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# Organized Crime in Action: Trafficking of Human Cells, Tissues and Embryos in Romania\*

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## **Abstract:**

*In the context of impetuous debates on bioethical issues arising from biomedical and genetics research lines, the lack or inadequacy of national legislation to scientific research in the field of biogenetics facilitates the activity of organized crime.*

*Organised crime detects new sources of income that can be obtained the easy way by harvesting surcharge of human cells, tissues or organs, by trafficking of human embryos, by selling such products to interested persons which can use them at their own will, for medical curative, research or industrial purposes. In Romania there have been developed true recruiting networks of "donors" under the cover of the apparent legal specialized clinics in the country's major cities. Three of them have already been discovered and dismantled by Romanian judicial authorities's efforts. In this context, close international cooperation is needed in order to enable the identification of the modus operandi and the ramifications of criminal organizations. The Romanian state's judicial policy adjustment should be complemented by a review of legislative penal policy leading to the adoption of a strict prohibitive legislation regarding the traffic of oocytes and embryos and the medical techniques to provide them.*

**Keywords:** *organized crime, organized criminal group, embryo, oocyte, trafficking of human cells and tissues.*

## **1. Introductory aspects**

Trade in human eggs or surrogate motherhood became a widespread international phenomenon with serious repercussions in national and international area, in a relatively short period of time, thus creating real collection and distribution networks. We even can identify a direction in mobilizing the individuals involved in such practices, in "donor" - "beneficiary" relation; the "donor" comes mainly from Eastern Europe or Asian countries (India, Pakistan, China), while the "beneficiary" comes from Western European countries or the US, the legislation in later countries being extremely restrictive on biomedical procedures while the costs are extremely high. In this relationship, the critical place is held by "intermediaries", organized criminal groups and clinics that facilitate the exchange, obtaining in this way large sums of money.

In countries where the sale of eggs is prohibited under the national law, hormones may be administered in the country of female donors, then moving to another country for their collection. Oocytes produced by in vitro fertilization are harvested here too.

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Sometimes introducing the embryo in the woman's uterus also takes place here. Aggressive techniques to stimulate ovulation, repeated harvesting of large number of ovules, multiple attempts to implant in the uterus for the fertilized oocyte or embryo have led to many serious health problems of women undergoing these medical practices. Health effects for women occur in both short- (massive hemorrhage, allergic reactions, etc.) and long term (infertility, various cancers), being both extremely serious.

Transnational trade in surrogate motherhood is another form of trafficking in genetic material, that typically involves several people:

a) surrogate mothers (carriers) can only offer their body / uterus / eggs to the beneficiaries; they come from poor countries, have financial difficulties and obtain money in this way. They can cross several countries: in a state they are being artificially inseminated and in another state they may be sent to carry their pregnancy.

b) donors of genetic material (eggs, sperm) can be members of the beneficiary couple or even third parties which may be obtain, in turn for their „donation”, a financial reward. In this case, the third parties come obviously from other European states or Asia.

c) beneficiaries of the child that is born by the surrogate mother are paying this services and usually come from another state (Western European state or even United States).

Leaving aside the discussion about the violations of the human rights and about the violation of bioethics principles governing the biomedical and genetic practices and particularly in vitro fertilization, the described phenomenon has increased in the past recent years being almost impossible to control.

Within it, harvesting and distribution networks developed by organized criminal groups are built on pillars with legal appearance - creating in vitro fertilization clinics, medical counseling centers - and require specialized personnel: doctors and geneticists have so the chance to obtain untaxed gains and to achieve unauthorized medical research.

Both donors and beneficiaries are, in our opinion, victims of this phenomenon, their involvement in those proceedings having either a pecuniary motivation (the so-called donors, surrogate mothers), or a psychological and social motivation (beneficiaries).

## 2. Organized crime and its features

Organized crime, in its way of structuring, flexibility and great infiltration capacity in vital areas of politics and economics, through its rapid internationalization, through its unconditional appeal to violence, corruption and extortion, is a direct and urgent threat, and could be qualified as a defiance to global society.<sup>1</sup>

The United Nations Framework Convention on Struggle Against Organized Crime defines the concept of organized crime as: the activities of a group of three or more persons with hierarchical links or personal relationships that enable their leaders to make profits or control territories or markets by internal or external violence, intimidation or corruption, both in the purpose of support criminal activity and to infiltrate the legitimate economy.

