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Trafficking in organs in Europe

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Report

Social, Health and Family Affairs Committee

Rapporteur: Mrs Ruth-Gaby Vermot-Mangold, Switzerland, SOC

Summary

As the success of organ transplantation steadily increases, the gap between the supply and demand for organs continues to widen sharply. 15-30% of patients in Europe die on waiting lists as a result of chronic shortage of organs. International criminal organisations have identified this lucrative “gap” and put pressure on people in extreme poverty, particularly in countries of Eastern Europe, to resort to selling their organs.

This situation raises a number of ethical questions: should the poor provide for the health of the rich? Should the price of alleviating poverty be human health? Should poverty compromise human dignity and health?

Trafficking in organs - like trafficking in human beings or drugs - is demand driven. Combating this type of crime should not remain the sole responsibility of so-called “donor countries” in Eastern Europe. Recent trends in some Western European countries towards less restrictive laws, which would allow greater scope for unrelated living donation and hence for abuse, are of serious concern.

The Assembly calls on the Council of Europe to develop, in co-operation with the relevant organisations, a European strategy for combating trafficking in organs, and to consider drafting an additional protocol to the future European Convention on Action against Trafficking in Human Beings. It also recommends a number of concrete measures to be taken in both the so-called “donor countries” and the so-called “demand countries” in order to minimise the risk of organ trafficking in Europe.

I. Draft recommendation [*Link to the adopted text*]

1. Rapid progress in medical science and technology has transformed organ transplantation, and kidney transplantation in particular, into a routine medical procedure practised in hospitals across the world. Five-year survival rates for most organ transplantation programmes are reaching the level of 70%, thereby rapidly increasing the demand for organ donation.

2. Medical research demonstrates that renal transplantation increases the survival rate of patients. The supply of organs from cadaveric, but particularly from living, donors is very limited and strictly controlled in Europe. There are currently 120 000 patients on chronic dialysis treatment and nearly 40 000 patients waiting for a kidney transplant in Western Europe alone. 15-30% of patients die on waiting lists, as a result of chronic shortage of organs. The waiting time for transplantation, currently about 3 years, will reach almost 10 years by the year 2010.

3. International criminal organisations have identified this lucrative "gap" between organ supply and demand, putting more pressure on people in extreme poverty to resort to selling their organs.

4. Worldwide, the issue of organ trafficking is not so new. In the 1980s experts began to notice what was to become known as "transplant tourism" when prosperous Asians began travelling to India and other parts of Southeast Asia to receive organs from poor donors. Since then other routes have opened up, such as to Brazil and the Philippines. Allegations are made against China of commercial use of organs from executed prisoners. Organ sale continues in India despite new laws, which make the practice illegal in most regions.

5. While current estimations show that illegal organ trade remains on a relatively modest scale in Europe, the issue is nevertheless of serious concern since it is very likely that further progress in medical science will continue to increase the gap between the supply of, and demand for organs.

6. Out of poverty, some young people in parts of Eastern Europe have sold one of their kidneys for sums of 2 500 to 3 000 USD, while recipients are said to pay between 100 000 and 200 000 USD per transplant. It is a matter of grave concern that following the illegal transplant, the donor's state of health generally worsens in the medium term, due to the absence of any kind of medical follow-up, hard physical work and an unhealthy life style connected to inadequate nutrition and high consumption of alcohol. Most illegal donors will thus be forced in time to live on dialysis treatment or await in turn a kidney transplant.

7. This situation raises a number of ethical questions: Should the poor provide for the health of the rich? Should the price of alleviating poverty be human health? Should poverty compromise human dignity and health? And in terms of medical ethics, should help to recipients be counterbalanced by neglect of, and harm to, donors?

8. The Assembly therefore disapproves of recent trends in some Western European countries towards less restrictive laws, which would allow greater scope for unrelated living donation.

9. Trafficking in organs - like trafficking in human beings or drugs - is demand driven. Combating this type of crime should not remain the sole responsibility of countries in Eastern Europe. Examples of measures to be taken by all member states in order to minimise the risk of organ trafficking in Europe include: reducing demand, promoting organ donation more effectively, maintaining strict legislation in regard to live unrelated donors, guaranteeing transparency of national registers and waiting lists, establishing the legal responsibility of the medical profession for tracking irregularities, and sharing information.

10. The Assembly therefore recalls Committee of Ministers' Recommendation No R(97)16 on liver transplantation from living related donors, and Recommendation Rec(2001)5 on the management of organ transplant waiting lists and waiting times, and welcomes the draft Recommendation on organ donor registries.

11. The principle according to which the human body and its parts shall not, as such, give rise to financial gain is part of the legal "acquis" of the Council of Europe. This principle, already present in Resolution (78) 29 of the Committee of Ministers and confirmed, in particular, by the final declaration of the 3rd Conference of European Health Ministers, which was held in Paris in 1987, was enacted by Article 21 of the *Convention on Human Rights and Biomedicine*. The principle was reiterated in its *Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin*, opened for signature in January 2002.

12. While prohibition of organ trafficking is legally established in member states, most countries still have legislative loopholes in this domain. Criminal responsibility in organ trade is rarely clearly specified in national Criminal Codes. Criminal responsibility should include brokers, intermediaries, hospital/nursing staff and medical laboratory technicians involved in the illegal transplant procedure. Medical staff who encourage and provide information on "transplant tourism" should also be liable. The medical staff involved in follow-up care of patients who have purchased organs should be accountable if they fail to alert the health authorities.

