2008 U inquired about the possibility of conducting kidney transplants at Medicus. The licensing process involved multiple meetings with senior local officials including the then Minister of Health and the Health Advisor to the Prime Minister. In May 2008 the Office of the Permanent Secretary at the MOH issued a confirmation of license approval for performing living donor transplants. This license contravened the prohibition of transplants laid down in the Kosovo Health Law and it did not contain all the required constituents to be a proper license [D1].

From March-November 2008 at least 24 individuals were recruited in foreign countries and transported to Kosovo in order to have one of their kidneys removed. These 24 individuals were matched to 24 recipients, leading to 48 surgeries, all of which took place at the Medicus clinic. Although proof was found of only 24 transplants, prosecution believes that more transplants actually took place [D1-3]. M played an important role as “fixer” of the transplants, by maintaining contacts between suppliers and recipients and accompanying them and the families of recipients.

The organ suppliers came from Israel (4), Turkey (3), Moldova (1), Russia (3), Ukraine (2), Kazakhstan (1) and Belarus (1). Of 9 individuals’ their nationality is unknown [D3]. Most were 20-30 years old. Suppliers identified and contacted the brokers (“fixers”) via internet searches or newspaper advertisements [R]. After undergoing blood tests, suppliers flew to Priština, via Istanbul. At the immigration office most would present a letter of invitation stating that they came for medical check-ups at a “certain clinic” [R]. They would then be picked up and brought to the Medicus clinic. The planned surgery was presented to suppliers as being a routine medical procedure without risk after which they could resume a healthy life without restrictions. They were not given sufficient time to make a “final and conscious voluntary decision” to donate their kidney. They would go into the operation room almost immediately after their arrival, after signing false declarations in the local language that were not explained to them and were often in languages they did not speak or understand. They also signed so-called “Deeds of Donation” stating that they were donating their kidney for altruistic reasons or to a relative, which in all cases was false [R, D1-3]. After 4-5 days the suppliers were discharged and returned to their home country. They were not given any documents or medicines. All were promised amounts up to \$30,000. However some of them were only partially compensated or even received nothing at all. Many were later contacted by the “fixers” and urged to find other “donors” and given assurances that they would receive the money owed to them, and even more, should they cooperate with this proposal. Six of the 24 suppliers testified in trial. By the court they were considered victims of abuse of their position of vulnerability and in certain cases victims of coercion, fraud and/or deception and were found to be exploited by the removal of their kidneys [D3].

Recipients came from Ukraine (1), Israel (14), Turkey (1), Poland (1), Canada (1) and Germany (1). Of 5 recipients the nationality is as yet unknown. Recipients were generally over 50 years of age. They were ill

and desperate for a solution to save them from years of dialysis. Most located M and other brokers through word of mouth, and prices up to \$108.000 would be agreed. Payments were often made in instalments, electronically and/or in cash at Medicus. Patients would fly to Priština via Istanbul and were often escorted. Frequently their prospective suppliers would be on the same flight. Recipients were given invitation letters for getting medical treatment at Medicus to use if needed on entry into Kosovo or instructed to say they were visiting as tourists. They would meet at the airport and taken to the Medicus clinic. The operation would take place not long after their arrival at the clinic and they would have to sign documents, which were not explained to them. After a limited number of days they were discharged and given medicines and instructions relating to their condition and the procedures they had undergone to present to the doctors in their home country [R, D1-3].

Judgment

On 29 April 2013 U and X were found guilty of trafficking in persons and organized crime. The other accused (including U) were found guilty of unlawful exercise of medical activity. The charges abusing official position, grievous bodily harm, fraud and falsifying documents were rejected. U received 8 years imprisonment and €10.000 fine. X received 7 years and 3 months, and a €10.000 fine. The other accused received 3 years and 1 year imprisonment. Two defendants were acquitted [D3].⁸ M and V are presently the subject of an Interpol International Wanted Notice [D1, D3].

⁸ In April 2013 EULEX confirmed that it was launching a new investigation (Medicus 2.0) into people suspected of involvement in the organ-trading ring that operated from the Medicus clinic. The 8 individuals are being investigated for the criminal offences of organized crime, trafficking in persons, grievous bodily harm, abusing official position of authority, fraud and trading in influence. The statement said that the new inquiry was based on revelations arising from investigations and from information that came out at the trial which suggested that the men who were convicted had help from others in order to traffic victims and sell their organs.

5.3 State of Israel - The Netcare and Medicus Clinic Cases

Introduction

The Netcare and Medicus Clinic cases clearly demonstrate the global nature of THBOR. In these cases, the trafficking networks functioned in several nations and involved Israeli brokers. Law enforcement also covered several countries, including Israel. In order to shed additional light on the complexity of these 2 cases, the research team travelled to Israel and analyzed these cases in the Israeli context, examining the modus operandi, as well as the law enforcement measures, which took place in relation to these cases. Hence, this chapter complements the preceding chapters on the Netcare case in South Africa and the Medicus clinic case in Kosovo and should be read together with them. It will not discuss other legal cases in Israel that are not directly related to the cases in South Africa and Kosovo (17, 18).⁹

The Netcare Case

Respondents of the study [R]: Israeli police officers, office of the state attorney (prosecutors and department of international affairs representatives), deputy general manager of a health insurance company, kidney recipients (including director of an organization for dialysis patients and kidney recipients), nephrologists.