Organized crime has been characterized as the preserve or attribute of privileged individuals, placed on top of the social and political pyramid, using their influence,

<sup>1</sup> Petre Buneci ș.a., *Sociologie juridică și devianță specială*, Ed. Fundației Române de Măine, București 2001, p.142.

position, wealth and their political and economic power in order to commit unlawful acts which remain undiscovered by the police and justice, business from which they obtained huge profits, evading tax state control.<sup>2</sup>

Unlike the actions of individuals who occasionally associate to commit illegal acts, a criminal organization is a premeditated association designed to the smallest details regarding the role and mode of action of those who constitute it. The specific features of criminal organizations, from a traditional and even conservative approach are: a) hierarchical structure; b) hermetic and conspirativity; c) flexibility and penetration; d) the transnational character; e) profit orientation; f) use of force; g) the existence of a code of conduct.

In some recent analyzes of the organized crime phenomenon<sup>3</sup> has been shown that the only one dimension that is specific to organized crime in the current context is its complexity, being almost impossible to propose a comprehensive definition of the phenomenon. Secondly, the transnational feature tends to become a self-contained element after 1990, at the end of the Cold War.<sup>4</sup>

Formal definitions of transnational organized crime that are set out in various international documents treat the transnational character not as an ontological feature of organized crime, but as a specific manner of its actions. Art. 2 of the Palermo Convention defines organized criminal group as a structured group of three or more persons, existing for a certain period and acting in concert with the aim of committing one or more serious crimes or offenses under the Convention, to directly or indirectly obtain a financial or other material benefit. According to art. 3, an offense is transnational in its nature if: a) it is committed in more than one State; b) is committed in one state but a substantial part of its preparation, planning, direction or control takes place in another State; c) it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or d) is committed in one State but has substantial effects in another State.

OCTA<sup>5</sup>, published by Europol in 2007 distinguishes between three types of criminal groups: a) organized indigenous criminal groups based in the EU (leaders and their goods come from the EU); b) non-indigenous groups or not founded in EU (leaders and their goods do not come from the European Union); c) groups that include both organized groups of second generation (organized groups are groups derived from a non EU country that have established in the EU) and traditional indigenous groups that exploit the international dimension.<sup>6</sup>

The same document shows that modern organized criminal group has a defined transnational nature, many of its criminal typologies being evolved forms of smuggling. Smuggled goods are goods that can not be procured from the legal market.<sup>7</sup> A niche for such action is created, ingenuity and professionalism of the leaders of criminal groups consisting in identifying these niches and developing the distribution networks.

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<sup>2</sup> E.H.Sutherland, *White Collar Crime: The Uncut Version*, Yale University Press, 1983, Business & Economics, p. 253.

<sup>3</sup> Francesca Longo, *Discoursing organized crime. Towards a two-level analysis*, in Felia Allum, Francesca Longo, Daniela Irrera, Panos A. Kostakos (editors), *Defining and Defying Organized Crime. Discourse, perceptions and reality*, Part I, Routledge advances in international relations and global politics, Routledge, New York, 2010, p. 15.

<sup>4</sup> *Idem*, p. 21.

<sup>5</sup> EU Organized Crime Threat Assessment 2007; [www.europol.europa.eu](http://www.europol.europa.eu).

<sup>6</sup> OCTA 2007, p. 9, 14-16.

<sup>7</sup> *Idem*, p. 21.

The doctrine<sup>8</sup> also found two models of existence and action of organized criminal groups whose presentation is relevant to this study:

- the corporate model, traditional, in which entities acting as criminal groups are highly centralized with a certain hierarchical structure;
- the network model, flexible, fluid and adaptable, which can quickly regroup in case of its removal by the authorities. Organized criminal group consists of a network of sub-groups capable of rapid regrouping, whose existence is not based on lasting relationships between their members like in case of the corporate model. Unlike traditional organized structural model, group members do not have to prove their dedication to sacrifice their lives. Depending on the opportunities arose, they are free to seek other partners to maximize profits. The bond between the members of the criminal group in this model is the desire for profit.

### 3. New areas of interest for organized crime

The unprecedented development of reproductive technologies in conjunction with other legal, social, financial and psychological elements (lack of regulation or insufficient regulation of the field in a state, the increased degree of population infertility, the couples' desire to procreate, prohibitive costs of going through in vitro fertilization procedures, the excessive bureaucracy on a person's eligibility to qualify for such procedures) have opened the door to illegal practices carried out in an organized framework. Organized criminal groups which have a strong specialized professional character, that act in the field of assisted human reproduction. These networks were harvesting human reproductive cells that are fertilized in vitro and then implanted in the recipient's or surrogate mother's body. There is an appearance of legal medical activities, thanks to the loopholes or weak expression of the legislature. In these network-type organized groups are involved people with medical education background (from researchers to doctors, nurses and support staff) who constitute the "core group", essential for its niche activity.