13. Organ trafficking, like most criminal activities, is difficult to prove. But it should not be left to the media alone to investigate. Member states have a common responsibility to deal openly with this problem nationally, but also through multilateral co-operation at the European level - bringing together Ministries of Health, Interior and Justice.

14. In the light of the above, the Assembly recommends that the Committee of Ministers:

(i) invite all member states:

a. to sign and ratify the Convention on Human Rights and Biomedicine, and its Additional Protocol concerning Transplantation of Organs and Tissues of Human Origin;

b. to sign and ratify the UN Convention against Transnational Organised Crime and its Protocol to prevent, suppress and punish the trafficking of persons, especially women and children, and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, as trafficking in organs is closely linked to trafficking in persons;

c. to recognise their common responsibility with a view to minimising the risk of organ trafficking by strengthening existing mechanisms of co-operation at the Council of Europe level (SP-CTO) and stepping up funding for assistance activities in this area, crucial to helping to put efficient transplant systems in place;

d. to adopt and adhere to the recommendations in the World Medical Association's (WMA) Statement on Human Organ & Tissue Donation and Transplantation, adopted by the 52nd WMA General Assembly in Edinburgh, Scotland, in October 2000;

(ii) urge the member states to intensify their co-operation under the auspices of Interpol and Europol in order to address the problem of trafficking in organs more effectively. Stepping up the funding of the two agencies in this domain is equally crucial since they are both running on extremely low budgetary and staff levels in this field;

(iii) invite the so-called "donor countries":

a. to improve primary prevention through awareness raising and peer education, particularly in rural areas, in partnership with NGOs, media, and relevant international agencies;

b. to undertake measures to improve primary healthcare;

c. to take steps to identify illegal donors and provide for their medical follow-up;

d. with the assistance of the Council of Europe, to strengthen existing transplant systems;

e. to restrict the donation of organs and tissues from prisoners and other individuals in custody, as they are not in a position to give informed consent freely and can be subject to coercion, with the exception of donations for members of their immediate family;

f. with the legal assistance of the Council of Europe, to amend the Criminal Code to include specific provisions on organ trafficking;

g. to undertake effective measures to combat trafficking in general, and trafficking in organs in particular;

h. to provide special facilities at border crossings with a view to identifying potential victims;

i. to implement national anti-corruption programmes;

j. to implement national poverty reduction strategies and create conditions for investment;

(iv) invite the so-called "demand countries":

a. to maintain strict laws in regard to transplantation from unrelated living donors;

b. to introduce in their criminal law sanctions for medical staff involved in carrying out operations resulting from organ trafficking;

c. to deny national medical insurance reimbursements for illegal transplants abroad;

d. to deny national insurance payments for follow up care of illicit transplants;

e. to improve donor awareness by organising national campaigns and by actively supporting the regular organisation of the European Day on Organ Donation and Transplantation;

f. to ensure strict control and transparency of organ registers and waiting lists and establish clear responsibilities for tracking irregularities;

g. to harmonise data and strengthen mechanisms of co-operation for the allocation of organs in donation procedures;

h. to take steps to track down "broker" advertising (newspapers, agencies);

i. to co-operate and provide expertise to "donor" countries in connection with trafficking in human beings and organs;

j. to ensure the flow of case related information and provide necessary support to Interpol and Europol in this domain

(v) instruct the relevant bodies of the Council of Europe:

a. to develop, in co-operation with relevant organisations, a European strategy for combating trafficking in organs;

b. to advise and assist member states on organisational measures for putting in place an efficient transplant system to minimise the risk of organ trafficking;

c. to provide legal assistance in drafting specific amendments to national Criminal Codes;

d. wherever applicable, to widen their existing activities to include organ trafficking;

(vi) use its influence, in terms of more specific regional co-operation in South Eastern Europe, to widen the activities of the Stability Pact Task Force on Trafficking in Human Beings (Working Table III) to cover the issue of trafficking in organs;

(vii) call on all member states to demonstrate European solidarity towards countries in Eastern Europe most affected by the vicious cycle of poverty and to assist them, in co-operation with the international financing institutions and the international donor community, in developing measures to reduce poverty and create a secure business environment for investment.

II Explanatory memorandum by Mrs Vermot-Mangold

Introduction

1. During the preparation of this report, the Social, Health and Family Affairs Committee organised hearings with experts in Bucharest in May 2002 and with the secretariat of the Council of Europe Bioethics Division, Division on Criminal Law and Criminal Justice and the Health Division in June 2002. In September 2002, the Committee held an exchange of views with a representative of Europol, and in October 2002 the Rapporteur visited Moldova.

2. During her fact-finding visit the Rapporteur met with people who sold their kidneys through trafficking networks between Moldova, Turkey, Ukraine and Israel. Mrs Vermot-Mangold met with the Moldovan authorities in order to raise the issue of illegal trafficking in organs, corruption and the deteriorating state of healthcare. She also met with representatives of the World Bank, OSCE and donor community to discuss their current initiatives with the government designed to break the cycle of poverty in the country. The Rapporteur is aware that a number of other Eastern European countries face similar problems, making the trafficking in organs a regional, if not a European, problem.

3. In January 2003, the Committee held an exchange of views with Professor Wolf, Head of General Surgery and Transplantation, Saint Pierre Hospital, Strasbourg.

