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ETHICAL AND LEGAL ASPECTS OF UNRELATED LIVING DONORS IN ROMANIA

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In this paper I investigate, from an ethical perspective, the legal prospects of unrelated living donors from Romania. In the present-day shortage of organs necessary for transplantation, the organs from living donors represent an alternative to the organs from deceased ones. Worldwide, unrelated living donors begin to be considered as a promising category among overall living donors. However, their situation raises many ethical questions that need to be addressed by adequate regulations and protections. The paper analyzes the case of non-related living donors applied to the Romanian present situation, in an attempt to underline the ethical limitations their situation presents.

Key Words:

medical ethics, organ
transplant, living donor,
altruistic strangers,
legislation, EU, Romania,
church position

“We now know that the old Hippocratic Oath is inadequate for twenty-first century medicine. It violates the autonomy of the patient; prohibits most medical research, and makes all living donor transplant extremely difficult.”

R.M. Veatch, *Transplantation Ethics*

Successful living organ transplantation is a recent (i.e. fifty-years old) medical procedure that saves both lives and medical expenditures. Yet, from a combined medical-ethical perspective, it is a 200% risk procedure,¹ which needs to be carefully weighted when designing policies to expand the pool of existing organs. However, worldwide, the people from the waiting lists outnumber the quantity of available organs, and the tendency is only worsening for the foreseeable future.

Living donors are a special and remarkable category of people in the history and current practice of transplantation. The field of successful transplants owes its existence to them, as the first successful kidney transplant between identical twins came from a living donor (performed by Dr. Murray in Boston in 1954). Even now, with the advances in medical technology and immunosuppression, live donation (again, especially for kidneys, but also for segments of liver, pancreata, lung, small bowel and in some exceptional cases even for heart²), is considered to be a better option than related transplant from cadaveric donors, with statistics indicating better recipient survival rates and better graft survival.³ At the same time, living donors represent as well a unique category from an ethical perspective, because they face some serious threats to their health that are not accompanied by similar benefits.⁴ It is one reason why a leading ethicist in the field, R. M. Veatch, proposes to abandon the Hippocratic

paradigm of focusing on harms vs. benefits, and to replace it with the language of rights and responsibilities.

Specialized literature on living donors distinguishes among different categories of donors, regarding the type of possible relation between donor and recipient, each of them bringing particular ethical concerns. Usually a distinction is made between *related living donors* (such as close family, siblings, parents, etc.) and *unrelated living donors*⁵ (ranging from spouses, friends, strangers, to paid donors). The main difference between the two categories is the genetic link that is present in the first category, while absent in the second one. However, the distinction is somehow blurred if one extends the signification of “related” beyond the genetic limits; if by “related” one understands somebody who has a meaningful relation with the recipient (thus including spouses, extended family, and possibly close friends), than the distinction related vs. unrelated translates into related vs. strangers.

A more rigorous classification is proposed by R. M. Veatch who, being dissatisfied with the term “unrelated”, which, to his view, sounds ambiguous, has proposed to further on the distinction, coming with several additional categories that detail the previous two. Thus, he splits the category of “related living donors” in two sub-categories, *genetically related relatives* (siblings, parents) and respectively *legally but not genetically related relatives* (spouses, in-laws and steps). The second category is further split into *close friends* (including live-in lovers and gay couples) and *strangers*.⁶ As a peculiarity, he does not include the commercial donation in the category of “unrelated donors”, although many scholars do, because he considers these people to be more accurately described as “vendors” and not as “donors” as such. Apart from this, he analyzes several non-traditional “living donors” or “organ sources”⁷: *non-heart-beating donors, anencephalic infants or fetuses, persistent vegetative state patients, paired lived-donor exchange, live donor-cadaver exchange*⁸ and *purely altruistic live donors*⁹.

For the sake of clarity, in the rest of the paper I will mean by “unrelated living donors” genetically-unrelated donors; and among them, I will particularly focus on “purely altruistic donors”.

Quantitative data on living donors from Romania

The distinction related vs. unrelated has begun to lose its importance in medicine with the advent of immunosuppression medication that lessens the importance of HLA or ABO compatibility (which, however, are of great importance especially for kidneys, for different organs – such as the heart – other factors being of equal importance, such as the size of the organ). Nonetheless, it is still important from a legal point of view, because some countries still limit the possibility of donation to close relatives and sometimes spouses, imposing further conditions or regulating bodies who could establish whether a particular donation is or not possible.

Worldwide, important differences exist between the number of living donors and their proportion in overall donors. This is again dependable on the type of transplanted organ. To take again the kidney example, that is the most frequently transplanted organ, during the last decade in the USA, the proportion between kidneys from living donors and kidneys from deceased donors is very tight, each of them occasionally surpassing the other one.¹⁰ In the same period, in the majority of the European countries, most organs, kidneys included, come from deceased donors, although there are significant percentages of organs from living donors as well.¹¹ However, the category of unrelated living donors only counts for a small percentage of overall living donations,¹² and there are authors advocating for an increase in their numbers, that would significantly improve the condition of many potential recipients¹³.

Romania represents a peculiar situation in the larger European context, and a paradoxical one in many respects. First of all, although Romanians repeatedly manifested their attachment towards European-shared values, they scored lowest in Europe in public surveys regarding openness towards transplantation. In a Special Eurobarometer from 2007 (documenting research done in 2006), which had a few items concerning public attitudes towards organ donation, significant differences were found between the existing EU (at that time including 25 member states) and the acceding countries, Romania and Bulgaria, with Romania having the lowest approval rates of accepting transplantation (more specifically, transplantation from deceased donors). Table 1 below summarizes the results on all major items:

	EU25	Romania	Difference from EU average	Bulgaria	Difference from EU average
Has already discussed donation of organs in family %Yes	41%	16%	- 25	19%	- 22
Willing to donate one of his/her organs % Yes	56%	27%	- 29	40%	- 16
Would agree to donate an organ from a deceased close family member % Yes	54%	32%	- 22	41%	- 14
Supports the use of organ donation cards % Yes	81%	49%	- 32	71%	- 10

Table 1. Focus on acceding countries

Source: Special Eurobarometer, Europeans and organ donation, May 2007

However, one may say that these figures speak more about attitudes and do not indicate what real people would do if in the situation of donating their organs or their family members' ones. For instance, some of the above differences between Romania and Bulgaria (both of them below the European average, but with Bulgaria registering a smaller difference) are attenuated if we compare the actual numbers of organs donated in the two respective countries (see below Tables 2 and 3).

