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THE LEGAL AND ETHICAL ASPECTS OF ORGAN DONATION: BETWEEN ALTRUISM AND (DIS)TRUST***

Abstract

The Republic of Serbia is last on the list of European countries and among the last in the world when it comes to the number of performed transplants. This paper will provide an overview of the relevant legal regulations and challenges facing everyone who needs an organ transplant after the Constitutional Court of the Republic of Serbia found the provisions of Article 23 of the Law on Human Organ Transplantation from 2018, which refer to organ donation from a deceased individual, and the provisions of Article 28 of the Law on Human Cells and Tissues, which stipulate the

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conditions for tissue donation, to be unconstitutional, and citing religious standpoints on this current legal, medical, and bioethics issue. In addition, the COVID-19 pandemic saw a decrease in the number of donated and transplanted organs, while the post-COVID period saw the frequent occurrence of issues of distrust of the healthcare systems and the World Health Organization among different segments of the population, and thus the impact of this (dis)trust on the decision of individuals to become potential donors, especially in countries facing a high level of corruption in all areas, as well as war-torn areas where the possibility for unsanctioned human organ trade on the black market is high. It is the authors' conclusion that war conflicts, the (lack of a) clear and complete legal framework, and the level of trust in state and healthcare institutions, have a direct impact both on the number of donors and the transplants performed in a country.

Keywords: organ donation, bioethics, the Republic of Serbia, EU law, organ trade

INTRODUCTION

Organ donation takes place worldwide, and the organs that are most often transplanted are the lungs, heart, corneas, pancreas, and kidneys. Donation methods include altruistic donations of non-vital organs (usually the kidneys) and postmortem organ donations which can be divided into donations after brain death or donations after circulatory death. Despite starting an organ donor program, a considerable number of patients still die while on organ transplant waiting lists.

Postmortem organ transplants are possible when organs are retrieved after circulatory death, or brain death during a 24-hour window following cardiac arrest. In contrast to organs, most tissues (with the exception of the cornea) can be preserved and stored for up to five years.

Organ transplants open up numerous medical, legal, and bioethics issues, some of which include even how to define the moment of death, the possibility of transplant rejection, and an inadequate immune response from the recipient, consent for organ donation, transplant tourism, and the danger of human organ trafficking on the black market, which is linked to human trafficking and child trafficking. In addition, there is also the question of whether complete objectivity of the entire proceedings can be ensured, whereby it is necessary to take into consideration the severity of the illness of the potential recipient, the time spent on a waiting list,

any associated diseases, as well as the level of urgency, while there is also concern on the part of the citizens caused by the link between (a lack of) objectivity and (a lack of) transparency of the process and the entire procedure, as well as the level of corruption in a given society. Experts point out that there is a considerably greater possibility of us needing an organ to survive than of being organ donors ourselves.

In the Republic of Serbia, over two thousand people are waiting for an organ transplant, while only nine consents for donation were given in 2024 (Hemofarm fondacija 2025). Some people believe this to be a consequence of the prejudice that the Serbian Orthodox Church has against organ donation, as well as the fear that organ trafficking does exist, especially following the investigation into human organ trafficking on the territory of Kosovo and Metohija, and Albania, known as the case of the “Yellow House” (Čarnić 2020).¹

Unfortunately, this case has still not seen a court ruling 25 years later. The Hague prosecutor, Serge Brammertz, said in 2012 that any evidence of organ retrieval from the Serbs in the “Yellow House” was destroyed when Carla del Ponte was the prosecutor and agreed that it had not been a good decision but that he was unable to comment on the decision-making process of the prosecutor (*Insajder* 2019). Carla del Ponte, at the time, stated that the destruction of evidence was a mistake and that it had been done without her knowledge (*Insajder* 2019).² Moreover, as per Muharremi and Ramadani (Muharremi and

¹ The former prosecutor for the Hague tribunal, Carla del Ponte, stated in her book “The Hunt: Me and the War Criminals” that in 1999 she found out from journalists that approximately 300 Serbs and other non-Albanians, but also Albanians who had collaborated with the Serbs (‘disloyal’ Albanians) had been kidnapped and transported to Albania, where they had their organs retrieved, which were then shipped to Italy, from where they were distributed to clinics all over Europe. The Public Prosecutor’s Office for War Crimes in Serbia, following the claims made in the book by the former Hague prosecutor, had for years worked on gathering evidence related to this case, and it was back in 2012 that they found a witness, a former member of the Kosovo Liberation Army (KLA), who spoke about operations being carried out to retrieve human organs (Čarnić 2020).

² “As soon as I found out about the destruction of the samples, I brought the issue before the Tribunal. They then conducted an internal investigation and they are the ones who should be asked about the outcome. I know what the outcome was, but I cannot speak to you about it because I am no longer a member of the Tribunal” (*Insajder* 2019).

Ramadani 2024),³ the investigations into the involvement of the KLA in war crimes, including organ trafficking, on the part of the Council of Europe constituted a considerable political blow to the KLA and its permanent legacy as a symbol of resistance of the Kosovo Albanians against Serbian oppression. These developments, along with a lack of a judicial resolution of the controversy, give rise to doubts and foster a sense of insecurity among potential organ donors.

Even though Bishop Lavrentije became the first high-ranking dignitary of the Serbian Orthodox Church who, in 2011, bequeathed his organs for cadaveric organ transplantation (the transplantation of the organs of a deceased individual into a living one, after brain death is declared), stating that “bequeathing one’s organs is an act of free will, love, and respect for human dignity [...] there is nothing more noble than gifting one’s organs, it truly is of considerable national importance and that is why we need to help as much as possible” (RTS 2018) and recommended that everyone bequeath their organs, this did not make a considerable contribution to the increase in donor activity, the establishment of trust, or an increase in collective awareness of the social significance of this issue. Furthermore, the families of potential donors mostly respond that they have not discussed organ donation consent with the deceased, which is the cause of the low consent rate and one of the reasons why so few transplantations take place.