Transplantation of organs: supply and demand

4. Rapid progress in medical science and technology has turned organ transplantation, and kidney transplantation in particular, into a regular medical procedure practised in hospitals across the world. Five-year survival rates for most organ transplantation programmes are reaching the level of 70%[1], thereby rapidly increasing the demand for organ donation.

5. With modern techniques of organ preservation and advances in immunosuppression, a significant proportion of patients can now expect to achieve long-term survival with a high quality of life. In terms of managing healthcare costs, kidney transplantation for example is less costly than chronic dialysis treatment, making governments and health insurance companies shift towards more effective support of organ transplantation programmes and organ donation.

6. The supply of organs from cadavers, and particularly from living donors in case of kidney transplants, is very limited and strictly controlled in Europe. There are currently 120 000 patients on chronic dialysis treatment and nearly 40 000 patients waiting for a kidney transplant in Western Europe[2]. 15-30% of patients die on waiting lists, as a result of chronic shortage of organs. This figure is in reality even higher due to the fact that only patients most likely to benefit from transplantation are being selected for waiting lists.

Organ trafficking

7. In recent years, international criminal organisations have identified this lucrative "gap" between organ supply and demand, putting more pressure on people in extreme poverty to resort to selling their organs. Legislative loopholes in national Criminal Codes and lack of effective enforcement mechanisms to combat this relatively new type of trafficking indicate an urgent need for action at national and international levels.

8. While current estimations of illegal organ trade show a relatively modest scale in Europe, the issue is nevertheless of serious concern since it is very likely that further progress in medical science will continue to increase the gap between supply of, and demand for organs.

9. Worldwide, the issue of organ trade is not so new. In the 1980s experts begun to notice what would become known as "transplant tourism" when prosperous Asians begun travelling to India and other parts of Southeast Asia to receive organs from poor donors. Since then other routes have opened up, from Brazil to the Philippines. Allegations[3] are made against China of commercial use of organs from executed prisoners. Organ sale continues in India despite new laws, which make the practice illegal in most regions.

10. In his recent article[4], Professor Friedlaender analyses the situation at the renal transplant clinic of Hadassah University Hospital in Jerusalem, pointing out the desperate situation of patients trapped in chronic dialysis treatment, who without the option of a transplant in Jerusalem underwent kidney transplantation from unrelated paid living donors in India and Iraq:

"...we noted the success of the transplants done in India, but also that patients were not selected and prepared for the transplant procedure, which cost about $15 000 including travel. Baghdad became a closer and cheaper ($7000) option after the Gulf War, and we have reported on the first 80 recipients of Iraqi kidney transplants who arrived at our centre. Again, patients were not selected, and our colleagues in the West Bank have told us of many patients who travelled to Iraq against their advice within 1 or 2 weeks of starting chronic dialysis treatment. 85% of these unprepared patients' transplants had survived at 1 year follow-up, which actually exceeded the rate achieved by our local cadaver kidney programme. However, first-year mortality was 10%, higher than would be acceptable in most modern transplant programmes, and reflected poor selection of patients rather than inadequate treatment."

He then continues in regard to Eastern Europe:

"...Jewish patients realised that Arab patients were disappearing from their dialysis sessions. However, visiting Iraq is inadvisable for Jews. Therefore, the surgical group of the Rabin Medical Center in Tel Aviv circumvented Israeli law by doing kidney transplants from unrelated living donors in several accessible countries including Estonia, Bulgaria, Turkey, Georgia, Russia, and Romania. This group was stopped from working in several of these countries after local and international protests, but nevertheless have continued to flourish. Paid donors are recruited locally or in some cases are brought, with groups of patients, by private aeroplane from Israel. Transplant patients pay around $200 000 for such services. About 26 of our Jewish patients have taken this route, often incurring huge debts, but in some cases, patients have raised costs by setting up private charities.These transactions now receive semi-official recognition from the Israeli Ministry of Defence which is responsible for veterans' health costs, and from health

insurance companies which refund $40 000 (the cost of kidney transplantation in Israel) to patients who undergo transplantation abroad. These agencies are no doubt aware that renal transplantation is cheaper than chronic dialysis treatment. These transplants are generally successful and the medical care seems to meet international standards. However, patients must sign agreements of secrecy and we receive little documentation about the transplants since the Israeli doctors deny that they do more than accompany patients. Patients usually do not know the identity of the local donors."

and concludes:

"If my kidneys failed I would opt for a transplant from a living donor. Wolfe and colleagues[5] have shown that renal transplantation increases the survival rate of patients. Compared with dialysis patients who could have a transplant but have not yet been found a kidney, the relative risk of death after transplant is increased for the first 3 months after surgery, but after 1 year this risk has fallen to a third. Furthermore, the 1-year survival rate is higher in transplants from living donors than cadaver donors, and the median (50%) graft survival is 21.6 years compared with 13.8 years, respectively[6]. Despite a huge increase in the number of patients awaiting kidney transplant, the number of cadaver donors and related living donors have remained almost static in the USA during the past few years.

The waiting time for transplantation, currently about 3 years, will reach almost 10 years by the year 2010[7]. Thus, it is not entirely surprising to find that transplants from unrelated donors are rapidly increasing in the USA (USRDS[8]). Some of these donors are highly paid and imported from abroad."