Year		2000*	2003	2004	2005	2006	2007	2008**
Type of organ								
Cadaveric donors total		25	8	10	11	22	36	54
Rate (p.m.p.)		1.09	0.38	0.48	0.50	1.00	1.70	
Kidney transplants, out of which:	Total	108	166	189	182	204	222	210
	Rate (p.m.p.)	4.69	7.90	9.00	8.70	9.70	10.60	
	Living donor kidney	86	150	168	163	165	152	?
	Rate (p.m.p.)	3.74	7.14	8.00	7.80	7.90	7.20	
Liver transplant, out of which	Total	8	13	16	11	20	31	42
	Rate (p.m.p.)	0.35	0.61	0.76	0.50	0.90	1.50	
	Living donor liver	?	6	9	6	3	7	?
	Rate (p.m.p.)	?	0.30	0.43	0.30	0.10	0.30	
Heart transplant		6	2	4	2	7	9	6
Rate (p.m.p.)		0.26	0.10	0.19	0.10	0.30	0.40	
Waiting list for kidney, end of year		?	1396	1626	1512	1580	1626	2100
Waiting list for liver, end of year		?	180	290	242	287	313	300
Waiting list for heart, end of year		?	59	72	76	60	80	70
Family refusals		?	2	2	3	22	34	?

Table no. 2 Selection of data for solid organ transplantation - Romania

Data source: Personal interpretation of and rearranging of data from

www.romtransplant.ro, www.coe.int, <http://4transplant.com/en/statistics.htm> and www.realitatea.net¹⁴

Year		2003	2004	2005	2006	2007
Type of organ						
Cadaveric donors total		12	7	6	19	9
Rate (p.m.p.)		1.54	0.90	0.80	2.70	1.30
Kidney transplants, out of which:	Total	33	24	24	34	27
	Rate (p.m.p.)		3.00	3.20	4.80	3.80
	Living donor kidney	16	10	16	4	16
	Rate (p.m.p.)	2.05	1.30	2.10	0.6	2.2
Liver transplant, out of which	Total	-	1	8	10	7
	Rate (p.m.p.)		0.13	1.10	1.40	1.00
	Living donor Liver	-	1	5	1	1
	Rate (p.m.p.)	-	0.13	0.70	0.10	0.10
Heart transplant		5	1	1	3	3
Rate (p.m.p.)		0.64	0.13	0.10	0.40	0.40
Waiting list for kidney, end of year		766	?	36	581	947
Waiting list for liver, end of year		232	?	30	34	89
Waiting list of heart, end of year		8	?	44	38	87
Family refusals		-	?	3	37	7

Table no. 3 – Selection of data for solid organ transplantation – Bulgaria

Data source: Personal interpretation of and rearranging of data from www.coe.int ¹⁵

It becomes clear that the situation of the two countries is more or less comparable, with most percentages ranging around or above 1.00 p.m.p., with the exception of kidney transplants, where both of them register superior scores, with Romania being better situated (probably also because, due to its size, it also has more numerous accredited centers for kidney transplant – 5 compared to 1 in Bulgaria). Overall, the fluctuation of data in Bulgaria is larger than in Romania, which has a more obviously ascendant trend in overall organ transplants.

Nevertheless, if we compare Romania and Bulgaria with other European member states, both of them will situate well above the European average, with one exception for Romania: the percentage of kidney living donors. Here, the European (EU 27) average for 2006¹⁶ was 5.40 p.m.p. (2617 in absolute numbers), with a slight increase in 2007 of 5.95 p.m.p. (2926 in absolute numbers). Romania's respective percentages were of 7.90 p.m.p. and 7.20 p.m.p.

Another paradox of Romania comes from the fact that it is also a country that, over the last 5 years, registered a tendency of overall increase of the numbers of actual donors, unlike the rest of the European countries. Much of this paradox is explainable by the low numbers of transplanted organs in Romania. Even if the absolute number increased only from 22 deceased donors in 2006 to 36 donors in 2007, the increase in percentage is of 163% if we refer to 2007.

I isolated the situation of kidney donors from Romania in the following charts, to give a clearer picture of one of the most flourishing section in the overall transplantation phenomenon. Although the number of persons on the waiting list for this organ far outweighs the number of transplanted kidney, the number of people dying on the list has dropped significantly, probably due to a wider availability of dialysis for them (Table 4). The overall number in transplanted kidneys is also increasing yearly (with a short dropback in 2005), which reflects a greater availability of kidneys from deceased donors in this period, as well as an almost steady number of living donors (with a slight decrease in the last years) (Table 5)

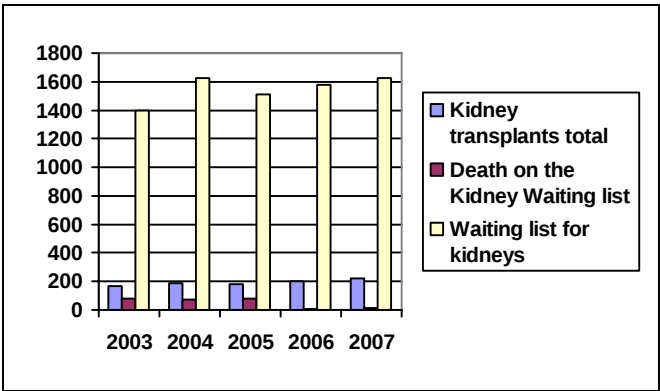


Table 4. Transplants of Kidneys from Romania, 2003-2007.