Note: The Netcare Case was not discussed with Israeli police and state attorneys. As a result, they were not able to respond to the questions regarding the international collaboration in this case.

Case material: Israeli Organ Transplant Act [D1], Penal Act [D2], Prohibition of Trafficking in Persons Act (Legislative Amendments) [D3], indictments [D4], court's rulings and judicial decisions [D5], presentation of health insurance company [D6], presentation of public healthcare provider [D7], Memorandum of the Ministry of Health's Director General No. 7/06 on Funding of Organ Transplants in Foreign Countries [D8], Organ Transplantation Regulations (Payment of Compensation and Reimbursement for Expenses to the Donor) [D9].

Case study by Frederike Ambagtsheer, Jessica de Jong, Martin Gunnarson, Zvika Orr and Linde van Balen 6-14th October 2013; Tel Aviv and Jerusalem, State of Israel

The involvement of Israeli nationals and entities in the Netcare case was multi-dimensional and included several global organ trafficking networks managed by Israelis, Israeli kidney recipients and initially also kidney suppliers, as well as funding of transplants by public healthcare providers and private insurance carriers.

⁹ As of 2007 a number of legal actions were taken against organ traffickers in Israel that ended in convictions. Two organ brokers were sentenced to prison for the crime of trafficking in persons for the purpose of organ removal and for causing severe personal injury, exploitation, receipt of goods under false pretenses, and imitating a physician (or being an accomplice in these offenses). Another broker was given a prison sentence for brokering organ transactions and for exploitation, receipt of goods under false pretenses, making threats, extortion using threats, and other offenses. Six additional organ brokers (in 2 cases) were given suspended sentences and/or community service, and were ordered to pay financial compensation to the complainants or a fine [D4-5] (Orr, 2014; Sperling, 2014). In August 2014 five organ brokers were indicted and in September 2014 the court ruled to extend their arrest until proceedings are completed. A judgment has not yet been decreed on this case.

The organ trafficking networks

Significant activity of an Israeli organ trafficking network in South Africa began in 2001. Beforehand most Israelis who purchased organs underwent transplantation in Turkey.¹⁰ In order to compete with the flourishing human organ market in Turkey, where prices were continually skyrocketing – reaching \$200.000 for a kidney transplant – the head of the aforementioned organ trafficking network offered transplants in South Africa for a fixed price of \$108.000 [R]. After the trafficking in Turkey was exposed and Israeli transplants there were stopped (temporarily), more and more Israelis began traveling to South Africa. Over time, additional Israeli organ trafficking networks began operations in South Africa, including the veteran network that had formerly operated in Turkey. For most of this time, 3 major and one minor Israeli network cooperated with Netcare. In contrast to Turkey, the sums charged to transplant recipients remained fairly constant, reaching a high of \$120.000 [R].

Official support for kidney purchase

During the years 2001-2003 South Africa was the main destination for Israelis undergoing organ transplants overseas; mostly in Netcare hospitals in Durban, Johannesburg, and Cape Town [R, D6]. These years were characterized by rapid growth in the number of Israeli patients who purchased kidneys from living suppliers overseas [D6]. Based on information from the public healthcare providers, some 300 Israeli kidney recipients received monetary refunds from their public healthcare providers after returning from South Africa; the sums ranged from \$37.000 to \$70.000 [R].¹¹ Kidney recipients who also had private insurance policies received additional remuneration from their insurance company. So in many cases the entire cost of the transplant, or almost all of it, was covered. The Ministry of Defense paid the expenses for those entitled to its services [R, D4]. When necessary, non-profit organizations or employers assisted in raising the missing funds for patients, fundraising campaigns in the media were conducted, and the public responded generously [R].¹² Information about the organ commerce, the costs, the different brokers, the potential destinations and their reputation were all well-known to patients. In the words of a woman who underwent a transplant in South Africa: "Everyone knew about it. It went ear to mouth, between the sick people. [...] Everyone knew someone who had done that and they got the telephone numbers and I spoke to patients, I got recommendations, and I have met 2 persons [who] organized this (brokers) and I chose the cheaper one" [R]. There were Israeli nephrologists who provided letters and documents for the South African medical centers where the transplants were done. Some even referred their patients to specific organ traffickers, although most refrained from this on ethical grounds [R].

¹⁰ The original international trafficking network began in the 1990s between Israel and Turkey, and later expanded to Moldova. According to Nancy Scheper-Hughes, the establishment of this network followed Ministry of Health investigations (The Cotev Commission) that interrupted the recruitment of kidney sellers from the Occupied Palestinian Territories in the 1990s. In the same years, Palestinian patients from the Occupied Territories as well as Palestinian citizens of Israel travelled to Iraq for purchased kidneys (15, 19, 20).