The example of Moldova

11. During her visit to Moldova, the Rapporteur interviewed a number of kidney "donors", all young men between 18 and 28 years of age living in poor conditions in rural parts of the country. Poverty had driven them to sell their kidney for a sum of 2 500 to 3 000 USD, while recipients are said to pay between 100 000 and 200 000 USD per transplant. The process sometimes took several months before donor-recipient matching could be established by biochemical cross-testing of blood samples. The transplants were conducted in Turkey in rented hospital facilities. “Donors” were asked to sign papers of consent without any prior information. In some cases they met the recipients before the operation, but such cases were rare. Medical check-ups took place at night. The post-operational phase and medical follow-up usually lasted no more than 5 days before the "donors" were sent back by bus to their country of origin. Following the operation, the "donors'" state of health generally deteriorated in the medium term due to the absence of any kind of medical follow-up, hard physical work and an unhealthy life style with inadequate nutrition and high consumption of alcohol.

12. According to the Head of the Dialysis Ward at the Emergency Hospital in Chisinau, most "donors" will be forced in time to live on dialysis or await in turn a kidney transplant. He nevertheless recorded the extremely professional quality of surgery, having examined a few “donors” who had sold their kidneys in Turkey.

13. Most people interviewed by the Rapporteur lived in very poor, insalubrious conditions without running water, without adequate food and heating in winter. Some had used the money to build an extension to their house, to help other members of their family, to buy a second hand car or simply to buy alcohol. Most children in the neighbourhood did not go to school for lack of shoes and schoolbooks.

14. In such a situation of general poverty and lack of prospects for a better future, young people were easily recruited on vague promises of travel abroad to earn money. In its *Recommendation 1526 (2001)*, the Assembly has already dealt with the very serious problem of trafficking in women and children in Moldova. In comparison, organ trafficking is happening on a very modest scale due to the extremely complex nature of this type of illicit trade.

15. Nevertheless, the interviews indicated that trafficking in organs has to be treated as a regional problem, since similar "donor" recruitment practices exist in other countries of Eastern Europe, including Ukraine, Russia, Bulgaria, Romania and Georgia. Trafficking in organs appears to be extremely well organised and extremely mobile, involving a network of "brokers", qualified medical doctors and specialised nursing staff. Strong links are also established with the police and customs staff for purposes of passport delivery and "secure" border crossings.

16. The Rapporteur notes a sign of progress in combating this type of organised crime in a recent press release[9] concerning two arrests in Moldova:

"According to the director of the public relations Department of the Ministry of Internal Affairs in Moldova, Eugen Vitu, the arrests concern Ruslan Cecati, doctor at the Republican Clinical Hospital from Chisinau and Roman Popusoi, inhabitant of Cimislia town, Lapusna county. The two were held in custody after being denounced to the police by one of the trafficked persons - Iurie Sobetschi, 21 years of age. He declared to the police that in January-February 2002, he was convinced by the two to sell a kidney for 7 thousand dollars, following to give him disability level. Sobetchi was taken at the Diagnosis Center from the capital for medical tests. After obtaining the results, he was transported, on February 21st 2002, to Turkey, where he had a surgery for the transplant of the left kidney. The young person sold his kidney to a citizen of Russian Federation, residing in Israel."

17. However, most "donors" are not investigated and themselves are threatened to keep silent with the authorities. During her visit to Moldova, the Rapporteur met with Mr Clipa, Deputy Minister of the Interior and Mr Bejan, Director of the Department to Combat Trafficking in Human Beings at the Ministry of the Interior. She raised the issue of corruption and stressed the urgent need to set up mechanisms to combat criminal activities in the country more effectively.

18. The Section for Combating Trafficking in Human Beings was created by the Ministry of the Interior in May 2000. After initial difficulties in prioritising the issue of trafficking across different sectors of public authority, the National Committee for Combating Trafficking in Human Beings was formed by the Government in November 2001, as a result of strong pressure from civil society and various international organisations including the Council of Europe. The Chairman is the Vice Prime Minister of Moldova and the membership includes senior government officials at the level of vice-ministers. National NGOs and international organisations have "partner-observer" status. Three sub working groups were created: Prevention & Education; Prosecution & Criminalization; and Victims Protection and Rehabilitation/Reintegration Assistance. It now remains to be seen to what extent this initiative will succeed in combating the widespread criminal activity in the country.

19. The work of local and international NGOs in this field is crucial. The Rapporteur highlights the example of "La Strada", an international NGO, which is helping to develop a system of preventive action and awareness raising of potential victims. Another is "Civil Initiative", a women's organisation, which organised a series of workshops on trafficking for law-enforcement officers.

20. During her meeting with the Chair of the Legal Affairs Committee of the Moldavian Parliament, the Rapporteur's attention was drawn to the need for the Council of Europe's legal assistance to courts and judges in Moldova in order to enhance the implementation of European and international legal standards in this field. Moldova has signed the *UN Convention against Transnational Organised Crime and its Protocol to prevent, suppress and punish the trafficking of persons, especially women and children* and is currently in the process of revising its Criminal Code. In practical terms, the British Criminal Investigation Department has issued a manual for Moldovan police and border guards, which has also been useful to prosecutors and courts.

21. Mr Morei, Minister of Justice, described the above-mentioned legal reforms, which were undertaken by his Ministry, but in his frank speech recognised the difficulties in implementing the law in Moldova. Low discipline at the level of investigation bodies, prosecutor's office, prokuratura and the police, and a general depreciatory attitude of the public towards law stem from earlier Soviet days, and were amplified over the last decade by a difficult socio-economic situation in the country. He listed a number of measures he considered for the future to overcome the current situation, namely: to consolidate discipline at all levels; to clarify responsibilities for each post and determine sanctions; to establish equal treatment before the law irrespective of function, power or status; and finally to benefit from experience in other countries especially concerning measures to combat trafficking in human beings.

