



National Rapporteur on Trafficking in
Human Beings

Human trafficking

*For the purpose of the removal of organs and
forced commercial surrogacy*

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1 Introduction

The issue of human trafficking for the purpose of organ removal was addressed in the Fifth and Seventh report of the National Rapporteur on Trafficking in Human Beings.¹ This report expands on the information in those two reports and describes recent developments in the Netherlands and in international legislation on human trafficking for organ removal and trafficking in human organs. In this section, after an update of the legal framework, there is a discussion of incidents involving human trafficking for organ removal, as well as a brief review of the investigation and prosecution of this offence. Other issues discussed here are the involvement of Dutch nationals in organ trafficking and organ tourism, as well as the recent debate on the commercialisation of the market for human organs.

The second part of the report is devoted to the connection between human trafficking and commercial surrogacy, a subject that has not been covered in any of the earlier reports on trafficking in human beings.

2 Human trafficking for the purpose of the removal of organs

2.1 Legal framework and changes in the legislation

Human trafficking for the purpose of the removal of organs has been a criminal offence under Article 273f of the Dutch Criminal Code (DCC) since 2005. According to Article 273f (1) (1) DCC, any person who, by force, recruits, transports, moves, accommodates or shelters another person with the intention of removing that other person's organs is guilty of a crime. A Dutch national who is guilty of human trafficking for organ removal in another country is also committing an offence by virtue of Article 273f DCC, provided, currently, that the offence is also punishable in the country concerned.² Human trafficking for organ removal is based on involuntary donation, or the intention of obtaining an organ without the explicit consent of the donor. The voluntary donation of organs is regulated in the Netherlands in the Organ Donation Act (Wet op de Orgaandonatie). The most important conditions for organ donation laid down in that act are that the donor gives explicit, informed consent (Article 8) and that no payment should be made for the removal of the organ (Article 2). The intentional removal of an organ from a living person or after a person's death without prior consent is a criminal offence under Article 32 of the Organ Donation Act, as is deliberately causing or encouraging a person to give permission to remove an organ during his or her lifetime in return for a

¹ NRM5, 2007, Ch. 9 and NRM7, 2009, Ch. 13.

² The adoption of the EU Directive on preventing and combating trafficking in human beings and protecting its victims (2011/36/EU), which expands extra-territorial jurisdiction with regard to human trafficking, will lead to the lapse of the requirement that the offence is also a criminal offence in the country where it is committed. A bill to implement this directive is currently pending before parliament (Parliamentary Documents II 2011/12, 33 309, no. 2).

payment that amounts to more than the costs incurred by the donor as a direct result of the removal of the organ. Persons who openly offer to pay a commercial fee for receipt of an organ or who openly put themselves forward as a donor or offer their services as a ‘mediator’ for a commercial fee are also liable to prosecution.

Since the appearance of the Seventh report, two amendments to the law, which are relevant for human trafficking for organ removal, have entered into force.

The Health Insurance Decree

In the Seventh report, there was a discussion of a case of organ tourism in which a Dutch kidney patient had received a transplant in Pakistan.³ Because the Health Insurance Act provided that the health insurer had to pay for the transplant regardless of whether the organ had been purchased, a Dutch health insurance company reimbursed the costs of the transplantation.⁴ However, that conflicted with the ethical and legal norms adopted in the Netherlands: that there should not be a payment for donating an organ.⁵ In a letter of 3 November 2008 to the Lower House of Parliament, the Minister of Health, Welfare and Sport announced his intention to “modify the law to the effect that in those cases where there is serious doubt about the ethical acceptability of a transplant the insurance company should refuse to pay for it”.⁶ The intention was implemented with the introduction of an amendment of Article 2.4 (1) (c) of the Health Insurance Decree with effect from 1 January 2010.⁷ The article now provides that the costs of transplants outside the countries of the European Union and the countries that are party to the Agreement on the European Economic Area will not be reimbursed unless the organ is donated by a spouse, a registered partner or a blood relative of the insured person, the reasoning being that there will be no question of additional financial compensation in those cases.⁸

This amendment brings the policy on payment by health insurers for transplants more into line with the criminal nature of trafficking in organs⁹ and creates an additional obstacle for Dutch nationals who attempt to have a transplant for payment in another country. With regard to organ transplants in countries of the European Union and countries that are party to the Agreement on the European Economic Area, however, there is no rule requiring insurance companies to refuse to pay in the event of serious doubts about the ethical acceptability of a transplant. In those cases, reimbursement for the transplant depends on the terms of the policy.

³ NRM7, 2009, § 13.3.1. See also the edition of the television programme *Netwerk* on 21 January 2008.

⁴ NRM7, 2009, p. 586. Annex to the Proceedings II 2007/08, no. 1741.

⁵ Decree of 31 August 2009, containing an amendment of the Health Insurance Decree in connection with changes in insured treatments and the rules for the insurance excess from 1 January 2010, Bulletin of Acts, Orders and Decrees. 2009, 381.

⁶ Parliamentary Documents II 2008/09, 28 140, no. 62.

⁷ Bulletin of Acts, Orders and Decrees 2009, 381.

⁸ Bulletin of Acts, Orders and Decrees 2009, 381.

⁹ Article 32 of the Organ Donation Act.

Subsidy scheme for donation during life

Also worth mentioning is the Subsidy Scheme for donation during life, which entered into force on 1 June 2009.¹⁰ Under this scheme, the donor receives compensation for expenses that are a direct result of the donation and which are not reimbursed in any other way.¹¹ This scheme has given the payment of expenses to donors a permanent character and anchored it more firmly in public law,¹² thus removing an obstacle to donation during life.¹³

International developments

The common thread running through the European and international framework is the call on governments to adopt measures to remedy the problem of the shortage of available organs and reduce waiting lists for patients and to combat human trafficking for organ removal.¹⁴ The following section briefly describes the international legal developments since the Seventh report (2009).

United Nations and Council of Europe

In 2009, the joint study by the United Nations and the Council of Europe entitled ‘Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs’ was published.¹⁵ The study contained a number of conclusions and recommendations that can be summed up as follows:

- A distinction needs to be made between illegal trafficking in organs, tissues and cells and human trafficking for the purpose of the removal of organs.
- The prohibition of making financial gain from the body or its parts should be the paramount principle in relation to organ transplants.
- Organ donation needs to be promoted.
- Reliable data needs to be collected about trafficking in organs, tissues and cells and human trafficking for the purpose of the removal of organs.
- There is a need for an internationally agreed definition of ‘trafficking in organs, tissues and cells’.