THE LEGAL FRAMEWORK IN THE REPUBLIC OF SERBIA – ORGAN DONATION A (NON) PRIORITY ISSUE?

Organ Donation in International Law Binding on Serbia

The first international contractual document in this field was the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, better known as the Oviedo Convention or the Convention on Human Rights and Biomedicine (herein: the Convention), which took effect on December 1, 1999, and which the Republic of Serbia ratified on

³ Muharremi and Ramadani refer to the „Inhumane Treatment of Persons and Illicit Trafficking in Human Organs in Kosovo” report (Muharremi and Ramadani 2024).

February 10, 2011.⁴ The Convention was ratified by 30 states, and was signed without ratification by seven states: Armenia, Italy, Luxembourg, Holland, Poland, Sweden, and Ukraine (Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine [ETS No. 164] 1997).

The Convention obligates respect for and protection of the human essence in cases of conflict with scientific achievements, which could involve the misuse of knowledge in the field of biomedicine. Chapter VI regulates organ and tissue retrieval from living donors with the aim of transplantation, and it stipulates that organ or tissue removal from a living donor with the aim of transplantation be carried out exclusively for the purpose of “therapeutic benefit,” only when there is no suitable organ or tissue available for retrieval from a deceased individual, or there is no other method of treatment of comparable effectiveness, while consent, as stipulated in Article 5, must be given explicitly and clearly, in written form (ETS No. 164 1997, Art. 19).⁵ The transfer and transplantation of organs from living donors is regulated in accordance with the effort to prevent the human body and its parts from becoming a source of profit (ETS No. 164 1997, Art. 21).

⁴ The preamble states that “[...] the aim of the Council of Europe is the achievement of a greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms; Conscious of the accelerating developments in biology and medicine; Convinced of the need to respect the human being both as an individual and as a member of the human species and recognising the importance of ensuring the dignity of the human being; Conscious that the misuse of biology and medicine may lead to acts endangering human dignity; Affirming that progress in biology and medicine should be used for the benefit of present and future generations; Stressing the need for international cooperation so that all humanity may enjoy the benefits of biology and medicine; Recognising the importance of promoting a public debate on the questions posed by the application of biology and medicine and the responses to be given thereto; Wishing to remind all members of society of their rights and responsibilities [...]” (Zakon o potvrđivanju Konvencije o zaštiti ljudskih prava i dostojanstva ljudskog bića u pogledu primene biologije i medicine: Konvencija o ljudskim pravima i biomedicini 2010).

⁵ Article 5 of the Convention stipulates that “An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as its consequences and risks. The person concerned may freely withdraw consent at any time” (ETS No. 164 1997).

The Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (ETS No. 186) took effect on May 1, 2006, and to this day has been ratified by 15 countries.⁶ Except for the Republic of Serbia which signed it on February 9, 2005, but has not ratified it to this day, this Protocol has been signed, without ratification, by France, Greece, Italy, Luxembourg, Holland, and Ukraine. The Additional Protocol contains the general principles and special provisions related to human organ and human tissue transplantation for the purpose of treatment. The general principles included in the Additional Protocol include equal access to transplantation services for all patients, transparent rules for organ distribution, health and safety standards, prohibition of financial gain for donors, and the necessity for donors, recipients, healthcare professionals, and the public to be adequately informed, while the special provisions regulate organ retrieval from both living and deceased donors, the use of the retrieved organs and tissue and stipulate the prohibition of financial gain, confidentiality, sanctions, and compensation.

The Universal Declaration on Bioethics and Human Rights stipulated that “[...] any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information [...]” (Universal Declaration on Bioethics and Human Rights [UNESCO] 2005, Art. 6).

Today, the concept of voluntary and informed consent is the leading principle in bioethics (the principle of autonomy), which is adopted by national laws, that regulate issues pertaining to bioethics and medicine. The concept presumes that an individual be given the right to choose based on information, understanding, and a clearly expressed desire to choose, bearing in mind all the other alternatives as well as the future prognoses for such a choice. Therefore, “the key elements of the concept are information, the freedom of consent (its voluntary nature, the absence of pressure or inappropriate influence) and the ability to make decisions” (the Council of Europe, Key human rights principles in biomedicine cited in: Ignovska 2022, 73). The author Ignovska states that “there are limitations to the application of the right to a private life as stipulated in Article 8 (2) of the European Convention on Human Rights and Article

⁶ The Protocol was ratified by Bulgaria, Croatia, Estonia, Finland, Georgia, Hungary, Iceland, Montenegro, North Macedonia, Portugal, the Republic of Moldova, Romania, Slovenia, Spain, and Switzerland (ETS No. 186 2002).

26 of the Oviedo Convention; the presumption of personal autonomy is actually most frequently nullified, for example, when urgent medical care is required but the patient is unable to provide consent, or in cases when consent is presumed unless a statement to the contrary has been made explicitly (for example, in the case of postmortem organ donation in certain states, including the Republic of Northern Macedonia), where the concept of informed consent has been replaced by the concept of presumed consent (unless the individual was explicitly opposed, which is determined by means of a written statement notarized by a notary public during the individual's lifetime" (Закон (измени и допуњавања) за земање и пресадување на делови од човечкото тело заради лекување, 2011, 2013 cited in: Ignovska 2022, 75).