22. Mr Gherman, Minister of Health, was aware of the problem of trafficking in organs in Moldova and considered that member states had a common responsibility to deal openly with this problem nationally, but also at the European level - bringing together Ministries of Health as well as Ministries of Interior and Justice. If the issue was to be resolved, it had to be tackled through international cooperation including the demand side, lifting the taboo in the so-called "recipient" countries. He also described the difficult situation of the healthcare sector in his country, ongoing reforms, and partnership with the World Health Organization (WHO) in creating a national health insurance system in Moldova in order to lift the burden from the central state

budget.

23. Like the deteriorating situation in healthcare, the social sector in general has been under a serious strain since the break-up of the Soviet Union. The sudden increase in energy prices resulting from the transition from a centrally controlled system to international pricing, on the one hand, and a rapid fall in export prices for international goods on the other have brought the economy to a virtual standstill with more than 50% unemployment. The burden of servicing foreign debt leaves the government with few resources for investment. In addition, Moldova faces serious transition problems of corruption, lack of institutional capacity and an extensive grey economy. Criminal harassment and control of small and medium businesses create an unsafe business environment for foreign investment. As a consequence, poverty increased, reducing the average salary to only 30 USD a month. Poverty strikes both urban and rural areas inducing masses of young people to emigrate as the only way out. The International Organization for Migration (IOM) reported in 2002 that :

"According to approximate unofficial estimates, a number ranging from 600 000 to 1 000 000 of Moldovan citizens are working abroad. In most cases, they are gone illegally - with expired visas, without any employment permits, and sometimes without any IDs at all." [10]

24. According to the World Bank[11], the macroeconomic situation in Moldova has improved slowly over the last 3 years, giving a sign of hope for the future. The central objective of the Bank is to contribute to poverty alleviation and sustainable growth. With this objective in mind, the Bank is currently associated with the Moldovan government in the design of a "Poverty reduction and growth strategy" which the government was expected to adopt in March 2003. The process involves a dialogue with the business sector, trade unions, civil society, the donor community and other international financing institutions. It is hoped that the government strategy will become a first step towards breaking the vicious cycle of poverty and creating a more stable business environment for future investment.

Areas for action: minimising the risk of organ trafficking

Professional ethics

25. In October 2000, the World Medical Association (WMA) adopted its statement[12] on human organ and tissue donation and transplantation, establishing a number of principles concerning: professional obligations of physicians; guiding values; social aspects of organ and tissue procurement; organ and tissue procurement at the institutional and individual levels; free and informed decision-making about organ donation; determination of death; justice in access to organs and tissues; and experimental and newly developing transplantation procedures.

"(3) The WMA considers that policies and protocols concerning organ and tissue donation and transplantation must be developed in recognition of the medical ethics that underlies the practice of medicine and the patient-physician relationship. Medical ethics encompasses duties of respect for persons, justice, beneficence, autonomy, confidentiality, and privacy....

(3.1) The obligation to the patient has primacy over any obligations that may exist in relationship to family members. Nevertheless, this obligation is not absolute; for example, the physician's responsibility for the well-being of a patient who needs a transplant does not justify unethical or illegal procurement of organs or tissues.

(3.2) Physicians have responsibilities to society, which include promoting the fair use of resources, preventing harm and promoting health benefit for all; this may include promoting donation of organs and tissues.

(3.3) Transplant surgeons should ensure that the organs and tissues they transplant have been obtained in accordance with the provisions of this policy. In all cases the physician has an independent responsibility to ensure that organs to be used for transplantation have been procured in a legal and ethical manner...

(19) Free and informed decision making is a process requiring the exchange and understanding of information and the absence of coercion. Because prisoners and other individuals in custody are not in a position to give consent freely and can be subject to coercion, their organs and tissues must not be used for transplantation except for members of their immediate family.

(26) In the case of living donors, special efforts should be made to ensure that the choice about donation is free of coercion. Financial incentives for providing or obtaining organs and tissues for transplantation can be coercive and should be prohibited...

(30) The WMA considers there should be explicit policies open to public scrutiny governing all aspects of organ and tissue donation and transplantation, including the management of waiting lists for organs and tissues to ensure fair and appropriate access.

(34) Payment for organs and tissues for donation and transplantation should be prohibited. A financial incentive compromises the voluntariness of the choice and the altruistic basis for organ and tissue donation. Furthermore, access to needed medical treatment based on ability to pay is inconsistent with the principles of justice. Organs suspected to have been obtained through commercial transaction should not be accepted for transplantation. In addition, the advertisement of organs should be prohibited. However, reasonable reimbursement of expenses such as those incurred in procurement, transport, processing, preservation, and implantation is permissible.

26. The Rapporteur also refers to the conclusions of the Bellagio Task Force[13] report on transplantation, bodily integrity and the international traffic in organs:

"The Task Force concluded that existing social and political inequities are such that commercialisation would put powerless and deprived people at still graver risk.....Because persons selling their organs would be drawn exclusively from the economically deprived, regulation can not prevent fundamental abuses. Transparency and fairness can not be assured."

Political commitment

27. Organ trafficking, like most criminal activities, is difficult to prove. But it should not be left to the media alone to investigate. Member states have a common responsibility to deal openly with this problem nationally, but also through multilateral co-operation at the European level - bringing together health authorities, Ministries of Interior and Justice authorities.