¹⁰ Regulation of the Minister of Health, Welfare and Sport of 12 May 2009, no. GMT/IB/2929135, providing for reimbursement of costs for the donation of an organ during life, Government Gazette 2009, 97.

¹¹ ‘On these grounds, for example, the donor qualifies for reimbursement of the medical costs for which compensation is not provided elsewhere, the individual’s personal contribution to the municipality for help in the household, the care of children or loss of income.’ Parliamentary Documents II 2010/11, 28 140, no. 77, p. 9. The subsidy scheme corresponds with Articles 2 and 7 of the Organ Donation Act, which states that consent given for the removal of an organ, given in return for payment amounting to more than the costs (including loss of income) incurred by the donor as a direct result of the removal of the organ, shall be invalid.

¹² Government Gazette. 2009, 97, p. 4.

¹³ Government Gazette. 2009, 97, p. 4.

¹⁴ NRM7, 2009, p. 596. For a survey of the international legal framework, see: Council of Europe, 2009. The publication of this study was already announced in NRM7: NRM7, pp. 593-594.

¹⁵ Council of Europe, 2009.

World Health Organisation (WHO)

Given the absence of generally accepted terminology and definitions, in November 2009 the ‘Global Glossary of Terms and Definitions on Donation and Transplantation’ was published.¹⁶ This Global Glossary is a compilation of existing and newly coined terms and basic definitions relating to the donation and transplantation of cells, tissues and organs. On 21 May 2010, the 63rd World Health Assembly adopted Resolution WHA63.22, which endorsed the revised version of the ‘WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation’.¹⁷ The resolution also called on member states to implement the Guiding Principles, promote altruistic donation, combat attempts to make financial gain from trafficking in organs and from transplant tourism, promote transparent and legitimate systems of allocating organs and tissues, improve the safety and effectiveness of donations and transplants, strengthen national and multinational organising and coordinating authorities and promote the collection of data.¹⁸

European Union

While the Directive of the European Parliament and the Council of 7 July 2010 on standards for human organs intended for transplantation¹⁹ is primarily concerned with the quality and safety of organs, it does refer to unacceptable practices in relation to organ donation and transplantation, including trafficking in organs and human trafficking for the purpose of the removal of organs. The directive is intended to “contribute indirectly to combating organ trafficking through the establishment of competent authorities, the authorisation of transplantation centres, the establishment of conditions of procurement and systems of traceability”.²⁰ Although practice in the Netherlands already largely complies with the rules laid down in the directive, there is also a minor addition to the principle of voluntary and unpaid donation and the prohibition of trafficking in organs, since the amendment provides that the procurement of organs in a hospital must also not be for profit.²¹ The member states were required to transpose this directive into national law by 27 August 2012.²²

¹⁶ World Health Organization, 2009.

¹⁷ World Health Organization, WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation, endorsed by resolution WHA63.22, 21 May 2010. The presentation of the new WHO Guiding Principles on Human Cell, Tissue and Organ Transplantation was already discussed in NRM7, which said, among other things: “Guiding Principle 5 prescribes that cell, organ and tissue donation may only take place voluntarily – for altruistic reasons – and rejects the trade in these human body parts. Any costs incurred by the donor may be reimbursed.”

¹⁸ WHA63.22, p. 2.

¹⁹ Directive 2010/53/EU of the European Parliament and the Council of 7 July 2010 on standards of quality and safety of human organs intended for human transplantation (OJ 2010, L 207/14). The proposal for this directive (COM(2008)818 def.) and the Action Plan published at the same time (COM(2008)819 def.) are discussed in NRM7, p. 595.

²⁰ Directive 2010/53/EU (OJ 2010, L 207/14), recital 7.

²¹ Parliamentary Documents II 2011/12, 33 063, no. 3, p. 2.

²² Directive 2010/53/EU (OJ 2010, L 207/14), Article 31. The amending law entered into force in the Netherlands on 27 August 2012. Bulletin of Acts, Orders and Decrees 2012, 98.

In the EU Directive on combating and preventing trafficking in human beings and protecting the victims of trafficking,²³ the definition of human trafficking in the previous Council Framework Decision²⁴ was expanded by adding human trafficking for the purpose of the removal of organs.

In April 2010, an EU-financed project on organ donation during life in Europe was launched.²⁵ The general objectives of the project are to identify practices in relation to donation during life in the member states, to investigate and promote donation during life as a possibility of increasing the availability of organs and to develop tools to improve the quality and safety of organ donations during life in Europe.

2.2 Incidents, investigation and prosecution

Although human trafficking for the purpose of the removal of organs has been a criminal offence under Article 273f DCC since 1 January 2005, little is known about the prevalence of this form of human trafficking in the Netherlands. It is also difficult to say whether this type of offence is committed by Dutch nationals abroad. As described in the Seventh report, three possible cases of human trafficking for the purpose of the removal of organs were reported in 2006 and 2007.²⁶ Since then, one additional case that might have involved human trafficking for the purposes of the removal of organs was reported to CoMensha in 2010. This case involved an Iranian political refugee who was smuggled to the Netherlands via Istanbul. In the Netherlands, he was locked in a room and threatened with organ removal. The man was able to escape and told his story to the police. A place was then found for him in a reception centre and an asylum application procedure was started.

Although every victim or possible victim of human trafficking must be registered with CoMensha, no new victims of forced organ removal have been reported to CoMensha since that last case in 2010. However, the newspaper Trouw published an article in 2011 about a Chinese woman who was smuggled to the Netherlands where she was exploited in prostitution.²⁷ The woman had a daughter in China whom she wanted to bring to the Netherlands. In exchange for her daughter's journey, the woman had to surrender a kidney in China. After donating the organ, the woman returned to the Netherlands with her daughter, where she was again put to work as a prostitute in a massage parlour.

²³ The European Parliament and the Council, Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Strasbourg, 5 April 2011.

²⁴ The European Parliament and the Council, Directive 2011/36/EU.

²⁵ See <http://www.eulod.org/>.

²⁶ NRM7, 2009, §13.3.3.

²⁷ 'Een nier in ruil voor mijn meisje' [A kidney in exchange for my daughter], Trouw, 6 August 2011.