¹¹ The amount of public funding varied with healthcare providers, the time and location of the transplant. One healthcare provider refunded a fixed rate of \$70.000 to those with its "complementary insurance" (this applied to most of the insured). Another healthcare provider paid out the equivalent of DRG-rate of a kidney transplant in Israel, that varied from \$37.000 in the years 1993-1994 up to \$50.000-\$55.000 in 2006-2007. As a condition for receiving a refund, some of the healthcare providers demanded that the insured present receipts, while others did not make this demand (since they assumed they would be forged, in any case), and in lieu accepted an Israeli physician's statement that a transplant had indeed been performed [R, D5].

¹² For example, Nancy Scheper-Hughes found that Israeli patients raised "the money required through a publicity campaign aided by a 'charitable' organization, Kav LaChayim, 'United Lifeline', that has been accused of money laundering activities in the US and Israel" (19). According to Scheper-Hughes, this organization was one of the most essential components of support of international transplants for Israelis (21).

The law before 2006

Official funding for these transplants, as well as the unimpeded and transparent actions by organ trafficking networks in Israel, were possible because of the Israeli law during these years. At this time there were not yet any laws in Israel prohibiting the purchase or sale of human organs, brokering in organs, or THBOR (22). Consequently, organ brokers were not subject to criminal punishment in Israel for the brokerage itself. This legal situation expressed and also impacted the dominant moral attitudes in Israel towards the topic of buying and selling human organs, which were (and to an extent still are) relatively tolerant of these practices (17, 23).¹³

Law enforcement and its challenges

This situation placed challenges and difficulties in the path of those charged with enforcement. For example, in the framework of the investigation by the South African police in the Netcare case, Israeli citizens were called upon to testify in Tel Aviv. One kidney recipient, who underwent her transplant in Durban and was asked to testify, said in her interview that she did not want to incriminate the brokers, towards whom she felt very grateful: "They took me and [asked]: 'How did you pay? How much did you pay?' I didn't give many details because I didn't want to incriminate anyone. I told them that I didn't deal with this, it was my children, my friends, who handled this. [...] I tried to wrangle out of this. [...] They [the brokers], after all, did me a favor. Why would I go and incriminate them? So I evaded this [issue]" [R]. The police officers who investigated other cases of organ trafficking, including the case in Kosovo, also reported that it was difficult to convince the recipients to make statements against the brokers, but they nevertheless managed to convince some of the patients to cooperate and give a testimony [R]. Prosecutors added that patients who were not doing well after the transplant tended to be more cooperative when asked to testify against the brokers. Other patients who perceived the brokers as "life savers" were more reluctant to cooperate [R]. As far as South Africa was concerned, a kidney recipient, who is also the director of an organization for dialysis patients and kidney recipients in Israel, claimed that transplants that were performed in South Africa were the most professional and of the highest quality among all the places to which Israelis travelled for kidneys. He expressed regret and indignation that this was terminated [R]. Israeli nephrologists who had opposed organ trafficking noted that the South African hospitals were on the highest professional standard. In the words of the director of nephrology of an Israeli hospital: "They really did a good job. I mean, the best patients we ever had were from South Africa [...]. But they really had a business there." [R]

The organ trafficker – who headed the first Israeli network for commerce in human organs to work in South Africa – was arrested in Israel in July 2002. He was suspected of tax evasion to the amount of 25.000.000 NIS in Israel (approximately \$5.245.000, at the exchange rate at that time), on income from the transplants done in South Africa¹⁴. He was also suspected of document forging in relation to these activities (among which was documentation from South African hospitals including official receipts and invoices) and the use of forged documents for fraudulent acquisition of funds; all in aggravated

¹³ Preliminary unpublished results of a survey conducted by Ofra Greenberg on the topic "public opinion in Israel towards commercial organ transplants," personal communication with Ofra Greenberg, May 30, 2014

¹⁴ In August 2013 another organ trafficker and his company, were indicted for tax evasion of 118.000.000 NIS (\$32.187.000 at the exchange rate then) on income received from organ trafficking between 1999-2007. Of this, some 47.300.000 NIS (\$12.900.000 at the exchange rate then) were received from the Israel Ministry of Defense, and the remainder from private clients [D4]. A judgment has not yet been decreed on this case.

circumstances [D5]. On July 2002 he was released on bail and was not permitted to leave the country. On February 2003 he was permitted to leave the country for short periods, conditional on posting an additional bond payment [D5]. In 2006 he was arrested in a German airport as a result of an international arrest warrant issued in South Africa, but ultimately he was released [R].