Organ Transplantation in Serbian National Law

The organ bequest program and the issuance of donor cards in the Republic of Serbia was first initiated in 2002 at the Military Medical Academy in Belgrade to improve the program of cadaveric organ transplantation. The program relied on the provisions of the Law on Organ Transplantation (Zakon o transplantaciji organa 2009) which had a relatively rigid position *vis-à-vis* consent for cadaveric transplant – which had to be given by an adult with full business capacity in a strictly prescribed form (Baturan i Samardžić 2013). After the Law on Human Organ Transplantation (Zakon o presađivanju ljudskih organa [ZPLJO] 2018 i 2021) and the Law on Human Cells and Tissues (Zakon o humanim ćelijama i tkivima [ZHĆT] 2018 i 2021) of the Republic of Serbia was ratified in July of 2018, the issuance of donor cards was terminated.

In accordance with the Law on Human Organ Transplantation from July 2018, each citizen of the Republic of Serbia is a potential organ donor; that is, there is a presumed consent policy which means that all citizens are considered potential organ donors in the case of brain death if they have not explicitly made a statement to the contrary in written or in oral form to the Biomedicine Directorate of the Ministry of Health. Therefore, the organs of the deceased could be donated provided that the individual had not, in oral or written form, explicitly made a statement opposing their organ donation. Nevertheless, the family still had the right to object to the organ donation, in which case the transplantation would not go through (assumed and revocable consent for donation was prescribed).

However, on May 20, 2021, the Constitutional Court of the Republic of Serbia determined that Article 23 of the Law on Human Organ Transplantation from 2018, which refers to cadaveric organ transplants, was not in accordance with the Constitution due to omissions, a lack of clarity, imprecise wording, and inconsistencies in the legal forms which prescribe the retrieval of organs from a deceased person (Odluka Ustavnog suda Republike Srbije [USRS], Iuz-223/2018). The legal arguments of the Constitutional Court did not go into a detailed examination of the relationship between the national legislation governing transplantation and the rights guaranteed by Article 3 and Article 8 of the European Convention on Human Rights, which is also directly applicable in the Republic of Serbia. Instead, the Constitutional Court examined the provisions of Article 23 of the said Law in view of the standard of the quality of legislation, invoking its previous jurisprudence, and the jurisprudence of the European Court of Human Rights in this subject matter (USRS IUz-27/2009, IUz-107/2011, IUz-299/2011 and ECHR, 61243/08). The Constitutional Court found that the conditions for cadaveric organ transplantation from minors and from adults who had been fully or partially deprived of legal capacity were not regulated in a sufficiently clear and precise manner, thus rendering the norms of Article 23 incompatible with the principles of the rule of law and as such, unconstitutional. It is also interesting to note that in its decision the Constitutional Court explicitly stated that it did not find the presumed consent policy unconstitutional *per se*, i.e., that the lack of explicit consent does not impinge on the right of an individual to freely decide on organ and tissue donation.⁷

⁷ The Law stipulated that human organs could be retrieved from a deceased person for transplantation unless a legally competent adult donor had explicitly opposed it in oral or in written form during their lifetime, that is, if, at the moment of death, one of the parents, a spouse, a common-law partner, or adult child of the deceased individual were not explicitly opposed to it, and in exceptional circumstances, if the deceased did not have such relatives if, at the moment of death, a collateral relative up to the second degree of kinship did not explicitly object to it. It is possible to retrieve an organ from a deceased minor who had been under parental care during their lifetime, only with the written consent from both parents, that is, one parent if the other parent is deceased or is unknown, while from a deceased minor who during their lifetime did not have parental guardianship, organ retrieval is allowed only with the consent of the ethics board of a healthcare facility, formed in accordance with the law that regulates healthcare. From a deceased individual who was not a citizen of the Republic of Serbia, that is, did not have permanent residence in the Republic of Serbia, it is possible to retrieve organs only with the

The Constitutional Court also determined that all the provisions of Article 28 of the Law on Human Cells and Tissues, which regulate the conditions for tissue donation, were unconstitutional. This article stipulated that tissue from a deceased individual can be retrieved for use if the legally competent adult donor prior to death had not explicitly made a statement to the contrary in written or in oral form during their lifetime, or unless at the time of death, a parent of the deceased, a spouse, common-law partner, or adult child of the deceased individual were not explicitly opposed to it (ZHĆT 2018 i 2021).⁸ The Constitutional Court, in fact, utilized the same argumentation it had employed in declaring the provisions of Article 23 of the Law on Human Organ Transplantation unconstitutional.

The publication of the Constitutional Court decision was postponed for six months, until November 2021, in order for the governing bodies, the Ministry of Health, the Government, and the National Assembly to have enough time to make changes or additions to the aforementioned laws before the contested provisions ceased to be valid, which would prevent the occurrence of any legal gaps. However, this did not happen, and so since November 2021, there has been no legal framework regulating the conditions and procedures for human organ or tissue transplant from a deceased individual. The amendments and supplements to the Law on Transplantation were only harmonized with the Constitutional Court

written consent of the spouse, common-law partner, an adult brother or sister, or the adult child of the deceased individual (ZPLJO 2018 i 2021).

⁸ In certain instances, if the deceased individual did not have such relatives, the tissue from the deceased individual can be retrieved unless, a collateral relative up to the second degree of kinship explicitly objected at the time of death. Tissue retrieval from a deceased minor individual, who during their lifetime was under parental care, was possible only with the written consent of both parents, that is, one parent if the other parent is deceased or is unknown. In the case of a minor individual who during their lifetime had no parental guardianship, according to the Law, tissue retrieval was possible only with the consent of the ethics board of a healthcare facility, formed in accordance with the law that regulates healthcare. In a similar vein, organ retrieval from an adult deceased individual, who during their lifetime by decision of competent authority was partially or fully deprived of legal capacity, was permitted only with the consent of the ethics board of a healthcare facility, formed in accordance with the law that regulates healthcare. From a deceased individual who was not a citizen of the Republic of Serbia, or did not have permanent residence in the Republic of Serbia, tissue retrieval was possible only with the written consent of a spouse, a common-law partner, a parent, an adult brother or sister, or the deceased's adult child (ZHĆT 2018 i 2021).

decision in May 2023, when they were ratified by the Government of Serbia, and the text was sent to the National Assembly for adoption under expedited procedure; however, to this day it has not been included in the agenda (the proposal for the amendment made its way to the National Assembly, but was not included in the agenda because the Assembly was dissolved, and the procedure had to begin anew). It's uncertain when that will occur but it is clear that there can be no talk here of any kind of 'expedited procedure.'