No suspect has ever been prosecuted for human trafficking for the purpose of the removal of organs in the Netherlands. In Belgium two cases involving the illegal removal of organs²⁸ have been reported to the public prosecution service, but there, too, there have been no prosecutions, according to the Centre for Equal Opportunities and Opposition to Racism.²⁹

Although human trafficking for the purposes of the removal of organs is a criminal offence in many countries, in most countries there is little awareness of this form of crime or expertise in investigating and prosecuting what has proved a very complex offence.³⁰ For example, there was a case in South Africa where medical staff were found guilty of performing more than 100 illegal kidney transplantations, but it took seven years before the public prosecution service had collected enough evidence to prosecute the suspects.³¹ Because of the very small number of prosecutions for human trafficking for the purpose of the removal of organs worldwide, there is scarcely any case-law about this form of crime.³²

2.3 Trafficking in organs and organ tourism

The basic principle for voluntary organ donation in the Netherlands is that the organs should not be donated for payment.³³ However, the shortage of organs could undermine this principle. On the one hand, payment for an organ could give people an incentive to donate an organ while they are alive, thus reducing the shortage of organs. On the other hand, the risk of a trade in organs³⁴ is that the commercialisation of organs could endanger the voluntary nature of donation,³⁵ and a market in organs could encourage human traffickers to exploit people for that purpose. After all, wherever there is money to be made, there is the risk of exploitation.

Scale of organ trafficking and organ tourism

Although there is still no clear picture of the scale of organ trafficking and organ tourism in the Netherlands and by Dutch nationals abroad, the situation is coming into sharper relief. Public offers of and requests for organs seem to occur increasingly frequently, while doctors also seem to find it easier to discuss possible cases of organ tourism that they encounter during their work, and more research is being conducted into the scale of trafficking in organs and organ tourism.³⁶

²⁸ Human trafficking - Illegal removal of organs, Article 433 quinquies § 1.5° SW.

²⁹ Centre for Equal Opportunities and Opposition to Racism, 2010, p. 47.

³⁰ Ambagtsheer & Weimar, 2012, p. 572.

³¹ Ambagtsheer & Weimar, 2012, p. 574.

³² Ambagtsheer & Weimar, 2012, p. 574.

³³ Only costs, including loss of income, incurred by the donor as a direct result of the donation may be reimbursed (Article 2, Organ Donation Act).

³⁴ Trafficking for organ trade is not the same as human trafficking for the purpose of organ removal, but in practice the same set of facts could encompass, see NRM5, 2007, § 9.9.2.

³⁵ On this point, see NRM7, 2009, § 13.2.2.

³⁶ For research into organ trade, see, for example: Geesink & Steegers, 2011, and Ambagtsheer, 2007.

Some people offer their kidney on the Internet or in the newspaper.³⁷ At the beginning of 2011, the *Algemeen Dagblad* reported that at least 24 people had offered their kidneys for sale in advertisements on websites like *Marktplaats* and *Speurders* (the advertisements are usually removed from the websites after a while).³⁸ In the advertisements the donors asked for remuneration and sometimes mentioned a specific amount, such as of 40,000 or 60,000 euro.³⁹ Advertisements are also sometimes placed by kidney patients looking for an organ.⁴⁰

At the beginning of 2011, there was an uproar about organ tourism by Dutch nationals in Belgium. It was reported that 28 Dutch nationals who were on a waiting list in Belgium had received Belgian organ transplants in 2010.⁴¹ Member of Parliament Dijkstra (D66) submitted questions on the matter to the Minister of Health, Welfare and Sport.⁴² However, this case did not involve payment for organs.

In the free newspaper *Metro*,⁴³ surgeon Frank Dor said that every year there are probably between five and ten Dutch people who buy kidneys in Turkey or Israel. These kidneys are reportedly taken from young people from Moldavia and Kosovo, who are enticed to these countries under the guise of finding ‘work’ and then have their residence papers confiscated. The only way they can get their passports back is to surrender a kidney, according to Dor.

The disappearance of a person’s name from a waiting list for an organ transplant for reasons that are unclear could be an indication that they have had a questionable transplant. Until recently, the Ministry of Health, Welfare and Sport was unable to say how many people disap-

³⁷ See, for example, the advertisement: ‘Nier Te Koop, Nier Aangeboden’ [Kidney for Sale], www.nujij.nl/nier-te-koop-nier-aangeboden-gezond-nier.10684265.lynkx (consulted on 26 March 2012), and the articles ‘Nier te koop uit geldnood’ [Kidney for sale because of financial need], *De Telegraaf*, 18 March 2010, ‘Nier verkopen enige uitweg voor Roos Lee’, [Sale of kidney the only way out for Roos Lee] *AlgemeenDagblad*, 8 January 2011.

³⁸ ‘Nederlanders zetten hun nier te koop op internet’ [Dutch offer their kidneys for sale on the Internet], *Algemeen Dagblad*, 8 January 2011 and ‘Nier verkopen enige uitweg voor Roos Lee’ [Sale of kidney the only way out for Roos Lee], *Algemeen Dagblad*, 8 January 2011.

³⁹ See the advertisement ‘Nier aangeboden, prijs: nader overeen te komen’ [Kidney for sale: price negotiable] of 13 April 2011 on [Tweedehands.net](http://tweedehands.net), <http://diensten.tweedehands.net/overige-welzijn/nier-aangeboden.html> (consulted on 10 May 2011), the advertisement on *Speurders.nl*, www.nujij.nl/nier-te-koop-nier-aangeboden-gezond-nier.10684265.lynkx (geraadpleegd 10 mei 2011), the article ‘Nier te koop uit geldnood’ [Kidney for sale because of financial need], *De Telegraaf*, 18 March 2010, and the article ‘Nier verkopen enige uitweg voor Roos Lee’ [Sale of kidney the only way out for Roos Lee], *Algemeen Dagblad*, 8 January 2011.

⁴⁰ See for example, the article ‘Gezocht: donornier, bloed O-positief’ [Wanted: donor kidney, blood type O-positive], *dé Weekkrant*, 10 June 2009.

⁴¹ On this point, see ‘Nederlanders kapen Belgische organen weg’ [Dutch hijack Belgian organs], *De Volkskrant*, 17 January 2011.

⁴² Annex to Parliamentary Proceedings II 2010/11, no. 1376.