Data source: Personal rearranging of data from www.coe.int and www.romtransplant.ro

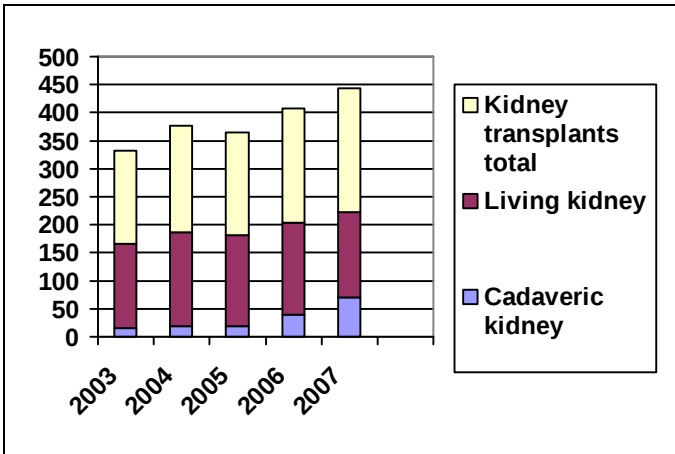


Table 5. Proportion of living donors among overall kidney donors in Romania, 2003-2007

Data source: Personal rearranging of data from www.coe.int and www.romtransplant.ro

Unfortunately, there is no statistics available on the proportion of related vs. unrelated living donors from Romania. However, we can find out from the media about such cases of unrelated living donor transplantation, and sometime in specialized literature as well. Cases of ABO-incompatible, living spouse donations have been registered, as well as cases of paired exchanged donations (56 being mentioned over a 5-year period at the Institute from Cluj)¹⁷.

Legislative provision on living donors

Different legislations tackle differently the issue of living donor transplantation. For example, Venezuela's law from 1992 restricted it to first degree blood relatives, allowing some exceptions to be decided by the National Executive; in Europe, Portuguese, French and Italian laws restricted it to family members,¹⁸ thus restricting the cases of unrelated donations, or imposing conditions on them.

In comparison, Romanian legislation looks more open to the possibility of unrelated living donation. Although it changed several times during the last two decades, the stipulations concerning living donors have not changed dramatically. Among the conditions that have to be fulfilled by living donors, Article 144 of the current Law no. 95/2006 mentions the following: "to be an adult, fully competent, to give one's informed consent in writing, freely, preceding the donation and to the express purpose of it."¹⁹ Organ procurement from incompetent persons is forbidden. The following paragraphs in the same article add that the donor should be informed on the risks and possible consequences of donation; that s/he can change one's mind until the donation; that any constriction is forbidden; that donation should be humanitarian and altruistic – in other words, there are no restrictions concerning the identity of recipient, or the relation between them. Article 145 discuss donation from minors, which is forbidden, with the exception of hepatopoietic medular or periphereal cells. Article 146 further details the institution judging that a potential donor can be considered for donation – a committee of approval of donation composed by three independent practitioners who "have to evaluate the donor's motivation and to control the respect of patients' rights." Further on, paragraph (8) states that: "If the [living] donor does not wish to reveal his/her identity, the confidentiality of donation shall be respected, with the exception of those cases when the declaration of identity is mandatory according to the law." This paragraph clearly does not refer to donation between relatives or close friends, where the identity of both donor and recipient is known beforehand. The only remaining possibility is that it covers the situation of "purely altruistic donation," when the donor does not wish to uncover his/her identity²⁰.

However, the legal possibility being instated, another set of practical questions arises, that the law obviously does not propose to cover. How

could one manage to accomplish the intention to donate one's organ *and* simultaneously to protect one's identity? Hypothetically, one could go to a hospital that is accredited to undergo transplantation and register his/her wish to donate an organ. This situation is discussed in the transplant literature (especially in the US) under the label "altruistic non-directed donation." Some notorious cases are mentioned here – such as the one of Jochem Hoyer (1996), a transplant surgeon who donated a kidney to a man he did not know; that of Joyce Rousch (1999), the nurse donating her kidney to a boy she did not know, after assisting to a laparoscopic nephrectomy given by a Johns Hopkins transplant surgeon;²¹ or the case of so-called Jesus Christians, a group of neo-protestants that decided to donate one of their kidneys to strangers out of pure love. However, this type of cases is rather infrequent and usually attracts many controversies.

Another possible case would be of "altruistic directed donation", when a person finds out about the need of an organ of a specific individual from various media (such as the press, billboards, TV, the Internet) and decides to donate him/her that organ, without personally knowing the recipient. This situation is again to be found in the US, allegedly more frequently than the previous one, and it provoked vivid discussions over the ethical implications of one's "publicity" for an organ.

One needs to be aware of the insistence on the word "altruistic" in all these phrases and expressions. It emphasizes the ethical dimension of the donation act, by carefully distinguishing it from other (supposedly non-altruistic and therefore non-ethical) types of donation. But it is also paradoxical because, by all legal definitions, be them American, European or Romanian, all organ donations need to be altruistic to be acceptable. "Altruism", together with "voluntary" or "informed consent", is part of the basic principles that are making the donation act possible in the first place. Thus, if all organ donations are altruistic by definition, than "altruistic directed or non-directed donation" is double-fold altruistic. This may signal an ethical embarrassment that many people (especially clinicians and those directly involved in performing transplant surgery) feel when confronted with the possibility that some healthy individuals may decide to give their "spare" organs to strangers.²²

However, if the "altruistic non-directed donation" may be possible, although unrealistically sounding, the "directed donation" is indirectly sanctioned by the Romanian legislation that bans all activities related to advertising or publicizing the need/ or the offer of organs. The express mention is in Article 157, paragraph (3): "It constitutes an infraction, being punished with imprisonment from 2 to 7 years the publicity for a person, with the purpose of obtaining organs and/or tissues and/or cells of human origin, as well as the advertising or displaying in the media announcements regarding the donation of organs and/or tissues and/or human cells with the purpose of obtaining some material advantages, or

advantages of a different nature for oneself, his/her family or third parties, physical or juridical personas.”