Faced with a choice between the principle of presumed consent and the principle of explicit consent, Serbia adopted the principle of presumed consent, which states that an individual must explicitly state that they do not wish to be an organ donor, but in the absence of such a statement, the presumption is that they would like to be an organ donor. Dr. Marta Sjeničić, the president of the Association of Lawyers for Medical and Health Law of Serbia, states that the problem with the previous law was that once it is determined that no such statement exists, the relatives of the deceased individual are asked for their consent, which is not in accordance with the principle of autonomy of will, and that the relatives should be asked whether they know what the will of the deceased person actually was, and not what their opinion on it is (*Euronews Serbia* 2024). It was also precisely stated where and in what way interested citizens could express their will regarding organ donation, whether it be positive or negative, and so provisions were made for that statement to be given to a doctor of any specialization, to a notary public, or by means of the eUprava website.

It should be pointed out that in terms of the number of completed transplants, the Republic of Serbia is virtually last in Europe and among the last in the world (it is among the last five states) (Komčarević i Krstić 2024). The association "Donorstvo je herojstvo" points out that they are asking for "everyone to be the owner of their own organs, that is, to make their own decision on whether they wish to be a donor or not, instead of the decision being left to an individual's relatives [...] Therefore, one can now be in favor of organ donation, but their family members, when the time comes, can make a decision to the contrary" (Komčarević i Krstić 2024). The former Minister of Health, Zlatibor Lončar, has a somewhat different view of this problem, pointing out that "no law precludes us from being donors, and that for some time now we have been waiting for a response from the Serbian Orthodox Church on the issue, and that the discussion on the issue with the representatives of the Church is barely

even ongoing [...]” (Komčarević i Krstić 2024). On the other hand, the theologian Vukašin Milićević finds it “unusual that he [the minister, authors’ comment] does not know the official position of the Serbian Orthodox Church [...]” (Komčarević i Krstić 2024). There is an evident and undeniable existence of a lack of knowledge, lack of communication and coordination among certain key social factors, but also a lack of awareness regarding the importance and the need for priority action to legally regulate and improve the legal framework in this area, while at the same time a number of people are investing their final hopes in the possibility of receiving a donated organ for transplantation, which would improve their quality of life and extend their life, which is becoming increasingly more difficult and perilous on a daily basis.

Another serious problem is the fact that the Republic of Serbia is not a member of the Eurotransplant (ET) community (composed of Austria, Belgium, Croatia, Germany, Hungary, Luxembourg, Netherlands, and Slovenia). Joining Eurotransplant would significantly reduce the high mortality rate among individuals on waiting lists and the time spent waiting for a transplant. Some of the advantages include adding potential organ recipients to the unified waiting list of this organization, while providing priority to children and patients whose lives are threatened, which would also increase the chance of patients getting transplants since there would be more donors. It should be noted that the residents of these countries also face challenges in the field of organ donation and transplantation, and among the Eurotransplant community, over 1.2 thousand individuals in 2022 died while on the transplant waiting list (nearly 50% were waiting for a kidney and by around a quarter for a liver) (Stewart 2024b).⁹

However, until that happens, the Republic of Serbia must fulfill all the preconditions in the field of organ donation and transplantation, which primarily means increasing the number of donors through the active inclusion of the state in promoting donorhood, which directly correlates with strengthening the rule of law with the aim of increasing the trust citizens have in state institutions and government representatives. The latter has considerably been eroded, especially after November 1, 2024, and the collapse of the concrete canopy of the main railway station in Novi Sad, resulting in the death of individuals and leaving two individuals

⁹ Rate of deceased organ donors including both donation after brain death (DBD) and donation after cardiac death (DCD) in Europe in 2022 and 2023, by country (Stewart 2024b).

severely injured, one of whom subsequently also passed away. This event launched a wave of student protests that have been ongoing for several months all over the country, causing the suspension of teaching-related activities at universities and schools, agricultural worker strikes and strikes for workers employed in various economic sectors.

It is a vital precondition, in every country, that important issues such as organ transplants and care for the most vulnerable individuals in society become a priority, regarding which there will be consensus on the professional, responsible, and conscientious conduct of all the key social factors and holders of public authority. In other words, if the amendments to the law governing organ transplantation were to be promulgated under the present circumstances, instead of fostering the culture of organ donation, it would cause even more distrust and repudiation. The adverse impact that could stem from legislative activity under the present conditions can be further illustrated by examining the impact of the COVID-19 pandemic and the (dis)trust in the vaccination measures offered or imposed by various governments, and the effect of the given pandemic to organ donation and transplantation.