⁴³ ‘Je nier of je lever: handel in organen’ [Your kidney or your liver: trade in organs], *Metro*, 10 June 2011.

peared from waiting lists for organ transplants. Following a recommendation by the NRM,⁴⁴ the Minister of Health, Welfare and Sport conducted a study into the number of people disappearing from the waiting lists and reported her findings to the NRM in a letter.⁴⁵ The minister made enquiries at Eurotransplant, the agency that keeps records of why people remove their names from a waiting list in the Netherlands. One of the reasons that can be given, apart from 'other' or 'improvement or deterioration in condition', is 'transplant outside a Eurotransplant country'. This reason was given in two instances in 2010. Aware of the possibility that the real reason for leaving a waiting list was not given, the minister then consulted the Dutch Transplantation Foundation (NTS), which had made enquiries at the eight Dutch kidney transplant centres in 2008 about transplant tourism in the Netherlands. Five cases were reported in the period 2005-2007. The NTS has not repeated its study since 2008⁴⁶ and the minister sees no reason to conduct a further study into the reasons why people remove their names for the waiting lists for kidney transplants.⁴⁷

Addressing the shortage of donors

The Netherlands still faces a shortage of donors,⁴⁸ which is the driving force behind trafficking in organs and human trafficking for the purpose of the removal of organs,⁴⁹ so it is important to have a clear picture of how the government intends to address the donor shortage.

In 2008, the Organ Donation Coordination Group drew up the Master Plan for Organ Donation.⁵⁰ The Coordination Group investigated the option of providing financial incentives for donation during life, but rejected this option because there was insufficient public support and because of ethical and legal considerations.⁵¹ Although, according to the Minister of Health, Welfare and Sport, progress had been made in other areas, such as the approach in hospitals, public information and donation during life, in response to the Organ Donation Master Plan,⁵² those efforts have not resolved the shortage of donors. In a reaction

⁴⁴ The recommendation was made during a meeting of the NRM with the Minister of Health, Welfare and Sport, 27 September 2011.

⁴⁵ Letter from the Minister of Health, Welfare and Sport to NRM, 11 May 2012.

⁴⁶ Information received in a telephone call from NTS, 12 July 2012.

⁴⁷ In the letter of 11 May, the Minister gives as reasons the small number of reports in the period 2005-2007, the amendment of the Health Insurance Act (see section 2.1) and the measures currently being taken by the Council of Europe.

⁴⁸ According to the 2011 annual report of the Dutch Transplantation Foundation, on 31 December 2011 there were 1311 patients on the waiting list for an organ (NTS, 2012). According to the Kidney Foundation, on 31 December 2011 there were 883 people on the waiting list for a donor kidney. Kidney patients have to wait an average of just over four years for a transplant: <http://www.nierstichting.nl/asset/folders/feiten-cijfers2011.pdf> (last consulted on 12 July 2012). Every year, between 100 and 200 people die while they are on the waiting list: <http://www.nierstichting.nl/collectanten/collecte/veelgestelde-vragen?id=836f40do-2fcc-4c7a-a7ff-37e1d58abo2c#836f40do-2fcc-4c7a-a7ff-37e1d58abo2c> (last consulted on 12 July 2012).

⁴⁹ NRM7, 2009, § 13.2.2, and § 13.3.2.

⁵⁰ Organ Donation Coordination Group, 2008. See also: NRM7, 2009, p. 588.

⁵¹ Organ Donation Coordination Group, 2008.

⁵² Parliamentary Documents II 2010/11, 28 140, no. 77, pp. 5-9.

to this conclusion, members of parliament held talks with the minister.⁵³ During that meeting MP Dijkstra announced that D66 would submit a bill providing for the introduction of an active donor registration system (ADR system).⁵⁴ Dijkstra presented her private member's bill in August.⁵⁵ The ADR system leaves people free to choose whether to become a donor, but requires the choice to be registered.⁵⁶ The Organ Donation Coordination Group had recommended in the Organ Donation Master Plan that the Netherlands should switch to this system.⁵⁷ However, the minister said that she regarded the assumption that a person who does not register an objection wishes to be a donor as an infringement of the right to self-determination, which could only be justified if that infringement would yield an undeniable and substantial increase in the number of donors.⁵⁸ According to her, the uncertainties about the effect of a change in the system are too great to justify making such a change.⁵⁹

Principle of non-commerciality

Dutch legislation takes a clear stand against commercial payments for organ donation.⁶⁰ In international treaties and legislation, altruism is also regarded as the decisive factor for organ donation.⁶¹ Donation should be voluntary and not for financial gain. Various arguments can be made in favour of the non-commerciality principle, one of which is that paying for bodily materials would transform them into commodities, which would constitute a violation of human dignity.⁶² Another argument is that the payment would tempt donors to conceal diseases and, hence, endanger the safety and quality of donation.⁶³ With regard to human trafficking for the purpose of the removal of organs, however, the most important factor is that commercialisation could endanger the voluntary nature of organ donation. In the literature, the argument made is that social determinants (poverty, debt, a vulnerable social position or illiteracy on the part of the donor) could reflect the social inequality between donor

⁵³ Parliamentary Documents II 2010/11, 28 140, no. 78.

⁵⁴ Parliamentary Documents II 2010/11, 28 140, no. 78. The Netherlands currently has a passive donor registration system. See p. 265 R 5.

⁵⁵ Proposal by the member Dijkstra for a law to amend the Organ Donation Act in connection with the inclusion of an active donor registration system, No.2 Preliminary Draft and No. 3 Preliminary Draft (Explanatory Memorandum).

⁵⁶ Under Dijkstra's private member's bill, the Organ Donation Act would be amended to the effect that adults who do not register would be deemed to have given their consent for the removal of their organs after their death (Article 9, section 2).

⁵⁷ Organ Donation Coordination Group, 2008.

⁵⁸ This is the line taken by most critics of the ADR system. See, for example, the opinion pieces that were published following the presentation of the private member's bill: M. van der Land, 'D66 verloocht zichzelf met de verplichte donor registratie' [D66 does itself a disservice with this mandatory donor registration], NRC Handelsblad, 16 August 2012. See also: D. Spaargaren & G. Waling, 'Nee D66, wij blijven baas in eigen buik' [No D66, we retain control of our own body], De Volkskrant, 20 August 2012.

⁵⁹ Parliamentary Documents II 2010/11, 28 140, no. 77, pp. 1-2. On 15 December 2011, Minister Schippers repeated that she did not intend to take any steps to revise the statutory system in the direction of an Active Donor Registration System. See Parliamentary Documents II 2011/12, 32 711, no. 6, p. 12.

⁶⁰ See NRM5, 2007, pp. 266-267, 271-273 and NRM7, 2009, pp. 577, 585-588.

⁶¹ See NRM7, 2009, § 13.4, and §2.1 of this report.