Nevertheless, despite the fact that it is illegal in Romania, one may easily find many advertisements by patients who plead for an organ, accompanied by personal details such as blood type or phone number, on specialized medical websites;²³ patients’ own blogs and websites²⁴ in which they emphasize their need for organs; and even stories in newspapers about the disease of a celebrity who requires transplantation as a cure, which can very easily qualify as “publicity.”²⁵ And I do not mention here the fact that these persons may easily register on US websites such as MatchingDonors.com or similar ones.

Here we touch a sensitive issue that has been already addressed in the US, but is rarely discussed in Romania. The issue of “public solicitation of organs,” which is the equivalent of “publicity for organs,” has stirred many debates in countries where the practice is not illegal. The arguments against it invoke the specter of commercial donation (usually illegal), that cannot satisfactorily be ruled out in the case of strangers; or claim that it allegedly subverts the standards for organ donation,²⁶ by replacing the various existing criteria for being admitted on an organ waiting list with dubious criteria such as “the one with the most compelling story” or, even worse, “the one which is more able to make use of the various media.”

Counter arguments have also been advanced: the current solicitation does not threaten the hierarchy system from the existing waiting list because the latter one regards only the organs from cadaveric donors, which are treated as a community resource; alternatively, there is no system to regulate the donation from living people, except legal prohibitions in particular situations. Proponents also underline that the organs from living people are their private property that, even if it cannot be exchanged for money (as in commercial donations, usually forbidden by law), are still at the disposal of their owners, who have the right to decide who is going to receive their “gift.” If one is willing to give up a part of his/her body, one has the right to make an informed choice, in a similar way with the situation of money donation or any other type of voluntary donation. Yet, the publicity for organs does exactly this job, of informing interested individuals of the need of some people for specific organs, allowing them to decide whom to choose from.

These arguments have to be carefully balanced when examining the current Romanian law. Is the formulation just or does it impose an unnecessary burden – namely, the possibility of being imprisoned from 2 to 7 years – on desperate organ seekers? While many admit the shortcomings of the present system of organ procurement, that can only fulfill approximately 10% of the demand, why banning the recipients to publicly search for a solution?

A difficult term to define in the law article is “publicity for a person.” If one seeks to find a suitable organ outside the limits of one’s family, does

it mean that s/he goes public and deserves to be sanctioned? For instance, if somebody talks to his/her neighbors or friends and complains about not finding a suitable donor, does it mean one has done “publicity for a person” and deserves to be put in jail? Similarly, if a celebrity retells in a published interview about his disease that can only be cured with a transplant, and says he is looking for a donor, regardless how well-intended is the reporter covering the story, does it not mean that we have a case of disguised “publicity for a person”? As one can see from previously mentioned documents, the current system of prohibition does not manage to prevent potential recipients to publicly advertise their tragedies, but places them under the burden of legal sanction. At the same time, it creates unintended discriminations, by allowing celebrities to make their claims for organs public, without fearing the same consequences.²⁷ This situation clearly needs to be addressed in a subsequent modification of the law.

At the same time, another argument could be that there are other cases of publicity for persons having a difficult medical condition that are not sanctioned by laws and that benefit from public display in print media, on TV, internet, etc. Such is the case of people suffering from various diseases (ranging from leukemia to Dawn syndrome) who wish to undergo a treatment for which they do not have the financial means, and publicly ask for money. If their situation is not harming anybody, why would a solicitation for organs do? What is even more ambiguous, I have found articles that attempt to obtain financial donations for pursuing a transplant abroad, which cannot be done in Romania due to different logistical reasons.²⁸ Although these articles do not ask for an organ, they explicitly mention the fact that money are needed for paying a transplant operation that cannot be pursued at national level. This could easily be categorized as “advertising or displaying in the media announcements regarding the donation of organs and/or tissues and/or human cells with the purpose of obtaining some material advantages, or advantages of a different nature for oneself,” that should be also sanctioned by law, although in fact is not.

One could object to the previous argument by saying that giving some extra money to an individual in need cannot bring harm to anybody, while giving one’s “extra” organs actually harms that person. But for the objection to be sound, it should rule out all type of organ donation, even between siblings or close family. If it is acceptable for a relative to undergo the risks of transplant surgery, why would it be unacceptable for a stranger to do it? If some could say there is the possibility that emotionally unstable people may act irresponsibly and decide to donate their organs, the reply would be that these people could not do it, provided that they should pass before a medical commission that investigate their motivation, their health, and capacity to make an informed decision, a commission that should not let those people to donate, if they endanger themselves.

One powerful argument against the publicity for organs may be that relevant European legislative documents or proposals tend also to sanction the phenomenon. Thus, among European states having legal prohibitions with focus “on preventing activities ancillary or preparational to payments”, that include “explicitly... solicitation of business for organs, such as via commercial advertisement” are France, Poland, Russian Federation, UK.²⁹ At EU and Council of Europe levels, similar concerns and prohibitions are to be found; for instance, Article 1, paragraph 2 of the *Guide to safety and quality assurance for the transplantation of organs, tissues and cells* states that: “Advertising the need for, or availability of, organs or tissues, with a view to offering or seeking financial gain or comparable advantage, shall be prohibited.”³⁰

However, one needs to note that in this type of prohibitions what is denied is the advertising for organs related to a commercial advantage, and not advertisement for organs as such. The use of notions such as “advertising” or “publicizing” can be encountered as well in a more positive way; for instance, a CoE recommendation of 2003 concerning the establishment of (national) organ donor registers propose it “as a means of *publicising* organ donation, and of involving people and organisations in realising the benefits of organ donations for themselves and for others in society.”³¹ One could also note that this particular article refers to countries with an opt-in system of donors, such as Romania, at least until the projected modification of law designed to include “presumed consent” is going to be clarified.