THE IMPACT OF THE COVID-19 PANDEMIC ON THE TRENDS IN THE FIELD OF ORGAN DONATION AND TRANSPLANTATION

Legal Challenges of the COVID-19 Pandemic: a Bird's-Eye View

During the COVID-19 pandemic, individuals and society as a whole faced challenges in terms of maintaining their physical and mental health. In addition to the health aspects of the global pandemic and its impact on the global economy, the legal aspects are also important, especially in terms of respect and protection of unalienable human rights as one of the basic tenets of contemporary democratic society. The question is, to what extent would the degree of their restriction be justifiable, and where do we restrict the state authorities in their activities aimed at protecting public safety and public health (Ćorić and Knežević Bojović 2021)? During emergency events and circumstances, the distrust among people increases in states that do not enjoy the complete trust of their citizens, considering that they are not effective in protecting human rights in peacetime or when there is no general danger or situation that

requires an assessment of the necessity and scope of their restrictions (Čović 2020, 684). We could say that it is a “paradox that human rights are usually the first victims of a global crisis” (Uvarova 2020, 252). In the end, it can be concluded that the pandemic was a test of maturity for both the healthcare and the legislative systems of any state, rendering visible all their disadvantages and shortcomings, which under regular conditions might not have been evident to the citizens.

The question of (the lack of) trust among the citizens in the state’s healthcare system and its functioning is frequently addressed. COVID-19 vaccination sparked the most controversy among the public due to the brief research period and competition among the pharmaceutical companies regarding which one would be the first to put the COVID-19 vaccine on the market (irrespective of its efficiency), which gave the entire preventive role of the vaccine a negative connotation, along with the numerous contradictory pieces of information (the possible skipping of research phases, ‘concealing’ the actual results of the trial phase on human volunteers, etc.) (Čorić 2022, 27). Certain authors believe that “the individual character of the right to healthcare was pushed aside in favor of, or actually gave primacy to, the collective character of this law, by declaring a state of emergency” (Čorić 2022, 30). In other words, “vaccination has the character of a collective right, and in the aforementioned pandemic circumstances it had primacy over other individual laws; the right to choose still exists – to confront the ethical nature of one’s own choice, that is, an inadequate choice and the consequences which such a decision on the part of an individual has on their environment” (Čorić 2022, 32).

On the other hand, we would like to point out that during the coronavirus pandemic we witnessed numerous precedents such as the mass, systemic, institutional violation of human rights under the pretext of the protection of public health, and that the analysis of the obligatory COVID-19 vaccination from the viewpoint of the law indicates that such a practice threatens an entire group of fundamental rights, including the right to live, to physical integrity, safety, and health (Dokmanović 2022, 60).

Research that included 39 European countries indicated that 69% of countries had introduced measures to limit freedom of movement, 18% of countries had introduced a curfew, while 15% had introduced measures that additionally limited the freedom of movement of the elderly (Čović

and Nikolić 2021, 425).¹⁰ Restrictions and bans on citizens' freedom of movement in Serbia represented one of the most rigorous in Europe, based on data provided by the Belgrade Centre for Human Rights (Čović and Nikolić 2021, 425). These measures did not motivate the citizens to get vaccinated in greater numbers, nor did the later attempts of the government to use financial stimulation in the form of symbolic one-time monetary payments in the amount of 25 euros, considering that only 45% of the population is vaccinated (Jeremić Stojković *et al.* 2023, 496). This could indicate the level of (dis)trust on the part of the citizens in the state and in healthcare institutions. The author Stjepanović reminds us that the Chinese authorities relied on considerably aggressive preventive measures and so concluded that the Republic of Serbia "to a considerable extent followed the example of China, since the measures imposed by the Government upon the citizens to prevent the spread of COVID-19 could quite freely and justifiably be labeled as some of the most drastic in Europe" (Stjepanović 2021, 104).

It is a fact that the healthcare systems of various countries during the COVID-19 pandemic were overwhelmed and that many patients with chronic conditions were unable to obtain healthcare to the same extent and in the same way as in the pre-pandemic conditions. Furthermore, it was necessary to introduce additional protective measures for immunocompromised patients, primarily hemato-oncological and transplant patients, as well as individuals suffering from chronic arthritis, systemic connective tissue disease; that is, all patients who due to their condition were more vulnerable compared to the general population, which is why vaccination was recommended for them without exception. According to the official recommendations, primacy was given to mRNA vaccines (Zajedno za novi život n. d. b, 16). However, in practice, it has shown that the immunological system of these patients reacts poorly to the COVID-19 vaccine, given that it does not create the required level of antibodies needed to fight off the infection, which is why these patients made up 40% of the hospitalized patients with breakthrough infections

¹⁰ By means of the Order on the restriction and prohibition of freedom of movement in the territory of the Republic of Serbia, a curfew was introduced in Serbia during the state of emergency, and the citizens of Serbia were prohibited from moving during business days from 5 PM (for several days also from 3 PM) to 5 AM, and during the weekend, from Friday, 5 PM, to Monday, 5 AM. Full prohibition of movement for persons older than 65 lasted for as many as 34 days, with the possibility of going to a grocery shop once a week, on a particular day, from 4 AM to 7 AM (Čović and Nikolić 2021, 425).

(Zajedno za novi život n. d. b, 4–5). However, the author Dokmanović points out that “the vaccines against this infectious disease were not only insufficiently tested, but also various innovative vaccines were introduced, vaccines based on genetic material which have so far never been used with the purpose of immunization, which is why they could only be administered with prior informed and voluntary consent of the individual” (Dokmanović 2022, 60).

When it comes to figures in terms of vaccination during the COVID-19 pandemic in Europe, in EU member states, until January 17, 2023 the percentage of vaccinated citizens ranged from 35.8% in Bulgaria, 50.7% in Romania, 60.1% in Slovakia, 66.2% in Croatia, 66.9% in Poland, to more than 90% of the vaccinated population in certain countries (Ireland 96.3%, Portugal 94.2%, Malta 93.9%, France 92.3%, Denmark 92%, Norway 91.4%, Belgium 90.1%) (Stewart 2024a). Research which included the countries of the Western Balkans indicates that the percentage of the population that is completely vaccinated (including the booster shot) against COVID-19 was notably smaller: 40% in Northern Macedonia, 44% in Albania, 48% in Serbia, 45% in Montenegro, 26% in Bosnia and Herzegovina, which is significantly below the 73% mark in the EU (Jeremić Stojković *et al.* 2023, 496). It is interesting to note that in 2020 and 2021, these Western Balkan countries also ranked in the bottom half of the countries included in the Rule of Law Index (World Justice Project 2024).