⁶² Geesink & Steegers, 2011, p. 21.

⁶³ Geesink & Steegers, 2011, p. 21.

and recipient and, consequently, compel the sale of organs.⁶⁴ Accordingly, the donor would have no autonomy or freedom of choice and the situation would usually involve coercion and exploitation.⁶⁵ There are other studies that suggest that criminalising the commercialisation of organ donation could promote human trafficking,⁶⁶ because there would be a greater opportunity for exploitation and abuse if supplying desperately wanted goods (in this case, organs) were made illegal.⁶⁷

Because of the shortage of organs, there are growing calls to abolish the prohibition of payments for organs. In 2011, Ingrid Geesink and Chantal Steegers (two researchers at the Rathenau Institute) published ‘Nier te koop – Baarmoeder te huur’,⁶⁸ a book that explores the worldwide market in bodily materials. Their conclusion was that parts of our body are worth money and that Dutch nationals travel abroad to buy them. The authors believe that this forces us to revise our ideas about payment and donation, and they refer in their book to alternative forms of donation and possible financial incentives. One form of remuneration for organ donors that they suggest is a lifetime exemption from health insurance premiums,⁶⁹ a proposal that had already been made in 2007 by the Council for Public Health and Health Care (RVZ) as an appropriate form of remuneration.⁷⁰ The journal *Medisch Contact* published an article entitled ‘Wet tegen orgaanhandel is dode letter’ [‘Act to prevent organ trade is a dead letter’], which also proposed this form of remuneration.⁷¹ Dutch doctors, who are confronted with patients who have had a kidney transplant abroad and suspect that the kidney came from a paid donor, do not feel that it is their responsibility to act as investigating officers, and their duty of professional confidentiality and doctor-patient privilege exempts them from the requirement to report crimes that may have been committed by their patients. For these reasons, possible cases of transplant tourism are not reported and registered, and therefore go unpunished. As a result, illegal trafficking in organs continues. The authors of the article therefore advocate that the government should consider regulating the market in organs rather than banning payment for them. According to them, there is no conflict between payment and voluntariness. Proper screening and a reward that is not provided at once (and also not given in cash), such as a lifelong exemption from health insurance premiums, would prevent involuntary donation. Research shows that the public also regards exemption from health insurance premiums as the most acceptable form of remuneration.⁷²

⁶⁴ NRM7, 2009, p. 583. See Budiani-Saberi & Karim, 2009.

⁶⁵ NRM7, 2009, p. 583.

⁶⁶ Ambagtsheer & Weimar, 2012, p. 573.

⁶⁷ Ambagtsheer & Weimar, 2012, p. 573.

⁶⁸ Geesink & Steegers, 2011.

⁶⁹ See, among others, Geesink & Steegers, 2011, p. 56, and ‘Het lichaam is geld waard, maar niet bij ons; Daarom wijken sommige kopers voor een nier, bot of een eikel uit naar the buitenland’ [The body is worth money, but not here; that is why some buyers go abroad for a kidney, a bone or an egg], NRC Handelsblad, 4 March 2011 (Carola Houtekamer).

⁷⁰ Council for Public Health and Health Care, 2007.

⁷¹ Van Dijk, Ambagtsheer & Weimar, 2011, pp. 778–781.

⁷² See Kranenburg, 2007, and Van Buren, et al., 2010, pp. 2488–2492.

Parliament held a debate in response to the book 'Nier te koop – Baarmoeder te huur'.⁷³ In a letter dated 19 January 2012, the Minister of Health, Welfare and Sport announced that she would present her analysis of the book and her position on the principle of non-commerciality in the first quarter of 2012.⁷⁴ Because of the controversial nature of the subject, the statement of the government's position on the issue has been left to the next government.⁷⁵

2.4 Problems and recommendations

This chapter has described recent developments in the Netherlands and in international legislation relating to human trafficking for the purpose of the removal of organs and trafficking in organs. The analysis leads to the following list of bottlenecks and the issues that require special attention.

- There are very few known cases of human trafficking for the purpose of the removal of organs in the Netherlands or by Dutch nationals. However, there is a need to remain alert because there seems to be a growing market in organs, due in part to the Internet and the globalisation of society.
- Commercialisation of organ donations could endanger the voluntary nature of donation. Where these practices occur, there is therefore a risk of human trafficking for the purpose of the removal of organs. It is important to learn more about the scale of organ trafficking and organ tourism. The Ministry of Health, Welfare and Sport could play a prominent role in this.
- As already mentioned in the Seventh report, in order to gain a clear picture of the scale of trafficking in organs and organ tourism it is necessary to secure the help and alertness of the relevant facilitating, supporting and executive agencies, such as medical personnel and health insurers.⁷⁶ An agency should be established to make it easier to report and register possible cases of organ tourism and trafficking in organs.

⁷³ On 22 March 2011, members of parliament had a meeting with the Rathenau Institute to discuss the trade in bodily materials. During the debate in parliament on organ donation on 24 March 2011, members of parliament asked the Minister for a reaction to the Rathenau Institute's book 'Nier te koop – Baarmoeder te huur'.

⁷⁴ Parliamentary Documents II 2011/12, 28 140, no. 82.

⁷⁵ The Ministry of Health, Welfare and Sport provided this information in an e-mail sent in reply to enquiries, 11 July 2012.

⁷⁶ NRM7, 2009, p. 597.

- The disappearance of a person's name from the waiting list for an organ transplant for vague reasons could be an indication that they have had a questionable transplant. Eurotransplant keeps records of the reasons why people remove their names from a waiting list. In 2010, this happened twice because the transplant could be performed outside a Eurotransplant country. Enquiries by NTS at kidney transplant centres in 2008 identified five cases of transplant tourism in the period 2005-2007. Because of the small numbers involved, no further research has been conducted since these studies in 2010 and 2008. The research should be repeated to gain an overview of the current situation.
- There are calls from various quarters for financial incentives for organ donation. A number of points need to be considered in this context. Financial incentives could alleviate the shortage of organs and, hence the chance of human trafficking for the purpose of the removal of organs. However, financial incentives for organ donation would also make organ donation a commercial activity and create a market for organs, which would, in itself, carry the risk of human trafficking for the purpose of the removal of organs. That risk could be avoided by offering donors an exemption from health insurance premiums rather than a direct monetary reward.
- Trafficking in organs and human trafficking for the purpose of the removal of organs are not constrained by national borders. It is important for states to try to reach new joint solutions and, where possible, coordinate policies and strategies with respect to organ donation, trafficking in organs and human trafficking for the purpose of the removal of organs.