Altruistic vs. paid donation

Another worrying observation is that, although commercial donation of organs is equally prohibited by the Romanian law, the sanction for the attempt of somebody to sell one’s organs seems less drastically than for the publicity for organs. Thus, Article 157, paragraph (1) stipulates that: “It represents an infraction being punished with imprisonment from 3 to 5 years the act of a person to donate organs and/or tissues and/or cells of human origin, with the purpose of obtaining material gains or gains of a different nature, either for oneself or for another person.” Thus, if the maximum one can get from actually selling one’s organs is 5 years, one could get 7 years in prison for merely attempting to publicize it. However, the organized attempt to sell organs (usually known as “organ trafficking”) is more severely punished by law, namely with 3 to 10 years in prison, both the selling and the acquisition for the purpose of a profit. Even the tentative is subject to punishment, so clearly here we see an attempt to discourage organ trafficking under all possible forms.

Commercial donation represents a serious accusation for the citizens of a state and, by extension, a threat for the state itself. Occasionally in the international media, as well as in specialized literature, appeared disparate

signals about Romanians being involved in such practices, more frequently as potential victims (paid donors) than perpetrators (intermediaries or organ brokers). Respectable authors, such as Nancy Scheper-Hughes,³² Michael M. Friedlander,³³ Clive O. Callender, Micean Johnkin, Patrice Miles³⁴ and others have mentioned cases of Romanians being involved in kidney selling to affluent foreigners. Nevertheless, at the official level there is no public admittance of Romanians being trafficked for organs/ or alternatively searching for organs to traffic, as one can read from the answers of authorities from the questionnaire of the Council of Europe on the law and practice concerning organ trafficking, that dates back to 2002. Thus, it was affirmed that the current Romanian transplantation system ensures that legally removed organs cannot evade its control, and at the same time illegally removed organs cannot enter its system.³⁵ Moreover, organ trafficking both from and to Romania was denied, as well as of Romanian citizens traveling abroad to sell or buy organs, despite the fact that such allegations were mentioned (concerning Romanian citizens) by other countries in the same questionnaire.³⁶ No official investigation of organ trafficking was recorded, neither for the past, nor for the present, and no prosecutions for organ trafficking have been registered.³⁷ However, one weak point revealed by that questionnaire was the fact that the National Transplantation Register was not ready at that time,³⁸ and it became operational only in 2007³⁹, which meant that a nationally recognized system of waiting lists has become only recently available.

Religion and Transplant

Transplant in general and living donor transplants in particular elicited a great deal of discussion from the religious point of view. For the unrelated living donor, there is a special case that is widely discussed in the literature, that of the small group of Jesus Christians, whose controversial leader convinced the entire community about the benefits of donating one's spare kidney to a stranger. Both he and many more of the group managed to fulfill this unusual Christian duty, by donating a kidney to strangers. Their unusual case even made the subject of a documentary movie (*Kidneys for Jesus*, directed by Jon Ronson in 2003) which tells the story of several kidney donations from the members of the group. Many ethicists took the opportunity to discuss the situation from the point of view of benefits and harms for the donors, and generally on the opportunity of organs donation by completely strangers.⁴⁰ It also underlines the pervasive link between ethics and religion in the case of organ transplantation.

The role of religion, and more specifically of organized religious institutions, in raising the public sensitivity and openness towards organ transplantation is well-recognized at the European level as well. This link is emphasized as well in the following resolution of the European

Parliament: “[the European Parliament] calls on the Commission, the Member States and the organisations of civil society, *churches*, religious and humanist communities to take part in this effort to raise public awareness of the possibility of organ donation whilst taking into account the cultural particularities of each Member State.”⁴¹

This new trend of discussions could be significant for the Romanian situation because a peculiarity of the country is its remarkable level of trust towards the Christian Orthodox Church, as demonstrated in public surveys. For instance, 95% of Romanians consider God as being important in their lives, a figure rarely found in similar surveys at European level. For the topic of transplant issue, it could improve the population attitude towards it, provided that the Church would take a public stand in favor of it.

Unfortunately, despite theoretical openness towards organ transplantation in the past on behalf of several Church representatives,⁴² with some nonetheless reserves concerning the issue of brain death, especially during the year 2008, when public discussion on the issue of presumed consent took place,⁴³ the Romanian Christian Orthodox Church took a public and vivid stance against it. Its main argument was that transplant should remain in the paradigm of “gift” (the supreme gift of life), and as such cannot be approved without the explicit consent of the individual (while alive). The press communiqué of the Holy Synod stated that: “[the Church] considers that the act of organ harvesting, as well as the accept to donate organs has a moral value only when it is conscious, informed, and altruistic; presumed consent, even if it would considerably raise the number of organs and tissues procured from deceased donors, represents a lack of respect towards the human being and it may open the way to abuses and to merely satisfying professional interests”⁴⁴.

In the bitter exchange of replies between proponents of the law amendment (most vocal figures being the representative of the Romanian National Transplant Agency, Gh.Victor Zota, while other transplant surgeons were also sometimes mentioned) and their opponents (one of the leading figures being Vasile Astarastoe, President of the College of Medics and Rector of the University of Medicine from Iasi), most readers and listeners only found out that the church was also against it. It is impossible to say if audience understood that the church is only against presumed consent, being open towards freely consented transplants (including living donor transplants) or if the audience understood that the church is against transplant as such. So far, there are no public surveys on this matter, but perhaps future surveys will help clarify this issue. However, if the pessimistic interpretation is confirmed (the one that, most probably, the general public did not fully understood the church position), then the interest of Romanians in transplants (including living donor transplants), could significantly drop.