Impact of the COVID-19 Pandemic on Organ Donation and Transplantation

As indicated above, the COVID-19 pandemic has also affected organ donation and transplantation practices. Today, certain studies are available that point to the impact the pandemic had on trends in the field of organ transplantation. One of them states that Switzerland has seen a decrease in cadaverous transplants of 16.7% in March and April 2020 (during the pandemic) compared to January and February 2020, and that the decrease was mostly caused by kidney transplants (–27.6%) and to a lesser extent vital organ transplants (the heart, lungs, liver) (–5.9%) (Immer *et al.* 2020). In May 2020 organ transplantation in Switzerland again exceeded the average in the months prior to the pandemic (January and February), with 35 transplanted organs, but the

increase from April to May 2020 was solely the result of liver and kidney transplants (Immer *et al.* 2020).

In another study, the authors concluded that organ donation and transplantation activities decreased significantly in Hungary, from March 2020 until the end of the year, and cited that in Hungary the number of organ donors after brain death decreased by 38.33%, while the number of organ transplants from deceased donors decreased by 29.27%, especially in the case of heart and liver transplants (Mihály *et al.* 2021, 890). The number of organs that arrived from abroad rose by 21.13%, their overall share rose by 12.34%, while the number of transplanted kidneys from living donors remained unchanged (Mihály *et al.* 2021, 890). In 2020, there was a 25% decrease in new patients compared to those registered in 2019, while the mortality rate among the patients on the waiting list rose by 28% compared to the previous year, especially among those waiting for a kidney transplant, with the conclusion that in the country there had not been a SARS-COV-2 infection from a donor (Mihály *et al.* 2021, 890). Certain authors cite that “there has been a decrease in potential donors due to the lack of willingness on the part of staff to go into intensive care units out of fear of infection and heightened isolation measures [...] measures taken as a result of the pandemic preclude any possibility of performing activities related to organ transplantations, while the planned training and organization of awareness-raising activities were postponed and could not be realized due to the COVID-19 pandemic” (Akkurt *et al.* 2024, 24).

Spain had the highest rate of deceased donors in Europe in 2023, with 49.4 per million population, including donation after brain death (DBD) and after cardiac death (DCD), and the largest increase in the rate of organ donation between 2021 and 2022 (from 10.2 to 25.2 donors per million population) had Sweden (Stewart 2024b).¹¹ At the bottom of the list are Romania (4.1) and Bulgaria (3.3) (Stewart 2024b).

An interesting link has been made between organ donation and trust in the vaccination process. In his research, the author Inoue begins with the assumption that in countries in which organ donation is popular,

¹¹ Portugal had the second highest rate of deceased organ donation (36.8 per million population) and then Belgium (32.7), Slovenia (30.5), Italy (29.4), Croatia (29), Czechia (28.5), Finland (28.2), France (27.6), Sweden (26.2), Estonia (23.1), Switzerland (22.7), (United Kingdom 22.3), Norway (22.2), Austria (20.9), Lithuania (19.6), Denmark (19.2), Ireland (18.6), Netherlands (17.3), Latvia (13.9), Poland (13.8), Hungary (12.8), Slovakia (11.7), Germany (11.6), Luxembourg (13.3), Greece (8.4), Cyprus (6.9) (Stewart 2024b).

individuals exhibit greater trust in the vaccination process. He studied the correlation between the progress made with the COVID-19 vaccine and the status of organ donation prior to the pandemic in 38 countries, all members of the Organisation for Economic Cooperation and Development (OECD) (Inoue 2022). Using publicly available statistical information on the progress of immunization and organ donation, he concluded that any progress in COVID-19 vaccination during 2021 correlated significantly with the trust that people have in medical staff and the public healthcare system, which is typical for organ donation (Inoue 2022).

Based on the research results of the author Inoue, which indicate that in countries in which organ donation is popular, individuals exhibit a greater level of trust in vaccination, it can be concluded that the data from the Republic of Serbia support the conclusions of the aforementioned study. Let us recall that Serbia recorded 45% of the population vaccination rate during the COVID-19 pandemic, which is almost 30 percentage points below the EU average. According to the available data, the otherwise small number of donors and performed transplantations prior to the pandemic has significantly decreased from 2020 on, with a clear yet insufficient trend of growth in the number of performed transplants during 2023 and 2024. The donor statistics and performed transplantations in Serbia over the past few years is the following: in 2017 – 40 donors and 92 transplants; 2018 – 23 donors and 64 transplants; 2019 – 15 donors and 37 transplants; 2020 – three donors and 10 transplants; 2021 – three donors and nine transplants; 2022 – two donors and two transplants; 2023 – 13 donors and 32 transplants; 2024 – nine donors and 44 transplants (Zajedno za novi život n. d. a; Hemofarm fondacija 2025).¹² The estimated population of the Republic of Serbia in 2023 was 6.623.183, based on the results of the 2022 Census of Population, Households and Dwellings (Statistical Office of the Republic of Serbia 2024). The rate of deceased organ donation is 1.9 per million population in 2023, with an increase in 2024 (Zajedno za novi život n. d. a; Hemofarm fondacija 2025).

For purposes of comparison, in the neighboring Republic of Croatia in the pandemic year of 2021, 121 donors were registered, while a total of 268 organ donations were performed; compared to 2020, the total number of transplants increased by 26.5% (Ministarstvo zdravstva Republike

¹² A donor, for the purposes of the above statistics, is considered a person who has donated one or more organs, i.e., a person who has declared that they want to donate organs is not considered a donor (if the organ removal has not been performed) (Zajedno za novi život n. d. a).