28. Trafficking in organs - like trafficking in human beings or drugs - is demand driven. Combating this type of crime should not remain the sole responsibility of countries in Eastern Europe. Examples of measures to be taken by all member states in order to minimise the risk of organ trafficking in Europe include: reducing demand, promoting organ donation more effectively, maintaining strict legislation in regard to live unrelated donors, guaranteeing transparency of national registers and waiting lists, establishing the legal responsibility of the medical profession for tracking irregularities, and sharing information.

29. The Rapporteur recommends that the European Health Ministers Conference, involving both "donor" and "recipient" countries, should lift the taboo and address the issue openly in order to set up mechanisms of co-operation in this field.

Reducing the demand and enhancing mechanisms of co-operation

30. Besides national transplant organisations, certain member states have set up co-operation mechanisms which are responsible for the mediation and allocation of organ donation procedures: Eurotransplant in Austria, Belgium, Germany, Luxembourg, the Netherlands and Slovenia; Scandiatransplant in Iceland, Norway, Finland, Denmark and Sweden; and Balttransplant in Estonia, Latvia and Lithuania.

31. In this international collaborative framework, the participants include all transplant hospitals, tissue-typing laboratories and hospitals where

organ donations take place. The aim of the co-operation mechanism is to improve, for each donor organ that becomes available, the selection of the best 'matching' recipient from all patients on the waiting list.

32. In the past, the Council of Europe has put emphasis on the need for international co-operation to promote organ donation and for equality between states where access to transplantation is concerned.

33. The Rapporteur therefore commends the activities of the Committee of Experts on the organisational aspects of co-operation in organ transplantation (SP-CTO), work carried out under the authority of the European Health Committee (CDSP). A list of publications/recommendations/activities is listed in Appendix II.

Legal framework

34. The principle according to which the human body and its parts shall not, as such, give rise to financial gain is part of the legal "acquis" of the Council of Europe. This principle, already present in Resolution (78) 29 of the Committee of Ministers and confirmed, in particular, by the final declaration of the 3rd Conference of Health Ministers, which was held in Paris in 1987, was enacted by Article 21 of the *Convention on Human Rights in Biomedicine*. The principle was reiterated in its *Additional Protocol concerning on Transplantation of Organs and Tissues of Human Origin*.

35. Ten member states of the Council of Europe have so far signed and one has ratified the *Additional Protocol,* which was opened for signature in January 2002. The Additional Protocol sets out a number of important principles: non-commercialisation of organs; equitable access to transplantation services for patients; traceability of organs and tissues; close personal relationship defined by law for living donors; right to independent advice and information prior to consent; appropriate medical follow-up for both recipient and living donor; promotion of donation.

Chapter III - Organ and tissue removal from living persons

Article 10 - Potential organ donors

Organ removal from a living donor may be carried out for the benefit of the recipient with whom the donor has a close personal relationship as defined by law, or, in the absence of such relationship, only under the conditions defined by law and with the approval of an appropriate independent body.

Chapter VI - Prohibition of financial gain

Article 21 - Prohibition of financial gain

The human body and its parts shall not, as such, give rise to financial gain or comparable advantage.

Article 22 - Prohibition of organ and tissue trafficking

Organ and tissue trafficking shall be prohibited.

36. The Rapporteur draws attention to a worrying trend in some European countries (e.g. Germany, Switzerland) towards less restrictive laws allowing greater scope for unrelated living donation.

37. While prohibition of organ trafficking is legally established in Council of Europe member states, most countries still have legislative loopholes in this domain, since criminal responsibility in organ trade is rarely established in national Criminal Codes. Should it only concern the "brokers" and health

professionals directly involved? Or should it be also the responsibility of staff involved in medical follow-up of the recipients benefiting from illegal transplantation and those treating unrelated paid donors for failing to alert the authorities? Should recipients and paid donors themselves be held responsible? Should there be stricter responsibility in tracking and control of national registers and waiting lists?

38. Criminal responsibility should include brokers, intermediaries, hospital/nursing staff and medical laboratory technicians involved in the illegal transplant procedure. The Rapporteur considers that paid donors should not be held criminally responsible insofar as the majority have been trapped by economic circumstances, or deceived into selling an organ. However, when former donors themselves become local brokers they should be held accountable for criminal behaviour. The medical staff involved in follow-up care for patients who have purchased organs should be accountable if they fail to alert the authorities. Liability should be clearly established for medical staff who encourage and provide information to patients in search of illegal transplant and donors. As part of the prevention campaign, dialysis units and transplant centres should provide educational materials to patients about the medical, legal, and ethical risks and dangers of buying and selling kidneys.

Assistance activities

39. The Rapporteur recalls Committee of Ministers Recommendation No R(97)16 on liver transplantation from living related donors, Recommendation Rec(2001)5 on the management of organ transplant waiting lists and waiting times, and welcomes the draft Recommendation on organ donor registries.

40. The Rapporteur also commends a recent initiative of the Secretariat General of the Council of Europe to collect detailed information on measures undertaken by member states to prevent organ trafficking[14], and urges the Council of Europe to provide guidance to member states in this field.

41. The Council of Europe has structures in place to examine the adequacy of any legal instrument and should endeavour to provide, upon request, experts in organ transplant systems who could visit and advise member states on any organisational measures which can be taken to minimise the risk of organ trafficking.

42. As an illustration, a seminar on organisational measures to establish efficient transplant systems was organised under the responsibility of the European Health Committee (CDSP) for the Baltic countries in 2002 and a similar seminar is planned in Kiew in 2003. The Rapporteur welcomes these initiatives and recommends that this type of activity be further strengthened through additional funding within the budget.