We could note that, to make things worse, even if the general public understood the nuances of church position regarding transplants (its endorsement of freely consented transplants and its unwillingness to accept the presumed consent solution), than the consequence will be “only” the drop out of the rate of transplants from deceased donors. Although, in a situation when the public is periodically informed and constantly reminded by the media about the shortcomings of the public health system (of which transplants are only the top of the iceberg), than church condemnation of presumed consent solution will only add to the already high degree of mistrust in the sanitary system. At any rate, public attitudes on transplant will not be enhanced, and probably Romania will continue to remain on the last places in Europe on number of transplants.

Conclusion

Although worldwide data show the increase of importance of living donors in overall transplants, and the current situation from Romania in the case of living kidney transplantation shows promising results (in any case better than the other types of transplants, especially from cadaveric donors), there are some limitations that may infringe upon the situation and impose supplementary burden on potential and actual donors. Despite the fact that the legislation is open towards the opportunity of living donors, and even towards the possibility of unrelated living donors, their actual interests are restricted by the impossibility of finding suitable unrelated recipients. Potential recipients are also facing limitations to freely publicize their story, risking imprisonment on top of their life-threatening disease. At the same time, an important guarantor of moral trust, that is the church, propagate a mixed discourse in which it supports transplantation but is reluctant towards presumed consent solution. Facing these problems, it is probably up to the medical community and, possibly, the larger academic community, to publicly discuss the benefits and opportunities of organ transplants, in an effort to raise public awareness and increase positive attitudes towards them.

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Notes

¹ During surgery, both donor's life and the recipient's one are threatened. Concerning the donor, "The mortality risk for kidney LDs has been estimated to be 1 in 8,000 to 10,000... In contrast, for liver LDs, depending on the type of resection, the risk of major complications is considerably higher; the mortality risk is estimated to be 1 in 900 for lateral segmentectomy and 1 in 500 for lobectomy." Rainer W.G. Gruessner, Sarah Taranto, Angelika C. Gruessner, „Introduction and Rationale", in Rainer W.G. Gruessner, Enrico Benedetti (Eds.), *Living Donor Organ Transplantation* (New York: McGraw Hill, 2008), 4. However, having two operations at the same time, the potential mortality rate is of 200%, quite unacceptable from a Hippocratic-oriented perspective that states "first do not harm".

² Although it might be considered odd, cases of heart transplant from a living donor are mentioned in the literature. It involves cases when a patient with a healthy heart but who needs a lung transplant is being transplanted a heart and lung sequence from a cadaver donor (some doctors preferring to transfer both of them and not only the lung), living its heart to be donated to somebody that only needs a heart. Mentioned in Robert M. Veatch, *Transplantation Ethics* (Washington DC: Georgetown University Press, 2000), 202, Endnote 4.

³ "The Organ Procurement and Transplantation Network (OPTN)/ Scientific Registry of Transplant Recipients (SRTR) annual report from 2006 reveals that the graft survival of living donor kidney transplantations in the United States is 95.4% versus 91.8% for deceased kidney transplantations at 1-year, 89% versus 81.2% at 3-years, and 80.1% versus 69.2% at 5-years.", Daniela Patricia Ladner, Stephan Busque, Marc Lee Melcher, "Overcoming Immunological Barriers to Living Donor Kidney Transplantation at Stanford University Medical Center", *SGH Proceedings*, Vol. 17, No. 1(2008): 9-15.

⁴ Paul Garwood, "Dilemma over Live Donor Transplantation", *Bulletin of the World Health Organization*, Vol. 85 (1), (January 2007): 5-6.

⁵ „For the purposes of organ donation, husbands and wives are considered unrelated because they share no genes", Robert Finn, *Organ Transplants. Making the Most of Your Gift of Life* (Cambridge: O'Reilly, 2000), 214. See also David W. Gjertson and J. Michael Cecka, "Living Unrelated Donor Kidney Transplantation", *Kidney International*, Vol. 58 (2000): 491-499.

⁶ R. M. Veatch, *Transplantation Ethics*, 186.

⁷ The distinction between a "living donor" and a mere "organ source" is of vital importance for the author. What exactly separates them is the existence or non-existence of informed consent for the donation of organs.

⁸ I mention here Veatch' non-traditional cases more for his laudable intention of including all possible types of living donor transplants. These situation are hard to be localized in the Romanian context, with some exceptions. Until now, in official statistics, Romania has reported no *non-heart beating donors*, although in the intentions of the national transplant coordinator we can find the one to initiate a national program for this. From the other categories mentioned, the only one I could find notable Romanian examples was the the *paired liver-donor exchange*, in an article of Prof. Lucan from the Transplant Unit from Cluj, where he mentions the 56 living donor transplantation using paired exchange donors, between 2001-2005. M Lucan, „Five Years of Single-Center Experience with Paired Kidney Exchange Transplantation”, *Transplantation Proceedings*, Vol. 39 (5) (2007): 1371-1375. See also M Lucan, P. Rotariu, D. Neculoiu, G. Iacob, “Kidney Exchange Program: A Viable Alternative in Countries with Low Rate of Cadaver Harvesting”, *Transplantation Proceedings*, Vol. 35 (3), (2003): 934-935.

⁹ It is questionable whether he understands the category of “purely altruistic live donors” as being different from the above-mentioned one of “strangers”, although other authors tend to superpose them. However, referring to the first one Veatch mentions that transplant surgeons have begun to practice them, while referring to the latter one he merely states that “Transplant surgeons have resisted such transplantation” (p. 186).

¹⁰ For instance, in the USA, in 2001, the number of kidneys from living donors (6039) exceeded the number of kidneys from deceased ones (5528); while in 2007, the proportion was reversed (10587 from DD vs. 6038 from LD).

¹¹ For instance, in Europe, in 2007, there were 2926 kidney transplants from living donors (out of the total of 17306) and 213 liver transplants from living donors (out of 6576). Source: Council of Europe, International Figures on Organ Donation and Transplantation – 2007, 2008, www.coe.int, Last accessed on January 30, 2008.