Hrvatske [MZRH] 2021). In 2023, in the Republic of Croatia, there were 116 donors, and 300 transplants were performed (MZRH 2023), while a new increase was noted in 2024 – 312 organ transplants (Eurotransplant 2024). In Croatia, every deceased person who during their lifetime was not explicitly opposed to it (the law of assumed consent) is a potential organ donor (Zakon o presađivanju ljudskih organa u svrhu liječenja [ZPLJOSL] 2012, Art. 17), and any individuals who do not wish to donate their organs after death must fill out a Statement of non-donation with their family doctor, which is entered into the registry of the Ministry of Health (ZPLJOSL 2012, Art. 18). As many as 80% of families in Croatia give their consent to organ donation from a deceased family member, which is among the highest rates in the world (*Al Jazeera* 2016).

THE RELIGIOUS STANDPOINT ON ORGAN DONATION

We thought it important to include in the paper a brief overview of some of the religious standpoints on this issue, considering that people facing different biomedical dilemmas often have no actual knowledge of the stance on the issue from the point of view of church bioethics, which differs from secular bioethics. No religion prohibits the donation or reception of organs nor obligates an individual to donate or refuse organs. There is no clear evidence of support for organ donation from the Christian Church. Jesus sent out his disciples with the imperative to cure illness and disease: “Heal the sick [...] Freely you have received; freely give” (Jevandjelje po Mateju 10:8). When we refer to organ transplants, ethical considerations are double, that is, an assessment of the potential damage inflicted upon the donor and of the needs of the recipient is required.

By consciously choosing to donate his organs, man behaves as Christ would have, providing mankind with life, which is why the Catholic Church views organ donation as an act of mercy, while the Ethical and Religious Directives for Catholic Health Care Services (Ethical and Religious Directives for Catholic Health Care Services 2018) as a group of principles, clearly explain why organ donation is permissible. Pope John Paul II reminds us that “each organ transplant originates from a decision of great ethical value wherein lies the nobility of the gesture which is a true act of love” and points out the need to plant into human hearts the true and deep love which can be reflected in the decision to become an organ donor (the Vatican 2000). Directive No. 63 states that

“Catholic health care institutions should encourage and provide the means whereby those who wish to do so may arrange for the donation of their organs and bodily tissue, for ethically legitimate purposes, so that they may be used for donation and research after death” (United States Conference of Catholic Bishops 2018 cited in: Čović 2023, 139). Directive No. 64 further clarifies that “Such organs should not be removed until it has been medically determined that the patient has died. In order to prevent any conflict of interest, the physician who determines death should not be a member of the transplant team” (United States Conference of Catholic Bishops 2018 cited in: Čović 2023, 139). It is of the utmost importance to obtain informed consent from the donor and/or legitimate representatives of the recipients, and for the vital organs, those which occur individually in the body, to be removed only after certain death (the complete and irreversible termination of all brain activity) (Donate Life California cited in: Čović 2023, 140).

The Greek Orthodox Church has adopted the position that organ donation is an act of self-sacrificing love, “By this we know love, that he laid down his life for us, and we ought to lay down our lives for the brothers” (Jevandjelje po Jovanu 3:16; The Holy Synod of The Church of Greece, Bioethics committee 2007 cited in: Čović 2023, 137). The Greek Orthodox Church “protects and supports everything that goes beyond individualism and dependence on biological life and which binds people through a mutual connection and a sense of community, just like anything that proves the supremacy of spiritual life over biological survival; with respect and a special sensitivity it stands before the mystery of life and death just like before the psychosomatic unity that is man” (The Holy Synod of The Church of Greece, Bioethics Committee 2007). Since organ donation has to be performed with explicit consent, cell donation or tissue donation from an embryo is unacceptable, considering that an embryo is a living being and cannot provide consent (The Holy Synod of The Church of Greece, Bioethics committee 2007).

The Russian Orthodox Church considers being a donor an expression of love and compassion, but also warns that prolonging the life of one individual cannot shorten the life of another, as well as that the development of this field of medicine, by increasing the need for necessary organs, leads to certain moral dilemmas and presents a potential threat for society (Официальный портал Белорусской православной Церкви 2015 cited in: Čović 2023, 138). It warns that unfair promotion of donorhood or the commercialization of transplantation-related activities set the stage for

trading in human body parts, thus threatening the life and health of people' (Официальный портал Белорусской православной Церкви, 2015).

Judaism encourages organ donation and eye and tissue donation for the purpose of saving a life. The Committee on Jewish Law and Standards of the Conservative Movement issued a statement that organ donation post mortem represents not only an act of kindness, but also is a 'commanded obligation' which saves human lives, while refusing to take part in organ donation violates the commandment: "Do not stand idly by the blood of your neighbor," which obligates individuals to use any possible resource to save a life (Solomon 2001 cited in: Čović 2023, 141).

Certain Muslim ulama (scholars) and mufti (scholars interpreting Islamic law) from South Asia are opposed to organ donation, pointing out that the human body has an *amanet* or a covenant from God which is why it must not be violated after death, and human organ donation among people of the same faith is proposed only by some orthodox Jews and certain Islamic ulema/mufti (Bruzzone 2008 cited in: Čović 2023, 136).

In Islam, individuals with legal authority unanimously prohibit organ donation, especially in the case of the heart or the (entire) liver from a living donor, citing that it is tantamount to murder of the donor, and transplants are forbidden for any organs which would lead to a significant disruption in the life of the donor, even if they were not to die, for instance in the case of cornea removal from both eyes of the donor (Suheil 2023, 210–211). Modern Fiqh guidelines in this area distinguish between organs responsible for the transmission of genetic material to progeny, such as the testicles and ovaries, and those that do not, and so prohibit the transplantation of the former, considering that the transplantation of sex glands, such as the testicles and ovaries, includes tissue which continues to transfer and secrete the genetic material of the donor, even after being transplanted into a new host (Saudi Society for Studies in Medical Jurisprudence 2023, 211 cited in: Čović 2023, 140).