Interestingly, none of the documents published by Europol (OCTA 2007, SOCTA 2013 IOCTA 2014) does not analyze this new field of action of organized crime. Obviously a presentation by the Council of all areas of action of organized crime would be impossible given the complexity of the phenomenon. However, until now, there is no analysis of Europol on trafficking in human cells and reproductive material, although the phenomenon has accelerated in the last 5 years.

### 4. Models of actions of organized crime in Romania in human cell trafficking, human tissues or surrogate motherhood. Three famous cases

In the context of insufficient regulation of medical techniques and the lack of legal limits in these areas, Romania has faced three highly publicized cases in both the national international media, involving in vitro fertilization clinics, foreign and Romanian businessmen and doctors, constituted in organized criminal groups. Thus, three in vitro fertilization clinics were accused of trafficking in oocytes, doctors recruiting Romanian or Roma nationality women. Their reproductive cells were taken

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<sup>8</sup> Tom Obokata, *Transnational Organized Crime in International Law*, Hart Publishing, Oxford and Portland Oregon, USA, 2010, p. 14-17.

in exchange for money. The oocytes were then used to treat some foreign patients, who suffer from infertility and who paid for the treatments. Unlawful gains achieved by members of harvesting and distribution network were huge.

*a) The MED NEW LIFE Case<sup>9</sup>*

In 2003, an Israeli businessman – Raz Hochman – has opened an in vitro fertilization clinic, named "Med New Life" in Bucharest. The business has operated without problems until 2009. Then, a donor of oocytes filed a criminal complaint after her condition worsened due to a hormone treatment to extract oocytes. The woman refused to be treated by doctors from the clinic, remaining without ovaries after an operation performed at another hospital. Although the case was reported to Directorate for Investigating Organized Crime and Terrorism (*in Romanian DDCOT*) in 2009, Israeli businessman (head of the traffic network of oocytes) was arrested only in 2013, and his clinic closed at the time.

The investigations carried out following the original complaint in 2009, revealed the whole network of donors – young women – who were cashing up to 600 euros for each harvest oocytes. Embryos were sent to Israel, without seeking the opinion of the National Transplant Agency. Israeli or other ethnic patients were paying a fee that could reach 3500 Euro to benefit from implantation of fertilized eggs or embryos. The financial mechanism created, allowed the distribution of money paid by the recipients to the donors and to the clinic for its medical services.

Prosecutors revealed that Raz Hochman, along with other defendants, "(...) in order to obtain necessary genetic material to achieve in vitro fertilization procedures, benefiting from the material basis to carry out the assisted reproduction techniques (medical equipment, medication etc.), directly or through intermediaries, recruited, by various means, females who have agreed to follow procedures that involved the extraction of oocytes; the genetic material obtained under these circumstances was used to provide embryo transfers for the benefit of distressed females who couldn't procreate naturally and that in return were paying substantial amounts of money(...)." <sup>10</sup>

It is worth mentioning that, following the network model mentioned by us during the analysis of the concept of organized crime, RAZ Hochman and two other defendants in the case, had initially worked in the Sabyc Clinic until 1998. From that point they were separated from HARRY MIRONESCU (convicted in the Sabyc Case) establishing MED NEW LIFE Medical Center in Bucharest.

The association of the organized criminal group members and their aggregation in the NEW MED LIFE Medical Center was a natural continuation of previous work carried out at Sabyc Clinic and was conducted in the context of not punishable at the time acts. The group's work was supported by the large number of people in difficulty to naturally procreate identified in Romania, but also by the many requests of some Israeli couples, while the achievement of such procedures in Israel meet difficulties due to traditionalist / religious reasons.

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<sup>9</sup> Regarding this case: <http://www.ordineazilei.ro/actualitate/social/sanatare/p/cazul-raz-hochman-facere-ilegala-sau-razbunare>; <http://www.9am.ro/stiri-revista-presei/2005-04-19/filiera-israeliana-a-pus-monopol-pe-traficul-cu-ovulele-romancelor.html>; <http://www.cuvantul-ortodox.ro/recomandari/2014/07/24/fabricile-de-bebelusi-reportaj-digi-24-video-despre-traficul-de-ovule-din-romania-realizat-in-clinicile-de-fertilizare-acreditate-de-agentia-de-transplant-care-sunt-cauzele-scaderii-natalita/>; <http://www.b1.ro/tag/clinica-med-new-life-115987.html>. (accessed 1.04.2015).