¹² USA proved to be one of the most open places to unrelated living donors. Here, for instance, if back to 1988 only 3.5% of living kidney donors were unrelated, in 2005 their percentage raise to 34%. Roberto S. Kalil, Lawrence G. Hunsicker, „Kidney Transplantation: Geographical Differences” in Rainer W.G. Gruessner, Enrico Benedetti (Eds.), *Living Donor Organ Transplantation* (New York: McGraw Hill, 2008), 139.

¹³ David W. Gjertson and J. Michael Cecka, “Living Unrelated Donor Kidney Transplantation”, *Kidney International*, Vol. 58 (2000): 491-499

¹⁴ For years 2005-2007, data comes from the official statistics of the Romanian National Agency of Transplants www.romtransplant.ro and respectively (2003-2004) from the Transplant Newsletter published by the Council of Europe. There were no available official data at time of my investigations for years 2000 and 2008. For year 2000, I used unofficial data available from <http://4transplant.com/en/statistics.htm>

For 2008 I could not find official data on the above-mentioned websites, and the unofficial data used come from the article “Directorul Institutului de Urologie și Transplant Renal Cluj-Napoca crede că România ar putea prelua sistemul de transplantologie din Austria”, 20 November 2008, http://www.realitatea.net/directorul-institutului-de-urologie-si-transplant-renal-cluj-napoca-crede-ca-romania-ar-putea-prelua-sistemul-de-transplantologie-din-austria_395531.html

¹⁵ If we look at the Bulgarian data from the waiting lists of different organs, there appear to be some errors that probably may be explained by objective reasons. I just want to signal them, in order to facilitate further investigation on them: thus, the number of persons fluctuates a lot in the reported data, data are missing for the year 2004, and the number of people on the list on specific years is greater than it should be if we add to the last year figure the number of people accepted on the list in the current year, minus the dead people from that year.

¹⁶ Before 2006, official data was calculated only for 2005, but for the union than composed of 25 member states, being 4.9 p.m.p. 9 (2216 cases)

¹⁷ "Premieră medicală la Cluj: Primul transplant de rinichi între două persoane cu grupe sanguine diferite", Saturday, 29 March 2008, http://www.realitatea.net/premiera-medicala-la-cluj--primul-transplant-de-rinichi-intre-doua-persoane-cu-grupe-sanguine-diferite_165722.html; M. Lucan, "Five Years of Single-Center Experience with Paired Kidney Exchange Transplantation", *Transplantation Proceedings*, Vol. 39 (5) (2007): 1371-1375; M. Lucan, P. Rotariu, D. Neculoiu, G. Iacob, "Kidney Exchange Program: A Viable Alternative in Countries with Low Rate of Cadaver Harvesting", *Transplantation Proceedings*, Vol. 35 (3): 934-935.

¹⁸ Austen Garwood-Gowers, *Living Donor Organ Transplantation: Key Legal and Ethical Issues* (Aldershot: Ashgate & Darmouth, 1999), 115-116.

¹⁹ Title VI, The procurement and transplant of organs, tissues and cells of human origin for a therapeutical purpose, from Law 95/2006 on the reform in healthcare, Article 144, paragraph a) et sq.

²⁰ Answering to a questionnaire concerning the law on organ trafficking, a specific question regarded unrelated donation: 4. "What kind of relationships should exist between the living donor of an organ and the recipient", Romanian position was: "The donation of organs and tissues by a living adult can only be performed if he or she has consented; the living donor and the recipient can, but need not to, be related", p. 19, 21.

²¹ Cases mentioned in David Steinberg, "The Allocation of Organs Donated by Altruistic Strangers", *Annals of Internal Medicine*, 145 (2006), 197.

²² However, if surgeons are sometimes concerned or at least reserved about the motivation of a stranger deciding to donate his/her kidney – with some notable exception at important transplant centers such as Minnesota Hospital, public opinion seems more open towards this possibility: "A 1987 Gallup Poll of the US adult public found that 70% of 1,022 respondents believed that kidney donation by altruistic strangers was acceptable ... Twelve years later another Gallup Poll found that support for this practice had actually increased to 80%". Aaron Spital, "Attitudes, Practices, and Ethical Positions among

Transplant Centers Concerning Living Kidney Donor Selection", in Robert W. Steiner (ed.), *Educating, Evaluating and Selecting Living Donors* (New York: Kluwer Academic Press, 2004), 147. A positive evaluation on living donors may be also found in Andrew S. Levey, Susan Hou, and Harry L. Bush Jr., "Kidney Transplantation from Unrelated Living Donors: Time to Reclaim a Discarded Opportunity", in Arthur L. Caplan, Daniel H. Coelho (eds.), *The Ethics of Organ Transplants: The Current Debate* (Amherst, NY: Prometheus Books, 1998), 48-53.

²³ See for instance <http://www.piatamedicala.ro/default.asp?categorie=10&tip=2>, <http://anunturi.bizcity.ro/sanatate/medicina> Last accessed on January 30th, 2009.

²⁴ <http://www.elevation.ro/catalin/?m=200807>; <http://www.cezargherman.org/>; Last accessed on January 30th, 2009.

²⁵ For instance, we can cite here the case of a well-known athlete, who discovered his end-stage renal disease and subsequently received extended media coverage of his case due to his status: "Atletul Gheorghe Gușet are nevoie de un transplant de rinichi", Monday, 13 October 2008, http://www.realitatea.net/atletul-gheorghe-guset-are-nevoie-de-un-transplant-de-rinichi_365496.html

²⁶ Margaret R. McLean, „Don't Take Your Organs to Heaven”, <http://www.scu.edu/ethics/publications/submitted/mclean/organ-donation.html>, Last accessed on January 30, 2009.