When we refer to the small number of donated organs and performed transplants in Serbia, the reasons can, in addition to the distrust caused by the conflict in Kosovo and Metohija, also be found in the high levels of corruption, the long-term lack of any complete and precise legal framework, but also in the fact that the Serbian Orthodox Church (SOC) does not have any official document which in a clear and unambiguous way outlines its stance on bioethics issues such as *in-vitro* fertilization, surrogacy, organ donation and euthanasia, unlike the Russian Orthodox Church and the Greek Orthodox Church. Such a document would certainly be useful,

considering the respect that the SOC enjoys among the citizens (Čović 2023). The Serbian Orthodox Church issued a statement on October 22 that the Holy Assembly of Bishops in 2004 adopted a position whereby it acquiesces to organ transplantation, if the donor has voluntarily bequeathed their organs and if the donor's family has provided their consent postmortem, in response to the claims of the Ministry of Health that they have for some time been waiting for a response from the SOC regarding organ donation and that the discussion on the issue with the representatives of the Church 'is not ongoing' (*Radio Slobodna Evropa* 2024). The Holy Assembly of Bishops affirms organ transplantation from living individuals if it does not endanger the life of the donor, as well as if "the death of the donor was determined by a professional committee of doctors in accordance with medical ethics," it was stated in the announcement (*Radio Slobodna Evropa* 2024).

According to the results of research conducted in Serbia, young people trust the Church more than political institutions, and the same applies to the general population. When asked whom they trust the most, the respondents put scientists in first place (37%), then people from their environment (33%), the Church (20%), and politicians in the end (10%) (Demostat 2023). Therefore, the Church's contribution and active participation through clearer guidelines and conversations in solving this issue by promoting organ donation and transplantation would be, for sure, desirable and significant. Also, in order to achieve a better understanding of the legal, medical and ethical implications of scientific and technological developments, in particular for young people, the State, in cooperation with the Church, medical organisations and universities, should encourage bioethics education and training at all levels.

CONCLUDING REMARKS

Organ donation and transplantation is a very complex issue from a legal and medical standpoint, but also from the standpoint of secular and ecclesiastical bioethics. Bioethics is inextricably bound to theology and philosophy and poses the question of overcoming moral dilemmas between the canonized knowledge of the human body and new technologies, that is, of the boundaries and ethical nature of their use to improve human life. The findings of applied biology and medicine are vital when it comes to their use to help people; however, showing respect for the dignity of a human being as God's creation must never be

brought into question. In that sense, the decision on who needs to have priority regarding organ transplantation must be based exclusively on medical factors and not on age, gender, religion, social position, or other similar criteria. In addition, organ transplantation should be performed in the context of love and respect for the dignity of human nature, which requires that donated organs never be offered for sale and that the act itself be motivated by mutual compassion, empathy, and selflessness among people, the wellbeing of an individual and society as a whole. Therefore, it could be said that based on all the above the existence of a certain level of individual and social maturity and spirituality is necessary, and above all an ordered legislative system, a clear theoretical framework, low levels of corruption, and firm trust on the part of the citizens in the state, its institutions, and its representatives. This complex process requires time, dedication to a shared cause, and cooperation between all the key social factors so that they, along with the citizens, can create a society in which the most vulnerable groups would be recognized and whose needs would come first as a priority.

Sadly, the Republic of Serbia has not advanced very far on this journey. It could be concluded that the citizens on waiting lists for organ transplants (and those who are yet to be on those lists) are victims of the war conflicts of the 1990s, the lack of a clear and complete legal framework, the expressed distrust of state and healthcare institutions, and of the high level of corruption in the country, which has become one of the main instigators of the greatest student and civil protests in modern state history. Time will tell how many years will be needed for more significant progress to occur in this field, as well as how many lives will be lost in the meantime.

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ПРАВНИ И ЕТИЧКИ АСПЕКТИ ДОНАЦИЈЕ ОРГАНА: ИЗМЕЂУ АЛТРУИЗМА И (НЕ)ПОВЕРЕЊА***

Резиме

Република Србија се налази на последњем месту у Европи и међу последњима у свету по броју реализованих трансплантација. У раду ће бити дат преглед релевантне правне регулативе и изазови са којима се суочавају сви којима је донација органа неопходна, након што је Уставни суд Републике Србије утврдио да су одредбе члана 23. Закона о трансплантацији људских органа из 2018. године које се односе на донацију органа умрлог лица и одредбе члана 28. Закона о људским ћелијама и ткивима, које прописују услове за даривање ткива, неуставне, уз осврт на религијска становишта о овом актуелном правном, медицинском и биоетичком питању. Такође, током пандемије Ковид-19 смањен је број донираних и трансплантираних органа, а у постковид периоду неретко се постављало питање поверења становништва у здравствене системе држава и Светску здравствену организацију, а у вези с тим и утицаја (не)поверења на одлуку појединаца да се појаве у улози потенцијалних донора, нарочито у државама које се суочавају са високим степеном корупције у свим областима, као и у ратним

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подручјима где се повећава могућност недозвољене трговине органима на црном тржишту. Ауторке закључују да ратни сукоби, не(постојање) јасног и потпуног законодавног оквира, као и степен поверења у државне и здравствене институције, директно утичу на број донора и извршених трансплантација у држави.

Кључне речи: донација органа, биоетика, Република Србија, право ЕУ, трговина органима

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