<sup>10</sup> <http://www.focus-energetic.ro/un-om-de-afaceri-israelian-vrea-sa-dea-statul-roman-in-judecata-la-cedo-17738.html>. (accessed 1.04.2015).

Prosecutors showed that, in order to disguise the illegal component of the medical work performed by specialists in the Romanian clinic and in order to justify the regular presence of Israeli doctors in Romania, a cooperation agreement between Med New Life Medical Center and HAROFEF ASSAF Hospital from Israel was drawn up. In order to justify the Israeli doctors' work in Romania, considering the fact that they had no right to medical practice in Romania, Raz Hochman came up with the formula of the qualification / over-specialization of the clinic staff, that was only formal employed, without really meeting the legal demands to achieve proceedings involved in cellular microbiology. The Israeli doctors' role was only to figure with their the name and their qualification in the organization chart, while specialized Romanian staff performed the procedures which required a high degree of complexity.

The prosecutors also argued that, since the spring of 2009, the members of the organized criminal group have acknowledged the legal research conducted by the judicial organs in a similar case – the so called "Sabyc" Case). After that, their classic mode of action consisting of recruitment of donors was changed to some extent adapted to the new situation, meaning that the persons concerned to follow ovarian stimulation procedure in exchange of money or other benefits were contacted by one of members of the organized criminal group, who put them in direct connection to the persons concerned to benefit from harvested oocytes in order to proceed to further realization of embryo transfer.

The network has been expanded and organized also in Moldova where they had taken steps to obtain permits required to open an in vitro fertilization clinic, under a similar name, New Med Life, with the involvement of Moldovan politicians and their relatives<sup>11</sup>. Interestingly, these efforts were made after the scandal broke out in Romania, in 2009.

In 2013 Raz Hochman was arrested on charges of trafficking of eggs and of constituting an organized criminal group and his in vitro fertilization clinic was closed. Currently, the businessman is banned from leaving the country and his case is pending at the Bucharest Tribunal.

Raz Hochman was indicted for initiation, establishment of organized criminal group, membership or support for such a group and trafficking in human cells (art. 158 para 1 of Law 95/2006) in a continued form. The file is still pending Bucharest Tribunal (judgment at first instance)<sup>12</sup>.

#### *b) The ATHENA Case<sup>13</sup>*

In May 2014, searches took place at a famous clinic in Timisoara. Another scandal, which involved an in vitro fertilization clinic, has outraged public opinion, dissatisfied already with the lack of a suitable legislation for in vitro fertilization. Konstantin Giatras, a Greek businessman, owner of the "Athena" Clinic in Timisoara, and part of his medical team, were detained.

<sup>11</sup> <http://www.zdg.md/editia-print/investigatii/de-ce-ministrul-sanatatii-protejeaza-monopolul>.

<sup>12</sup> File nr. 27222/3/2013 pending Bucharest Tribunal; <http://lege5.ro/Dosar/ge2tknjtgyztgxzt/27222-3-2013-tribunalul-bucuresti>.

<sup>13</sup> A se vedea: <http://www.tion.ro/medicii-de-la-clinica-privata-athena-acuzati-de-prelevare-ile-gala-de-ovule/1422379>; <http://debanat.ro/2014/05/un-nou-scandal-la-spitalul-athena-medici-acuzati-de-traffic-de-ovule/>; <http://www.mediafax.ro/social/dosarul-trafficului-de-ovule-managerul-spitalului-athena-din-timisoara-arestat-la-domiciliu-sefa-de-laborator-cercetata-sub-control-judiciar-12665858>.

The businessman of Greek origin Giatras Konstatin opened in 2010, an in vitro fertilization clinic in Timisoara, a city where he graduated the university. He was extremely well known in the Western part of Romania, had connections in the political class and received the approval of the Foreign Affairs Ministry of Romania and Greece to become Consul of Greece in Romania.

Konstantinos Giatras constituted a criminal group in which the Roma clan chiefs from Banat Region were involved, mainly dealing with oocytes traffic, but also illegally providing other medical procedures in the field of in vitro fertilization. Young Roma women were recruited and directed to the fertilization clinic where they received 300 euros in exchange for harvesting their oocytes. The network also attracted other 13 girls for surrogate motherhood.