3 Does forced surrogacy constitute human trafficking?

The previous sections discussed trafficking in organs and human trafficking for the purpose of the removal of organs in the context of the ‘classical organs’, such as kidneys, heart, lungs and liver. Because of the severe shortage of these organs, patients seem to be willing to pay for them. In addition to the trade in these ‘classical organs’, however, a market is also growing for other parts of the body.⁷⁷

One such market is the demand for surrogate mothers. Commercial surrogacy is increasingly common, partly as a result of developments like the Internet, the globalisation of society and advances in procreation techniques.⁷⁸ The policy in the Netherlands is aimed at preventing the spread of commercial surrogacy, and accordingly, behaviour that promotes supply and demand in relation to surrogacy has been made a criminal offence.⁷⁹ Surrogacy itself is not a criminal offence.

3.1 Legal framework

For parents who would like their own genetic child, high-tech surrogacy is permitted under very strict conditions⁸⁰ at the Vrije Universiteit Medical Centre.⁸¹ This form of surrogacy is very rare in the Netherlands, as is apparent from the fact that only five children have been born through the use of high-tech surrogacy at the VUMC in the last few years.⁸²

In addition to the stringent requirements for surrogate motherhood in the Netherlands, the requirements for the donation of eggs and semen were also tightened up in 2004, with the entry into force of the Artificial Insemination (Donor Data) Act. The act provides that every

⁷⁷ On this point, see Geesink & Steegers, 2011.

⁷⁸ See Parliamentary Documents II 2009/10, 32 123 XVI, no. 30, and Parliamentary Documents II 2010/11, 32 500 VI, no. 83.

⁷⁹ Parliamentary Documents II 2011-2012, 33 000 VI, no. 69. Criminalisation in Arts. 151b and 151c DCC.

⁸⁰ The rules were drawn up by the Dutch Association of Obstetrics and Gynaecology. Conditions are that there must be an indication that the prospective mother has a serious medical condition, the surrogate mother must be known to the prospective parents, and the surrogate mother must have a complete family of her own. Surrogacy is only permitted for altruistic reasons, and there is a strict medical and psychological selection procedure (Geesink and Steegers, 2011, p. 125). A further requirement is that the genetic material must come from the two prospective parents (Parliamentary Documents II 2011-2012, 33 000 VI, no. 69).

⁸¹ With high-tech surrogacy, an embryo created by IVF is inserted in the surrogate mother. That embryo may be related wholly or partially to the prospective parents, or not at all. The surrogate is not genetically related to the child.

⁸² Parliamentary Documents II 2011-2012, 33 000 VI, no. 69, p. 2. In the period 1997-2004, 500 couples requested information about high-tech surrogacy, of whom 202 couples were screened, but only 35 could start an IVF procedure. This led to the birth of 16 children. See Winkel, Roumenen&Dermout, 2010.

child from the age of 16 is entitled to know who his or her biological parent is. The prohibition of the anonymous donation of eggs and semen in this law has led to a severe shortage of sperm donors.⁸³

Foreign commercial surrogacy

While high-tech surrogacy is only available to a very small number of people in the Netherlands, and only if both prospective parents can provide their own genetic material, the rules on surrogate motherhood are less stringent in some other countries. In countries like the United States, India and the Ukraine, for example, commercial high-tech surrogacy is permitted and the purchase of eggs and semen is legal. With globalisation, it is possible for prospective parents in the Netherlands to buy an egg in the United States, order semen from Cryos (the commercial sperm bank in Denmark) and have them borne by an Indian surrogate mother through IVF with the help of high-tech surrogacy.

In a letter dated 16 December 2011, the State Secretary for Security and Justice said: “Globalisation and the Internet provide easier access to the services that are offered abroad. The low costs in India and the Ukraine are another important factor. This makes a route via those countries ‘attractive’.”⁸⁴ The total cost for a baby via high-tech commercial surrogacy comes to between 25,000 and 30,000 dollars in India,⁸⁵ compared with 150,000 dollars in the United States.⁸⁶

Intermediary companies operate in the international ‘baby market’, bringing together donors, parents, surrogate mothers and fertility clinics and making the legal arrangements. Although donors, surrogate mothers and fertility clinics are financially compensated for their services, according to Geesink and Steegers it is the intermediary companies that make the greatest profits from the ‘baby market’.⁸⁷

When it comes to commercial surrogacy, the question is to what extent the surrogate mothers are acting voluntarily. As with trafficking in organs, social determinants such as poverty, debt, a vulnerable social position and illiteracy can force a woman to become a surrogate mother. Jyotsna Gupta, a senior lecturer in gender studies and diversity at the University of Utrecht, argues that Indian surrogate mothers are usually under enormous pressure from their hus-

⁸³ Geesink & Steegers, 2011, p. 82. In part to address the shortage of donors, on 2 April 2012 the UMC Utrecht started recruiting egg donors as a first step towards creating a Dutch egg bank. See: ‘Eerste stap Nederlandse eicelbank’ [First step towards Dutch egg bank], De Telegraaf, 2 April 2012.

⁸⁴ Parliamentary Documents II 2011-2012, 33 000 VI, no. 69, p. 3.

⁸⁵ Geesink & Steegers, 2011, p. 122. The Confederation of Indian Industry (CII) expects that the surrogacy industry in India will generate income of around 1.7 billion euro in 2012 (‘Zolang een vrouw een baarmoeder heeft, kan ze gewoon kinderen krijgen’ [As long as a woman has a womb, she can have children] , De Volkskrant, 1 March 2012.)

⁸⁶ Geesink & Steegers, 2011, p. 78.

⁸⁷ Geesink & Steegers, 2011, p. 113.

band and family.⁸⁸ Furthermore, particularly in the poorer countries, the rights of surrogate mothers are not always properly protected⁸⁹ and most of the money goes to the mediators and doctors.⁹⁰ In other words, with commercial surrogacy, there is a risk that women are forced to become surrogates and are exploited in that role. Dr. Roel Schats, chief medical officer of the IVF centre of the VU Medical Centre, goes so far as to argue that “it is a form of modern slavery to use an Indian woman as a breeding machine without the benefit of any form of care”.⁹¹

This raises the question of whether forced surrogacy could, or should, fall within the scope of the Dutch human trafficking article, which would require the elements of the offence (as defined in Article 273f DCC) to be met. The following sections discuss each element of that offence in turn.

