

# 2019- Belgian Federal Parliament unanimously approved amendment of the Penal Code to prosecute trade in human organs

## Bill unanimously approved

On April 2, 2019, the Public Health Commission in the Belgian Federal Parliament has unanimously approved the bill regarding criminalizing commercial organ trade and organ tourism.

This law proposition refers directly to the **European Parliament Resolution from 2013: “In its December 2013 resolution (2013/2981 (RSP)) and in its Written Declaration of July 2016 (PE581 440v01-00), the European Parliament asked the Member States to inform their inhabitants about practices of organ harvesting in China and to prosecute those who participated in these unethical practices.”**

[[link to PDF Bill](#)]

The amended text of the bill appeared on April 9 with the heading: ‘Bill on trade in human organs and on the principle of non-punishment for victims of human trafficking’ (*Wetsvoorstel betreffende de handel in menselijke organen en betreffende het niet-bestrafingbeginsel voor slachtoffers van mensenhandel / Proposition de loi relative au trafic d’organes humains et relative au principe de non sanction des victimes de traite des êtres humains*’).

[[link to PDF Adopted text](#)]

On April 25, the bill is unanimously approved by the Belgian Federal Parliament.

## Summary of the main amendments

The law of June 13, 1986 on organ harvesting and transplantation prohibits commercial transactions of organs. The revised legal provision, however, makes it possible for the Belgian court to also prosecute commercial organ donation and transplantation when the crime takes place abroad.

In order to combat human organ trade more effectively, the legal provision extends the prohibition to facilitate this trafficking by, for example, recruiting donors or guiding people to donors.

From now on, the receiver of an organ that has been the subject of a commercial transaction will also be subject to sanctions.

## Main provisions amending the Belgian Penal Code

The main and most important revisions of the Penal Code are (in translation and abbreviation):

### Art. 4

“Art. 433novies/2. Will be punished by imprisonment from 5 years to 10 years and a fine of 750 EUR to 75,000 EUR, anyone who takes an organ from a person in the following cases:

1 ° when the removal is made from a living person without his free, informed and specific consent, or when the removal is made from a deceased person in violation of the conditions of consent or opposition provided by law; ...”

### Art. 5

Will be punished by imprisonment from 5 years to 10 years and a fine of 750 EUR to 75,000, EUR whoever:

“1 ° transplant to a person an organ that has been removed in violation of article 433novies/2 or that has been removed in another State under the conditions referred to in the aforementioned article, or uses such an organ for purposes other than the transplant, knowingly; ...”

The following articles (6 and 7) describe that the same penalty will be imposed on, i.a., whoever, knowingly:

- prepares, preserves, stores, transports, transfers, receives or exports an organ taken in violation of Article 433novies/2 or taken from another State under the conditions referred to in Article 433novies/2. (Art. 6)
- imports or causes the transit of an organ taken from another State under the conditions referred to in Article 433novies/2. (Art. 6)
- solicits or recruits a donor or recipient candidate for the purpose of obtaining, directly or indirectly, a profit or comparable advantage for himself or for a third party. (Art. 7)

**The penalties referred to in articles 5, 6 and 7 can be increased to a fine of 1,000 to 150,000 EUR and 15 to 20 years in prison, i.a. when the victim of organ harvesting dies or for criminal organizations that trade organs.**

Art. 8

Will be punished by imprisonment from 1 year to 5 years and a fine of 500 EUR to 50,000 EUR, whoever, by whatever means:

- facilitates, promotes or encourages the practices of the trade in human organs for profit;
- advertises or causes advertising, publishes, distributes, directly or indirectly, in favour of those practices;
- makes public, directly or indirectly, the need for or the availability of organs for the purpose of offering or seeking a profit or comparable advantage, directly or indirectly, for himself or for a third party.

Art. 9 states that the same penalty will be imposed on whoever, knowingly, has accepted for himself, the transplantation of an organ taken in violation of Article 433novies/2 or taken from another State under the conditions referred to in Article 433novies/2.

The court may **prohibit** the convicted persons from **engaging in any professional or social activity related to the offenses** for a period of **1 year to 20 years**. The court can also order the temporary or definitive, partial or complete closure of the institution where the crimes were committed. (Art. 13)

## Other related revisions

In addition to the amendments to the Penal Code, there are also

- Provisions amending the Preliminary Title to the Code of Criminal Procedure,
- Provisions amending the Code of Criminal Instruction,
- Provisions amending the Act of June 13, 1986 on Organ Harvesting and Transplantation,
- Provision amending the Act of December 19, 2008 on the procurement and use of human body material for human medical applications or for scientific research purposes.