Law enforcement in Brazil

A retired Israeli military officer (“G”), was a primary organ trafficker who set up the Brazil-To-South Africa scheme that recruited suppliers in Recife, Brazil. G received \$10,000 for each successful transplant (24). As Nancy Scheper-Hughes notes, he was indicted in Brazil, together with some 24 Brazilians, most of whom were kidney sellers who were wanted for information, not for prosecution (25, 26). The two co-conspirators – one from Israel, one from Brazil – were sentenced to 11 years in prison, a term they began to serve in 2005 (24). Later on, this sentence was reduced to 8 years and in 2007 G was granted “conditional liberty”. In 2009 he was granted compassionate leave for one month to visit his elderly mother in Israel, but did not return to Brazil. He was a fugitive for 4 years, until he was arrested in Rome in 2013 by airport police. He was extradited to Brazil in August 2014 (27).

Changes in Israeli law and policies since 2006

In 2006, the Israeli Ministry of Health published a memorandum which instructed public healthcare providers not to provide financial coverage for transplants that involve organ trafficking [D8]. In the same year, lawmakers amended the Penal Act to include imprisonment of up to 16 years as punishment for those who “traffic in persons for the purpose of removing an organ” [D2-3]. In 2008, the Organ Transplant Act was passed, a law which prohibits giving or receiving compensation for an organ and prohibits “brokering organ transactions” [D1]. The punishment for “brokering organ transactions” is imprisonment of up to 3 years or a fine of 226,000 NIS (\$61,870). The law does not set a punishment for recipients who buy organs as well as for suppliers. In 2010, regulations based on the Organ Transplant Act were formulated that put forth a payment by the state as limited compensation and reimbursement for expenses for living donors [D9].

Since 2008 there has been a sharp drop in overseas transplants funded by Israeli public healthcare providers and private insurance carriers [R, D6-7]. They have only funded cases where they were convinced that the organ transplant was legal, for example kidney transplants from deceased donors in Riga (Latvia) and Omsk (Russia). These changes in Israeli law and policies, as well as the impact of the Declaration of Istanbul on Organ Trafficking and Transplant Tourism (28) and of the work of the Declaration of Istanbul Custodian Group in combating organ trafficking in various destination countries¹⁵, has led to a significant drop in the number of Israeli patients undergoing transplants abroad. Thus, the annual number of kidney transplants performed abroad decreased from 155 in 2006 to 35 in 2011 and 43 in 2013 (22) [R].¹⁶ Concurrently, since 2011 there has been a marked increase¹⁷ in live kidney

¹⁵ <http://www.declarationofistanbul.org/governance/dicg>

¹⁶ These figures, based on the national dialysis registry, do not include transplants of pre-dialysis patients that are performed abroad [R].

¹⁷ From 56-71 living kidney donors annually in 2007-2010 to 117 living kidney donors in 2011, 108 in 2012, and 134 in 2013 (29).

donations (29). 22% of these are unspecified donors,¹⁸ most of whom (17%) are matched to recipients on the wait list by the charity organization, 'Matnat Chaim' (30, 31) [R].¹⁹

The Medicus Clinic Case

Start of investigation: 2011 - present

Indictment: indictment is forthcoming and concerns 5 Israeli nationals

Fugitive: organ broker (Israeli)

Respondents of the study [R]: Israeli police officers, office of the state attorney (prosecutors and department of international affairs representatives), deputy general manager of a health insurance company, kidney recipients (including director of an organization for dialysis patients and kidney recipients), nephrologists

Case material: translated court file [D1], amended indictment Kosovo [D2], judgment Kosovo [D3], closing statement Kosovo [D4], Israeli Organ Transplant Act [D5]

*Case study by Frederike Ambagtsheer, Jessica de Jong, Martin Gunnarson, Zvika Orr and Linde van Balen
6-14th October 2013; Tel Aviv and Jerusalem, State of Israel*

Signals of illegal activities

The Department of International Affairs at the Office of State Attorney, Israel Ministry of Justice, received a request for international legal assistance (ILA) from EULEX-Kosovo concerning the involvement of Israeli nationals in illegal organ transplants there. The request also identified Israeli nationals who had travelled to Kosovo for the removal and receipt of kidneys [R].

Criminal investigation

As a result of the information which was received from EULEX in the context of the ILA, the investigation in Israel started in 2011 and involved subpoenas of documents from hospitals, clinics, insurance companies, travel agencies and brokers. Based on information received from EULEX-Kosovo, the Israeli police discovered that Israeli brokers who had been organizing illegal transplants in Kosovo, were now buying tickets to a 'new' country where illegal organ activities are now taking place [R]. The activities in this country are currently the focus of the police's investigation. In May 2012 6 brokers were arrested; 3 of these are suspected for recruiting recipients and suppliers for the transplantations in Kosovo [R, D1].

Modus operandi

M (Israeli nationality, born in Turkey) started his activities in 2008 in Israel and was in contact with the Turkish transplant surgeon V by email, SMS and mobile phone [D1]. M performed the financial and logistic arrangements for suppliers and recipients and accompanied them from Istanbul to Pristina [D3]. M received the recipients' money on a bank account in Turkey which he wired to V's bank account [R]. After the search of the Medicus Clinic in November 2008, M gave statements to the police and the pre-trial judge. He was released from custody on humanitarian grounds [R] on the condition that he return to

¹⁸ Unspecified donation is donation to an anonymous recipient without a genetic or emotional relationship (30).