Conduct

To meet the definition of the offence in Article 273f (1)(1) DCC, there first has to be one of the actions listed in that sub-section.⁹² Depending on the specific situation, commercial surrogacy could involve the recruitment of the surrogate mother by the mediating agency. Many Indian surrogate mothers are also housed in special centres for all or part of the pregnancy. In such cases, one or more of the actions referred to in Article 273f (1)(1) DCC are involved.

Coercion

For forced surrogacy to qualify as human trafficking, one of the means of coercion listed in section 1, subsection 1 has to be used. Three factors can play a role in determining whether coercion is used in commercial surrogacy:

The first factor is whether a foreign surrogate mother who is paid to bear a child for Dutch parents has personally chosen to be a surrogate. For example, if pressure is exerted on the woman by her husband, or if women living in poverty are offered a large sum of money to become a surrogate, that could constitute coercion through the use of force or misuse of a vulnerable position.

Another factor is whether it is possible for the potential surrogate to change her mind. If the contract with the mediating agency has been signed but conception has not yet taken place, can the potential surrogate still retract her decision?⁹³ If not, this could constitute coercion.

⁸⁸ ‘Te huur’ [To let], *Nederlands Dagblad*, 24 December 2010.

⁸⁹ After a miscarriage, for example, the surrogate receives no more than the monthly payment up to that time. See the article ‘Te huur’, *Nederlands Dagblad*, 24 December 2010.

⁹⁰ Geesink & Steegers, 2011, p. 113. According to the article ‘Te huur’, *Nederlands Dagblad*, 24 December 2010, the doctors exploit the surrogates.

⁹¹ ‘Commercieel draagmoederschap is vorm van slavernij’ [‘Commercial surrogacy is a form of slavery’], *Nederlands Dagblad*, 15 March 2011.

⁹² These actions are recruiting, transporting, moving, accommodating and sheltering.

⁹³ For example, the consent given for the donation of an organ during life can always be revoked pursuant to Article 6 of the Organ Donation Act.

A final factor is the degree to which the surrogate mother, after conception, is free to spend the period of her pregnancy as she wishes. 'Google baby', a documentary about Indian surrogate mothers, included a film of a centre where surrogate mothers were living. Dozens of these surrogate mothers, whose pregnancies were at an advanced stage, were living in a large dormitory. They were required to stay in bed and take certain medication. All of the children were delivered before the due date by Caesarean section. It is legitimate to ask to what extent these women were free to spend their pregnancy in another way or whether this was a form of coercion.

Exploitation

Exploitation – and the intention to exploit – is the key to the article on human trafficking. The various forms of exploitation are defined in section 2 of Article 273f DCC. Commercial surrogacy is not specified as a form of exploitation in this article. However, that does not mean that it could not fall within the scope of the human trafficking article, since the list of forms of exploitation in section 2 is not exhaustive. Surrogate motherhood could be defined as the forced or induced performance of services, a form of exploitation that is included in section 2. The service the surrogate mother is forced to perform in that case is carrying and bearing the child.

If it is assumed that surrogacy could be regarded as being forced to perform a service, the question remains: under what circumstances would it involve exploitation? Exploitation involves a violation of fundamental rights, so it could be argued that forced commercial surrogacy is a violation of the right to bodily integrity, since the forced insertion of the embryo into the womb and any physical discomfort during the pregnancy and the delivery could be seen as a violation of bodily integrity. The right to human dignity could also be at risk if a woman is forced to be a surrogate. The number of high-tech pregnancies that a surrogate mother has gone through for the purposes of commercial surrogacy could also be an indication of exploitation.⁹⁴

Another factor that could play a role in deciding whether there is exploitation is the economic benefit gained from the surrogacy. Although the surrogate mother receives financial compensation in the case of commercial surrogacy, a large share of the money paid by the prospective parents goes to the agency that mediates in surrogacy. In India the surrogate mother bears the risks; if there are complications or health problems during the pregnancy or if the pregnancy or delivery leads to the death of the surrogate mother, neither the clinic nor the prospective parents are liable.⁹⁵ A surrogate mother who has a miscarriage receives no payment⁹⁶ or is only paid for the term of the pregnancy up to that point. It is therefore

⁹⁴ The some women undergo an extremely large number of high-tech surrogacies is apparent, for example, from the report '47-jarige zwanger van negende en tiende kind' [47-year-old pregnant with ninth and tenth child], www.nu.nl, 29 February 2012, in which a 47-year-old British surrogate mother was pregnant with twins, her ninth and tenth babies.

⁹⁵ Documentary Google Baby, 2009.

⁹⁶ Documentary Google Baby, 2009.

possible for a surrogate mother to be worse off physically and financially after a pregnancy with complications or after a miscarriage than she was before.⁹⁷

In conclusion, it can be argued that, under certain circumstances, surrogacy could constitute exploitation. An important indication of exploitation would be if the financial and health risks are entirely or largely borne by the surrogate mother.

3.2 Offenders, victims and jurisdiction

Based on the conclusion that under certain circumstances surrogacy could fall within the scope of Article 273f DCC, the question is, what consequences could that have in practice? First and foremost, it is important to establish who can be regarded as the offender – i.e., the exploiter/human trafficker – if forced surrogacy can be described as human trafficking. Is it the doctors, the prospective parents, the man who ‘instructs’ his wife to become a surrogate mother? Or is the mediator the human trafficker? Depending on the specific circumstances, it seems evident that in most cases of forced commercial surrogacy it is the mediating agency and/or the spouse of the surrogate who exercises the coercive pressure and exploits the surrogate mother. Although the prospective parents could also be involved in the exploitation of the surrogate mother, if a situation can in fact be described as human trafficking, their role is more that of consumer or customer rather than exploiter. In that sense, a comparison can be made with other forms of human trafficking: the customers are not the human traffickers in the case of forced organ donation, sexual exploitation in prostitution or labour exploitation. As such they do not fall under the definition of the offence in Article 273f DCC. Doctors, and sometimes lawyers, are also involved in forced commercial surrogacy. In that sense, they could be regarded as facilitators but seldom as co-offenders or conspirators in human trafficking. The role they play in the human trafficking process in such cases can be compared with that of taxi drivers, administrative offices or operators of window prostitution in other forms of exploitation. As facilitators, they enable the exploitation but do not play an active part in it. However, it could be argued that if they wilfully profit from the exploitation of another person, they could also be prosecuted as human traffickers, since that conduct is punishable under Article 273f(6) DCC.