²⁷ To come back to the situation of the Romanian athlete, he managed to obtain a kidney in about half-year after being diagnosed with ESRF, although the surgeon who operated him admitted he had a rare blood group: Ioana Oros, *Campionul care a învins moartea*, *Adevarul*, 27 October 2008, <http://www.adevarul.ro/articole/campionul-care-a-invins-moartea.html>

²⁸ See for instance Adrian Salagean, "Transplantul de măduvă nu este prevăzut în formularul E122, conform căruia românii se pot trata gratuit în UE", *Adevarul*, 4 February 2009, <http://www.adevarul.ro/articole/apel-pentru-fetita-bolnava-de-leucemie.html>

²⁹ Garwood-Gowers, 174. Worldwide countries having such prescriptions also include many Australian states, Hong Kong, India and Turkey.

³⁰ ***, Guide to safety and quality assurance for the transplantation of organs, tissues and cells, Council of Europe Publishing, Strasbourg, 2004 (2nd edition), p. 92.

³¹ Recommendation Rec(2003)12 of the Committee of Ministers to member states on organ donor registers, adopted on 19 June 2003, Article 4 of the Appendix. Italics mine (MF).

³² Nancy Scheper-Hughes mentions "a (paid) young living donor from Romania" in her article "The Tyranny of the Gift: Sacrificial Violence in Living Donor Transplants", *American Journal of Transplantation*, 7 (2007): 510.

³³ Michael M. Friedlander, "The Right to Sell or Buy a Kidney: Are We Failing Our Patients?", *The Lancet*, Vol. 359 (March 16, 2002): 971-973; Michael M. Friedlaender, "The role of commercial non-related living kidney transplants", *Journal of Nephrology*, 16 (suppl.7) (2003): S10-S15.

³⁴ Clive O. Callender, Micean Johnkin, Patrice Miles, "Cultural Differences in Living Organ Donation: A Global Perspective", in Rainer W.G. Gruessner, Enrico Benedetti (Eds.), *Living Donor Organ Transplantation* (New York: McGraw Hill, 2008), 12.

³⁵ The answer to both questions 18, "Does the transplantation system ensure that legally removed organs cannot evade its control?" and 19 "Is it possible to ensure that illegally removed organs cannot enter your transplantation system?" was YES. Steering Committee on Bioethics (CDBI), European Health Committee (CDSP), *Replies to the questionnaire for member states on organ trafficking*, Strasbourg (2 June 2004), 53.

³⁶ Answer was "NO" for questions 20 "Are you aware of any allegations concerning the illegal removal of organs in your country?", 21. "Are you aware of any allegations concerning the arrival into your country of organs removed illegally?" and 22. "Are you aware of any allegations whereby residents of your country have been traveling abroad to illegally sell or procure organs?". Steering Committee on Bioethics (CDBI), European Health Committee (CDSP), *Replies to the questionnaire for*

member states on organ trafficking, Strasbourg (2 June 2004), 56, 58. However, the answer from Estonia mentions the allegation that Romanians were involved (as living organ donors) in a controversial series of model transplant surgeries performed in 1998 by an Israeli doctor in an Estonian hospital (with recipients being allegedly Israelis). “No criminal proceedings” were started, Steering Committee on Bioethics (CDBI), European Health Committee (CDSP), *Replies to the questionnaire for member states on organ trafficking*, Strasbourg (2 June 2004), 57.

³⁷ Answer was “NO” for questions 23. “Have there been any official investigations, in the past to ascertain allegations of organ trafficking?”, 24. “Are there any official investigations currently taking place to ascertain allegations of organ trafficking?”, and 25. “Have there been any prosecutions for organ trafficking?”, Steering Committee on Bioethics (CDBI), European Health Committee (CDSP), *Replies to the questionnaire for member states on organ trafficking*, Strasbourg (2 June 2004), 60.

³⁸ Thus, the answer to both questions 10, “Does your State have a nationally recognized system of waiting lists for organ recipients?” and 11, “If the State has a nationally recognized system for organ recipients, is this system the same one for all organ recipients whether the organs are removed from living or deceased donors?” was “NO”. Steering Committee on Bioethics (CDBI), European Health Committee (CDSP), *Replies to the questionnaire for member states on organ trafficking*, Strasbourg, 2 June 2004, 35, 37.

³⁹ According to Victor Gh. Zota, quoted in Carmen Popescu, “Românii, împăcati cu donarea de organe”, *Ziua*, Nr. 4417, Wednesday, 17 December 2008 <http://www.ziua.net/display.php?data=2008-12-17&id=246947> Last accessed on January 30th, 2009.

⁴⁰ See David Steinberg, “Kidneys and the Kindness of Strangers”, *Health Affairs*, vol 22 (4):184-189; Jeffrey P. Kahn, “Would You Give a Stranger Your Kidney? The Ethics of “Unknown” Kidney Donors”, <http://edition.cnn.com/HEALTH/bioethics/9807/stranger.kidney/> Last accessed on January 30th, 2009; David Steinberg, “The Allocation of Organs Donated by Altruistic Strangers”, *Annals of Internal Medicine*, 145 (2006):197-203.

⁴¹ European Parliament resolution of 22 April 2008 on organ donation and transplantation: Policy actions at EU level (2007/2210 (INI).

⁴² We refer here, for instance, at public speeches of the Archbishop of Cluj, Bartolomeu Anania, in favor of transplants practiced in Cluj at the hospital directed by Prof. Lucan. Also mentioned as a symbolic gesture of support was former Patriarch discourse at the opening of the national congress of transplantation in 2000 from Bucharest. www.romtransplant.ro

⁴³ An attempt was made to pass a modification of the law that would introduce the possibility of “presumed consent” for deceased donors; meaning, that stipulated that if the individual didn’t choose during one’s life to refuse to donate one’s organs after death, than s/he should be automatically considered a donor. Although the law modification passed through the Senate Chamber, it was blocked in the Deputy Chamber, where the Commission of Cults refused to pass it. At the moment, the project awaits moderation in the reunited chambers. There were many voices claiming that the Church opposition to the law project was an important factor in the Commission’s decision.

⁴⁴ „Jefuitorii de organe”, *Ziua*, 12 March 2008, p. 5.