¹⁹ According to the National Transplant Center (29), 30 of the 134 living kidney donors in 2013 were altruistic unrelated donors. This phenomenon is spearheaded by the Israeli charity, 'Matnat Chaim' (www.kilya.org.il/en/) which matches altruistic donors with kidney patients on a voluntary, not-for-profit basis [R] (31).

Kosovo if ordered to do so, but then he fled [D1]. M is now the subject of an Interpol International Wanted Notice and an indicted co-conspirator on an indictment filed by the Prosecutor in the District Court in Pristina [D1, D2, R]. S and Z were 2 other Israeli brokers who accompanied kidney patients in Israel and handled the financial and logistic arrangements for their travel to Kosovo. Z accompanied the recipients to Kosovo and assisted them during their stay [D3]. S worked inside Israel and started working as a broker because of financial problems [R, D1].

Two Israeli doctors were suspected of collaborating with the brokers and facilitating the transplants in Kosovo by performing medical tests on the recipients in Israel [R]. Accusations against one doctor were dropped after the police concluded that he didn't know that his letters were used for the illegal transplants. The other doctor (surgeon) is alleged to have performed administrative tasks as part of the network [R]. According to the police there is an evidentiary basis to indict him and prosecutors intend to file an indictment pursuant to a hearing that will be held by the District Attorney's office.

Fourteen of the 24 recipients who underwent transplants in Kosovo were of Israeli nationality. Four Israeli suppliers were identified whose kidneys were removed for transplantation purposes in Kosovo [D2, D3].²⁰ Most recipients met their suppliers in the Medicus clinic or in the plane from Istanbul and were instructed to sign a document that they were relatives [R]. Suppliers and recipients recovered in the same room. Suppliers were usually discharged before the recipients, without being given medicines or dismissal forms [D2]. Recipients that returned to Israel in a bad condition were picked up by ambulances that brought them to a hospital where they received immediate care [R].

Some recipients used documents provided to them by the Medicus Clinic [D4] to make reimbursement claims for their transplant costs at their public healthcare providers and private health insurance companies. Some of them received reimbursements for their transplant costs but often not for the amounts agreed [R]. Because since May 2008 Israeli public healthcare providers and private health insurance companies have ceased funding out-of-country transplants which are suspected to be illegal, reimbursement claims were denied. This resulted in civil litigation claims where patients attempted to fight the refusal in court. Most claims have been denied by the Israeli courts because these transplant activities were viewed in light of the new 2008 law [R].

Judgment

The brokers are currently the subject of a police investigation. The Israeli police confiscated their assets, froze their bank accounts, seized their bank cards and one apartment; however, the seized property has since been released due to the prolonged proceedings [R]. Prosecutors from the State Attorneys are now writing the indictment [R]. On 23 May 2012 there was a court session, but the judge extended the arrest until the end of May 2012. In June 2012 all suspects were released on bail. At the time of this writing, an indictment against the suspects has not yet been filed [D1].

²⁰ See also Chapter 4.2

The suspects will be charged for trafficking in organs and acting as intermediaries with respect to payments between suppliers and recipients [R] under Section 36 of the Organ Transplant Act [D5]. The ongoing investigation of the arrested brokers has focused on trafficking in persons for the purpose of organ removal, organ brokerage, fraud, exploitation, aggravated assault, conspiracy, money laundering and tax transgressions [D1]. One of the Israeli transplant doctors may be charged in the upcoming indictment; the other doctor will not be charged. Neither recipients nor suppliers will be charged. The Organ Transplant Act prohibits organ purchase and sale, and contains criminal sanctions against all third parties involved in these activities. However, the law does not contain a criminal sanction against the organ recipient or supplier for these activities (the explanatory report of the 2008 law details that this is due to consideration of the distress and vulnerability of the supplier and recipient which led them to the purchase or sale of human organs) [R] (17).

5.4 United States – The Rosenbaum Case

Start of investigation: 2008

Charges: brokering in human organs and conspiracy

Judgment 11th July 2012: Rosenbaum is sentenced to 2,5 years in federal prison

Defendant: Levy Izhak Rosenbaum

Respondents of the study [R]: assistant U.S. attorney, FBI-agent, defence lawyer

Case material: transcript of the sentencing hearing [D1], criminal complaint [D2], pre-sentence memorandum of the defence [D3] and charges [D4]

Case study by Jessica de Jong

18-22th March 2013; New York, the United States

“A man portrayed by his lawyers as a good Samaritan pleaded guilty on Thursday to organ trafficking in the United States in what the prosecutor said was the first conviction under a federal statute banning sales of kidneys by paid donors. The man, Levy Izhak Rosenbaum, admitted in federal court that he had brokered three illegal kidney transplants for people in New Jersey in exchange for payments of \$120.000 or more. He also pleaded guilty to one count of conspiracy to broker an illegal kidney sale.” (32)