43. A number of measures have also been taken by the Council of Europe as part of the fight against organised crime and against associated "laundering" of the proceeds of crime and corruption. The *1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime* (European Treaty Series, ETS 141) and the two conventions against corruption - *Criminal Law Convention on Corruption* (ETS 173) and *Civil Law Convention on Corruption* (ETS 174) - are vital instruments for harmonising offences and for strengthening relevant international co-operation machinery, helping to develop legal barriers to organised crime.

44. The Rapporteur recommends that member states sign and ratify the *UN Convention against Transnational Organised Crime* and its *Protocol to prevent, suppress and punish the trafficking of persons, especially women and children*[15], which require contracting parties to establish as a criminal offence the trafficking in persons for the purpose of exploitation, including the removal of organs.

45. Similarly, under the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* contracting parties will be required to ensure that the sale of children, inter alia, for the purpose of transfer of organs of the child for profit, is fully covered under their criminal law.

Enforcement

46. Law enforcement mechanisms in certain member states are still relatively weak, particularly in those countries most directly affected by trafficking in organs. The Rapporteur therefore calls for intensified co-operation between member states under the auspices of Interpol and Europol in order to address this problem more effectively. Stepping up funding of the two agencies in this domain is equally crucial since they are both running on extremely low staff and budget in this field.

Alleviating poverty

47. The Rapporteur calls on all member states to demonstrate European solidarity over the medium and long term towards countries in Eastern Europe most affected by the vicious cycle of poverty and assist them, in co-operation with the international financing institutions and international donor community, in developing measures to reduce poverty and creating a secure business environment for investment. Gradual improvement in national economies would enable individuals to re-enter the mainstream economy, regain confidence and dignity, and over time improve their quality of life.

Conclusion

48. The Rapporteur strongly urges all member states to recognise their common responsibility to minimise the risk of trafficking in organs in Europe by taking the following measures:

- reduce the demand for organs;
- step up international co-operation in promoting organ donation;
- maintain strict laws on transplantation from unrelated live donors;
- enhance multilateral mechanisms for organ sharing;
- ensure strict control and transparency of national registers and waiting lists;
- establish clear responsibility of medical staff in tracking irregularities;
- guarantee strict prohibition of trafficking in organs through adequate provisions in national Criminal Codes, which would establish clear criminal responsibilities;
- step up bilateral and multilateral co-operation between member states to ensure that prohibition of this type of organised crime applies in practice (judiciary; prosecutors; police, border guards, etc.);
- improve the flow of information amongst member states;
- support Interpol and Europol in addressing this issue more effectively and devote more resources to combating this type of crime in the future;
- demonstrate European solidarity over the medium and long term towards countries in Eastern Europe most affected by the vicious cycle of poverty and assist them in developing measures to reduce poverty and creating a secure business environment for investment.

APPENDIX I

Programme for the visit of the Rapporteur to Moldova : (Chisinau , 6-10 October 2002)

Rapporteur : Mrs Ruth Gaby VERMOT-MANGOLD (Switzerland, Soc)

Secretariat : Mrs Dana KARANJAC

Report on “Trafficking in organs in Eastern Europe”

Sunday 6 October 2002
Arrival of Mrs Vermot-Mangold in Chisinau 18.15 flight RM 864 from Frankfurt
Arrival of Mrs Karanjac in Chisinau 18.15 flight RM 864 from Frankfurt
Accommodation : "Nobil Club", 132 Stefan cel Mare Street, Chisinau
Tel: (3732) 22 85 80, Fax: (3732) 22 68 90

Monday 7 October 2002

9.15	meeting with Mr. Lars JONSSON, Representative of UNHCR Office address : 57, 31 August Street, Chisinau
10.00 – 11.00	meeting with Mr. Pavel URSU, Acting Liaison Officer, WHO in Moldova address: 29, Testimiteanu Street, second floor, room 19/20
13.00 – 20.00	Meeting “donors” in villages outside Chisinau : Susleni

Tuesday 8 October 2002

9.30	meeting with Mr. Carlos ELBIRT, Resident Representative , World Bank address: 76/6 Sciusev Street
10.30	Meeting with Mrs Liliana SORRENTINO, Trafficking in human beings programme, OSCE
12.00- 17.30	Meeting “donors” in villages outside Chisinau : Mingir, Negrea
19.00- 20.00	Mr Dumitru MASTAC, surgeon, Head of Dialysis ward, Emergency Hospital Chisinau

Wednesday 9 October 2002

9.00 – 9.30	Parliamentary delegation to the Council of Europe, Parliament of Moldova
10.00 – 11.00	Mrs Ana PALANCEAN, President, NGO “La Strada”

11.00 - 11.30	Mrs Liuba REVENKO, Program director, IOM office
14.00 – 15.30	Mr CLIPA, Deputy Minister of Interior and Mr Ion BEJAN, Director of Department to Combat Trafficking in human beings, Ministry of Interior
16.00 –16.45	Mr Ion MOREI, Minister of Justice
17.00 – 17.45	Mr Andrei GHERMAN, Minister of Health
18.00 – 19.00	Mrs Sarah PFISTER, Deputy Head of the Suiss Agency for Development and Cooperation

Thursday 10 October 2002
Departure of Mrs Vermot-Mangold 7.35 am, flight RM 863 to Frankfurt

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APPENDIX II

List of Recommendations / publications / activities emanating from SP-CTO work carried out under the authority of the European Health Committee (CDSP).