Obviously, the victim in the case of forced commercial surrogacy is the surrogate mother. Human trafficking is about exploitation and the person exploited in this case is the surrogate. Although the term ‘human trafficking’ can be confusing in the sense that to some people it implies that people are traded, that is a misapprehension. It follows from this that the baby

⁹⁷ Similar problems also arise with paid organ donation abroad. See NRM7, pp. 581-582.

born from the forced surrogacy is not the victim of human trafficking⁹⁸ when there is no intention to exploit the baby.⁹⁹

Assuming that forced commercial surrogacy can constitute human trafficking and that, in that case, the mediating agency and/or the spouse who forces his wife to act as a surrogate can be regarded as the human trafficker, it is important to establish whether these facts can be prosecuted in the Netherlands under Article 273f DCC.

Forced commercial surrogacy appears to occur only outside the Netherlands. Because promoting the supply and demand for surrogacy has been made a criminal offence in the Netherlands, the agency that does so cannot be Dutch. This means that the offence does not take place in the Netherlands and that the offenders and victims are not Dutch nationals and do not reside in the Netherlands. The prospective parents are the only connection with the Netherlands, but as already noted they cannot be regarded as offenders for the purposes of human trafficking. This leads to the conclusion that, generally speaking, the Netherlands will have no jurisdiction to prosecute.

3.3 Problems and recommendations

- As already explained, the policy in the Netherlands is aimed at preventing commercial surrogacy, and its promotion is a criminal offence in this country. Although high-tech surrogacy is permitted, it is subject to strict conditions, which means that the number of prospective parents with access to it in the Netherlands is very small. The Minister of Health, Welfare and Sport is currently reviewing the requirements for high-tech surrogacy and was originally due to send a position paper on the issue to parliament in the first quarter of 2012,¹⁰⁰ but because the subject was declared controversial after the fall of the government, the statement of the government's position has been left to the next government.¹⁰¹ A more flexible regime for high-tech surrogacy in the Netherlands might reduce the demand for surrogacy abroad, but it has not yet reached that point, and at the moment, the option of using a foreign surrogate mother is attractive to prospective parents in the Netherlands.

⁹⁸ On this point, see also Boele-Woelki et al., 2011, p. 45 about the case of 'baby Donna': "The Public Prosecution Service concluded that the Dutch foster parents, by sheltering Donna, did not commit other criminal offences, for example human trafficking by the prospective parents. In the view of the Public Prosecution Service, there was no question of this because the foster parents did not act with the intention of exploiting the child."

⁹⁹ In fact, the Belgian newspaper *De Standaard* published an article containing allegations that in a Nigerian 'baby factory' pregnant teenagers were forced to surrender their child and that the babies then entered human trafficking circuits for child labour and child prostitution. See: 'Nigeriaanse 'babyfabriek' opgerold' [Nigerian 'baby factory' shut down], *De Standaard*, 3 June 2011. In such a case, the babies would be victims of human trafficking.

¹⁰⁰ Parliamentary Documents II 2011-2012, 33 000 VI, no. 69.

¹⁰¹ The Ministry of Health, Welfare and Sport provided this information in an e-mail in response to enquiries, 11 July 2012.

- The large differences between countries in the price of surrogacy could also prompt prospective parents to opt, for financial reasons, for surrogacy in a country where the rights of the surrogate mother are less well protected. That could promote exploitation. Although, in this case, the prospective parents are not guilty of exploitation or human trafficking in a legal sense, they are involved in it (directly or indirectly). It is therefore legitimate to ask whether the Dutch government does not have an obligation to prevent prospective Dutch parents from using surrogates in countries where the rights of surrogate mothers are not properly safeguarded (thereby creating the risk of exploitation). Current policy seems in no way geared to this, since the State Secretary for Safety and Justice actually announced in his letter of 16 December 2011 that he did not intend to make any decision concerning the compensation of expenses that foreign surrogate mothers receive or the medical costs that the organisations charge in the case of international surrogacy.¹⁰²
- A first step in discouraging surrogacy in high-risk countries, such as India, would be to provide good information to prospective parents. Although the State Secretary announced that the government would provide information about surrogacy in the Netherlands and abroad,¹⁰³ the intention seems mainly to be to provide information about the rules and procedures concerning legal parenthood rather than information about the risks of exploitation of surrogate mothers. It is recommended that the information for prospective parents also explicitly refer to the risks of exploitation of the surrogate mother, and that prospective parents should be discouraged from going along with these practices.
- An idea that goes further than providing information is the regulation of international surrogacy. Just as there are rules for adoption, international surrogacy could be regulated. When it comes to high-tech surrogacy, in particular, where the prospective parents are not the genetic parents, it is questionable whether it is any different to adoption.¹⁰⁴ In both cases, the child is not the parent's own genetic child. The State Secretary for Security and Justice has therefore also announced that surrogacy in other countries will, in future, be recognised by the Netherlands only if at least one of the prospective parents is genetically related to the child and the identity of the child's other genetic parent is known.¹⁰⁵ If that is not the case, the appropriate path is through adoption. During the Hague Conference on International Private Law (HCCH) in April 2012, there was a discussion of the possibility and desirability of a global convention on surrogacy.¹⁰⁶ It is recommended that the human

¹⁰² Parliamentary Documents II 2011-2012, 33 000 VI, no. 69. The reason given was that the requirement of 'no profit motive' cannot be properly enforced in practice, in part because there is no uniform international definition of profit and the evidence of a profit motive is difficult to gather.

¹⁰³ Parliamentary Documents II 2011-2012, 33 000 VI, no. 69.

¹⁰⁴ On this point, see also 'Eigen baby uit andere buik is zorgenkindje' [Own baby from another womb is a concern], Trouw, 28 February 2012.

¹⁰⁵ Parliamentary Documents II 2011-2012, 33 000 VI, no. 69.

¹⁰⁶ Parliamentary Documents II 2011-2012, 33 000 VI, no. 69. The Permanent Office of the HCCH is currently investigating the scale and nature of the problems under international private law that arise from international surrogacy agreements. The final report is expected in 2014. See: Hague Conference of Private International Law, Council on General Affairs and Policy of the Conference (17-20 April 2012), 'Conclusions and Recommendations adopted by the Council', 2012.

trafficking aspects in relation to surrogate mothers be addressed during the negotiations on that convention. The measures proposed by the State Secretary still have to be debated in parliament, and that debate will provide a basis for further discussion. It is important for the human trafficking aspects of commercial high-tech surrogacy to be addressed during those discussions.

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