Signals of illegal activities

In 1999 the FBI initiated ‘Operation Bid Rig’: an extensive investigation into corruption of several public officials in New Jersey and money laundering in tax evasion within the orthodox Jewish community. One of the involved (“D”) was running a fraudulent investment operation in real estate. When his scheme collapsed in 2006, he was arrested and ‘turned into’ a FBI informant. D fully committed himself to the operation. In February 2008, he suddenly informed the FBI that his wife’s grandfather was purchasing a kidney through an organ broker named Levy Izhak Rosenbaum (21) [R].²¹

Criminal investigation

In order to collect evidence, D accompanied an undercover FBI-agent to Rosenbaum. She was posing as D’s secretary and claimed that her uncle was in need of a kidney transplant [D2, R]. Rosenbaum stated his willingness to find a matching supplier for \$160.000. During several recorded meetings Rosenbaum mentioned that he had been a “matchmaker” for 10 years and explained that it would be necessary to create a fictitious relationship between the recipient and supplier, because of the hospitals’ screening processes. He named 2 recipients who had received a kidney through his services and provided the agent with a telephone number at which she could contact one of them as a reference. Rosenbaum wanted 50 percent of the money upfront and 50 percent before the transplant. The first FBI payment of bank checks totalling \$10.000 was credited to the bank account of a charitable religious organization in Brooklyn [D2]. In July 2009, Operation Bid Rig resulted in the arrests of 44 people, including Rosenbaum – whom D and the agent had arranged to meet on the day of the take down [R].

²¹ During the sentencing hearing, the assistant U.S. attorney refers to a would-be whistle-blower who contacted Organs Watch back in 2002 by e-mail about Rosenbaum’s illegal business [D1]. The attempts of the director of Organs Watch, Professor Nancy Scheper-Hughes, to alert the authorities failed: “I was told that the information lacked credibility.” (21)

Modus operandi

It was established in court that Rosenbaum had been brokering in kidneys since at least 2001, as a defendant's witness stated that he had received a kidney from a paid supplier in that year [D1]. The undercover operation revealed Rosenbaum's modus operandi. First, he would ask the recipient who approached him for help for a blood sample to find a matching 'donor' willing to sell a kidney, who typically would be located by his associates in Israel. Rosenbaum would arrange for the supplier to travel to and be housed in the United States, where he or she was looked after by one of his associates throughout the pre-transplant procedures. Rosenbaum would help the patient and the supplier to coordinate a cover story to mislead hospital staff into believing that the donation was a purely voluntary act. Finally, he would demand full payment by the date of the transplant [D2-D4, R].

In Rosenbaum's early activities, the recipients and suppliers all came from Israel and were presented to one and the same hospital in the name of Rosenbaum's charity. Their story was that they wanted to be treated in the United States, because of better facilities and the financial support of the Israeli government, who reimbursed medical treatments abroad. The suppliers were actually immigrants from Eastern Europe living in Israel. Five years later, Rosenbaum's charity had gone out of business and his method of operation seemed to have changed. At this point, the recipients were overwhelmingly Americans from the Orthodox Jewish communities of New Jersey and New York. The suppliers that were identified were mainly Israelis being brought over from Israel for the surgery. The transplants, reimbursed by American insurance companies, were carried out in different United States hospitals,²² *chosen by the recipient*. Hence, the police investigation did not uncover anything to suggest that the hospitals and specialists were knowingly complicit in the commercial transplants [R].

Even though there is no evidence to suggest that the suppliers were threatened, subtle psychological ploys were used, such as 'you are doing a mitzvah', to make sure they went through with the transplant [R]. The only supplier traced by the United States authorities testified that he had had second thoughts on the morning of the surgery. However, he was told that he was the only match and that the recipient who would receive his kidney had only about 3 weeks to live. He was not informed about the risks and impact of the surgery and was misinformed about the duration – Rosenbaum's associate told him the surgery would take 10-15 minutes instead of the actual 4-5 hours [D1]. While he received the \$25,000 he had been promised for his kidney, it was paid in instalments and he had to chase Rosenbaum down for the last \$5,000 [D1, R].

Law and charges

On 27 October 2011, Rosenbaum pleaded guilty to 3 counts of violating 42 U.S. Code §274e, which provides that it is unlawful 'to knowingly acquire, receive or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce', and to one count of violating 18 U.S. Code §371, which refers to the conspiracy involving his incriminating activities during the undercover operation. As a result, Rosenbaum needed to forfeit \$420,000 – the sum

²² According to the prosecutor, transplants were taking place in hospitals in Minnesota, Maryland, Pennsylvania and possibly Massachusetts and New York [R].

of the amounts that he received from the 3 recipients (\$120.000, \$140.000 and \$150.000) and the partial down payment of the FBI (\$10.000). The authorities were not seeking to charge the recipients or the suppliers: “Obviously the recipients were under the distress of being in bad health and needing a kidney transplant. The donors, our view was that by and large, if they were desperate enough to sell their kidney for \$25.000, there was a certain level of economic distress that they were under to do this, especially if they were willing to [...] come to an country that they were unfamiliar with.” [R] To make it look as if Rosenbaum had actually spent the minimal amount of \$120.000 on the suppliers, the defence made very specific claims about the expenses that he had incurred in finding the suppliers, bringing them to the United States and housing them.²³ But through one supplier’s testimony the prosecutor demonstrated that most of the expenses claimed by the defence had not really been incurred on the supplier’s behalf [D1].