1. Recommendation No R(94)1 on human tissue banks

2. Recommendation No R(97)16 on liver transplantation from living related donors.

3. Recommendation Rec(2001)5 on the management of organ transplant waiting lists and waiting times.

4. Meeting the organ shortage – current status and strategies for improvement of organ donation. European Consensus Document

5. Guide to safety and quality assurance for organs, tissues and cells. 1st edition. ISBN 92-871-4891-0. Council of Europe, June 2002

6. Draft Recommendation on organ donor registries adopted in November 2002 by the European Health Committee (CDSP).

7. TRANSPLANT NEWSLETTER. Annual publication on organ donation and transplantation

8. Standardisation of organ donor screening to prevent transmission of neoplastic diseases, Council of Europe, December 1977, ISBN 92-871-3485-5

9. State of the art report on serological screening methods for the most relevant microbiological diseases of organ and tissue donors, SP-PB(96)21-E, Council of Europe, Strasbourg 1977

10. European Day for organ donation and transplantation

Reporting committee: Social, Health and Family Affairs Committee

Reference to committee: Doc. 8966 and Reference No. 2579 of 13 March 2003.

Draft recommendation unanimously adopted on 7 May 2003.

Members of the committee: Mrs Ragnarsdóttir (Chairman), MM Christodoulides, Surján, *Mrs McCafferty* (Vice-Chairmen), MM. Ahlqvist, *Alís Font*, *Arnau*, Mrs Bargholtz, *Mrs Belohorská*, Mr Berzinš, Mrs Biga-Friganovic *(alternate: Mrs Bušic)*, Mrs Bolognesi (*alternate : Mr Oliverio*), MM. Brînzan *(alternate: Mr Tudose)*, Brunhart, Buzatu *(alternate : Mr Ionescu)*, *Çavusoglu*, Colombier *(alternate : Mr Cousin)*, *Cox*, *Dees*, Donabauer, *Evin*, *Flynn*, Mrs Gamzatova, MM. Geveaux, *Giertych*, *Glesener*, *Gregory*, *Gülçiçek*, *Gündüz*, Gusenbauer, Hegyi, Herrera *(alternate : Mrs Torrado)*, MM. Hladiy, Høie, *Jacquat*, Kastanidis, Klympush, Baroness Knight *(alternate: Mr Hancock)*, MM. Lomakin-Rumiantsev, Mrs Lotz, Mrs Luhtanen, MM. Makhachev, Malachowski, Manukyan, *Markowski*, Marty, Maštálka *(alternate: Mr Cabrnoch)*, Milecevic, Mrs Milotinova, Mladenov, Monfils *(alternate : Mr Timmermans)*, Olekas, *Ouzký*, Padilla (*alternate : Mrs Fernández-Capel*), MM. Pavlidis, Podobnik, Popa, Poty, Provera, Pysarenko, Rauber, Riester, *Rigoni*, Rizzi (*alternate : Mr Piscitello)*, Mrs Roseira, MM. Santos, Seyidov, Mrs Shakhtakhtinskaya, MM. Slutsky, Mrs Tevdoradze, Mrs Topalli, MM. Truu, Vella, *Mrs Vermot-Mangold*, MM. Vesselbo, Volpinari, *Mrs Wegener*, MM. Van Winsen *(alternate : Mrs Zwerver*), Zernovski, ZZ...., ZZ..., ZZ...

NB: The names of those members present at the meeting are printed in italics.

Secretaries to the committee: Mr Newman, Ms Meunier, Ms Karanjac, Mr Chahbazian

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[1] Council of Europe : "Meeting the organ shortage : current status and strategies for improvement of organ donation", a European consensus document

[2] idem

[3] Human Rights Watch Asia; and Laogai Research Foundation.

[4] The Lancet, Volume 359, number 9310, 16 March 2002

[5] Wolfe RA, Ashby VB, Milford EL, et al. Comparison of mortality in all patients on dialysis, patients on dialysis awaiting transplantation, and recipients of a first cadaver transplant. N Engl J Med 1999; 341: 1725-30. [PubMed]

[6] Hariharan S, Johnson CP, Bresnahan BA, Taranto SE, McIntosh MJ, Stablein D. Improved graft survival after renal transplantation in the United States, 1988-1996. N Engl J Med 2000; 342: 605-12. [PubMed]

[7] Neylan JF, Sayegh MH, Coffman TM. The allocation of cadaver kidneys for transplantation in the United States: consensus and controversy. J Am Soc Nephrol 1999; 10: 2237-43. [PubMed]

[8] the United States Renal Data System (USRDS)

[9]Eng/6824/AP FLUX Chisinau, 2 December 2002

[10] "Trafficking in women and minors for sexual exploitation : Republic of Moldova", International Organization for Migration (IOM), 2002

[11] World Bank report : Moldova - Wold Bank cooperation program, September 2002

[12] adopted by the 52nd General Assembly of the World Medical Association, Edinburgh, Sotland, October 2000

[13] recognising the need to define ethical standards for the international practice of organ donation, especially in light of abuses that undermine both the bodily integrity of socially disadvantaged members of society and the trust that must be integral to donation, a task force composed of transplant surgeons, organ procurement specialists, human rights activists, and social scientists met at the Rockefeller Conference Centre at Bellagio, Italy.

[14] Questionnaire addressed to member states in the course of 2002.

[15] opened for signature on 15 November 2000