The authorities were not able to identify any of Rosenbaum’s recruiters or pin down the number of transplants that Rosenbaum had orchestrated and how much he benefited. The criminal charges were limited to the undercover scheme and the 3 transplantations involving New Jersey recipients between 2006 and 2009. This was due in large part to the statute of limitations, which reaches back only 5 years under the United States law, and the fact that the local prosecutor could only charge violations of federal law that have some connection to New Jersey [R]. However, the profit margin that Rosenbaum received suggested that his profit must have been millions of dollars over the years [D1, R]. Rosenbaum had purchased millions of dollars in real estate in the 2000-2006 period and although he disputed that he had bought the properties with ‘kidney money’, the authorities did not see any other substantial source of income. Because the prosecution had not located any supplier at the time Rosenbaum pleaded guilty, he could not be charged for human trafficking. Eventually one supplier was located about 2 weeks before the sentencing, which was initially scheduled in May 2011 but then got pushed back to July 2011. According to the prosecutor, coercion was not evident from this supplier’s statement, so it would still have been very hard to prove human trafficking [R].

Judgment

As the sentencing guidelines contain no provision applicable for the violation of 42 U.S.C. §274e, the judge determined under the factors of 18 U.S.C. §3553²⁴ an imprisonment of 30 months. Rosenbaum did not appeal the sentence of the District Court.

²³ According to 42 U.S.C. §274e, at that time ‘valuable consideration’ doesn’t include the reasonable payments associated with the removal, transportation, implantation, expenses of travel, housing, and lost wages incurred by the supplier.

²⁴ In determining the particular sentence to be imposed, the court shall consider the following factors: 1) nature and circumstances of the offence and history and characteristics of the defendant, 2) the need for the sentence imposed – to reflect the seriousness of the offence, to promote respect for the law, to provide just punishment for the offence, to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, to provide the defendant with needed [...] correctional treatment in the most effective manner, and 3) the kinds of sentences available.

5. Conclusion

With this study, the researchers collected data that would have been difficult if not impossible to collect through desk research. Because of this, the authors were able to fill gaps that were highlighted in this project's literature review (1). The underlying study's purpose was to contribute to gaps concerning a) the actors and their modus operandi of contemporary organ trafficking networks and b) the experiences of police and prosecution in disrupting and prosecuting the persons involved in these networks.

The modus operandi of contemporary organ trafficking networks

Although respondents used different legal terms to describe the degree of organization of the organ trafficking networks – for example, the scheme in South Africa was described as a 'syndicate' and the network in Kosovo as a 'criminal enterprise' – this study illustrates that these networks are fluid, with a high degree of organization. This corresponds to the literature, in which trafficking in human beings for the purpose of organ removal (THBOR) is often said to require globally active, extensive and highly organized networks (1).

Initially, the networks operated with limited risk of investigation and prosecution. They could continue with their activities despite the presence of (clear) signals for authorities. In South Africa for instance, the network could go on because local hospital staff was complicit or was told that donations were altruistic, voluntary and related. In Kosovo the illegal transplants could be carried out under a false license issued by the Ministry of Health. In the USA activities were successful because persons (including recipients and suppliers) misled hospital staff into believing that the donations were voluntary and altruistic.

The actors were sophisticated in their selection of countries. The reasons why they organized their activities in these countries were because of legal loopholes in South Africa and Israel at the time when the activities took place, the post-war legal "vacuum" and a high level of corruption in Kosovo, and a complicit hospital/clinic and staff in Kosovo and South Africa. An important contributing factor in the Netcare and Rosenbaum case was that until May 2008 Israeli recipients could be legally reimbursed for their overseas transplant costs by their health insurance companies. Because recipients and suppliers travelled from different countries across the world, it was difficult for police and prosecution to identify the activities and to establish that the transplants were illegal.

The actors also used sophisticated means to recruit suppliers and recipients. The suppliers were carefully selected, based on their dismal economic situation (poverty) and vulnerability. Brokers recruited the suppliers from abroad and made sure that suppliers approached them by posting ads in the newspaper for example, rather than actively approaching suppliers themselves. This 'passive recruitment' made it more difficult for police and prosecution to prove THBOR and to declare the suppliers 'trafficked persons'. By transporting recipients and suppliers via Istanbul and conducting the medical tests there, the network in Kosovo was able to cover part of its activities. In South Africa and the USA, recipients and suppliers made efforts to hide the illegality of their transplants and donations from hospital staff. The transplants in the USA were reported to have been performed in various hospitals. No evidence was

found that hospitals and doctors were complicit. This made it more difficult for police and prosecution to trace the recipients and suppliers.

After recruiting the suppliers however, more coercive and deceptive elements came into play. Brokers manipulated the suppliers to ensure that they would not 'drop out'. In Kosovo, kidney donations were presented as a routine medical procedure without risk. Suppliers were given virtually no time to make a "voluntary decision to donate". In Kosovo and South Africa suppliers were given consent forms that were fraudulent and/or written in a language that they did not understand and that stated that they donated for altruistic reasons to a relative. The majority of the suppliers who were brought to Kosovo were given less compensation than agreed (if anything at all) and were informed they would receive remaining compensations on the condition that they would find new suppliers. This way, the Kosovo network was able to maintain a consistent, international flow of suppliers. The suppliers' testimonies in Kosovo were "fully sufficient" for the court to conclude that THBOR, organized crime and grievous bodily harm were committed. In the USA, although "subtle psychological ploys" were used upon the supplier, these were not proven to be sufficiently coercive or abusive to charge THBOR.

The successes and obstacles of police and prosecution

The experiences of police and prosecution differed greatly across countries. The level of success of each case depended on the availability of evidence, the dedication of police and prosecution and the existing legal frameworks. In South Africa, police and prosecution struggled from the very start with outdated laws against organ trade, which led them to apply charges of a different nature. Because the country lacked an anti-THB law at the time, no charges for THBOR or other serious crimes could be made. Although this country is the first country to have reached a guilty plea from a hospital for its involvement in organ trade activities, its proceedings against the accused surgeons and transplant coordinators lasted relatively long (9 years). Police and prosecution in the end did not succeed in getting the most important figures – namely the transplant surgeons, transplant coordinators and the head of the network, an Israeli organ broker – convicted for their alleged involvement in arranging and performing the illegal transplants. Convictions involved relatively low penalties (fines, and no prison sentences). A major obstacle according to police and prosecutors was the long time it took to establish international legal collaboration with Israel.

The case in Kosovo, by contrast, involved the most severe sentences and the largest group of transplant doctors that has been convicted until now. This country is the first to have prosecuted transplant doctors as a criminal group involved in THBOR. Because the group operated relatively "openly" under the issuance of a false license, evidence could be collected that included the anesthesiology logs of the transplants. These logs were –together with the recipient and supplier testimonies- the most important piece of evidence. Furthermore, according to the prosecution, the defense of the case was "extremely poor". A large obstacle is the fact that 2 accused (V and M), who are the subjects of an Interpol Wanted Notice and who are seen as "the most important figures in the criminal scheme", have until now not

been locked up.²⁵ In addition, non-recognition of Kosovo by a number of states obstructed international legal collaboration which hampered the issuance of evidence. Other hurdles included an “extremely challenging” trial process.

The involvement of its nationals in Kosovo and South Africa led to a number of arrests in Israel. The head of the Israeli network in South Africa was arrested for tax evasion, but has not received a sentence for illegal organ trading. In addition, 6 organ brokers (of which 3 were active in Kosovo) were arrested. However, until now they have not been indicted for their involvement in the transplants in Kosovo (33). Because of a lack of evidence of THBOR, these brokers will be charged for organ brokering/trading (3 years prison maximum) and not for THBOR. It is not known when the indictment will be issued.

Similarly in the USA, lack of evidence could not substantiate charges which included THBOR. Only one supplier could be found on whom subtle psychological ploys had been used, but explicit coercion could not be proven. Furthermore, police and prosecution did not manage to identify the actual number of transplants that were performed, as well as the total financial benefits that were gained.

Tip of the iceberg

This report illustrates that prosecutions in South Africa, Kosovo, USA and Israel were successful but leave room for improvement. First of all, prosecutions could have been more successful if the appropriate laws would have been in place at the time when the activities took place. Second, investigations and prosecutions could have been initiated earlier if available signals were identified and picked up already at an early stage and if international collaboration would have occurred sooner. Recent media reports from Sri Lanka²⁶ and Costa Rica (34) suggest that Israeli brokers, known to authorities, have relocated their activities. Meanwhile, a report from the OSCE (2), new research and recent reports from countries including China (4) and Turkey (35) illustrate that the organ trafficking networks presented in this report are only the tip of the iceberg. The global organ trade is not confined to the regions and countries presented here.

Further steps²⁷

This study demonstrates the need for:

- prioritizing prosecution of those who facilitate and conduct illegal transplants, even if not all of the THBOR elements are fulfilled;
- enhancing and improving international collaboration in cross-border organ trafficking cases;
- formulating indicators for police and other authorities to identify THBOR;
- raising awareness of THBOR, in particular amongst law enforcement authorities;
- concerted action between law enforcement and professional transplant/health organizations.

²⁵ Though neither have been extradited to Kosovo, both were investigated in their home countries related to the Medicus Clinic. M is expected to be indicted in Israel for these same charges, pursuant to information provided by authorities in Kosovo [R].

²⁶ The brokers related to Sri Lanka were questioned as suspects and are expected to be indicted in Israel.

²⁷ Indicators and recommendations will be written and published under the auspices of the HOTT project in 2015.

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