According to a release issued by the Directorate for Investigation of Organized Crime and Terrorism (DIICOT), the criminal group was organized on two levels: a) organizing illegal transplantation of human cells used for in vitro fertilization with parent carrier and b) organization illegal activities transplant human cells used for in vitro fertilization with eggs taken from various women recruited by hospital employees who were paid money for the procurement of oocytes; these oocytes which were later used in in vitro fertilization procedures for other women. These medical procedures were carried out without the approval of the National Transplant Agency or of the Minister of Health. People involved were directed by medical personnel at various notaries (currently being identified only two), which drew up notarised statements stating that oocyte donors or surrogate mothers were compelled to donate or to carry a pregnancy without any financial claim, and, as it concerns the surrogacy, at the end of the pregnancy they offer the child to the beneficiary couple, without any other claims. The recipient couples signed notarised statements stating that they agree with in vitro fertilization, with embryo transfer and that they recognize the child as their natural. So far 12 cases of surrogate motherhood have been identified (women from Romania, Hungary, Slovakia) being interviewed seven of them, and have been also identified the couples involved in in vitro fertilization procedures with them. Two of the seven surrogate mothers have given birth to one child, that has been immediately handed over to his biological parents. The recipient couples are both Romanian citizens and also citizens of Hungary, Norway and Greece.<sup>14</sup>

The defendant Konstantinos Giatras was not yet sent to trial, he is only subject to preventive measures, being still under prosecution<sup>15</sup>.

### c) *The SABYC Case*<sup>16</sup>

If medical units held by Hochman and Giatras operated legally on the basis of accreditations issued by the National Transplant Agency, in the Case of Sabyc Clinic closed in 2009, following DIOCT investigation for the egg trafficking, the story is different.

<sup>14</sup> <http://www.diicot.ro/index.php/arhiva/1132-comunicat-de-presa-30-05-2014>.

<sup>15</sup> <http://lege5.ro/CautaDosare#PartyName=Giatras%20Konstantinos>.

<sup>16</sup> A se vedea <http://www.ziare.com/stiri/inchisoare/decizie-definitiva-in-dosarul-sabyc-primul-caz-de-traffic-de-ovule-umane-din-romania-1328915>; <http://www.europafm.ro/stiri/interne/condamnari-definitive-in-cazul-trafficului-de-ovule-de-la-clinica-sabyc~n78791/>; <http://www.stiri.com.ro/stire-76841/condamnari-definitive-in-dosarul-sabyc-primul-caz-de-traffic-de-ovule-umane-din-romania.html#.VRwBrvysWAK>.



The owner of Sabyc Clinic, Harry Mironescu, his son Yair Miron and Israeli doctors Ziska Natan Lewit and Genia Ziskind were finally convicted by the Romanian High Court of Cassation and Justice to three years of imprisonment for illegal eggs trafficking. Sentencing decision was taken after nearly five years of trials. Other defendants in the case, including the former director of the National Transplant Agency received lesser penalties, with suspension.<sup>17</sup>

DIICOT prosecutors<sup>18</sup> showed in the indictment that Harry Mironescu was the leader of an organized criminal group who acted at the Sabyc clinic in Bucharest. He coordinated: the medical procedures, fraudulently introducing of genetic material in the country, the tracking of donors, the registration of medicines used in those procedures, the possibility to recruit from abroad, the rewarding of the donors and recruiters. Natan Lewit has been indicted on charges that he exercised without having this right medical profession in Romania, that he recruited foreign couples who wanted to benefit from assisted reproduction techniques, he supervised the development of hormone stimulation treatment participating directly in examination of donors and patients, he proceeded punctures for extracting oocytes, retrieved and handed them over to another doctor in order to prepare cultures needed for the embryo transfer.

All listed procedures were conducted repeatedly and in some cases the genetic material was fraudulently introduced, being later used in instructional techniques needed for the embryo cultures effectively. Egg donors were rewarded with money from the clinic. Also Sabyc clinic was not accredited to carry out the artificial reproduction techniques.

Sabyc Clinic was established under an agreement between Romania and Israel, signed in 1968, during the Communist period, as research center under the Ministry of Education and Research authority. For 10 years (1999 -2009) the clinic functioned without a legal accreditation, under the eyes of Romanian authorities, in the heart of Bucharest – Romanian capital. Oocyte donors recruited were aged 18-30 years (students, unemployed or other women in financial difficulty) and received up to 400 euro per donation. The oocytes were then fertilized and sent to recipients from Israel who paid up to 3,500 euro for treatment.

The network has worked so well that its ramifications developed almost naturally, in 10 years donors ended up to recruit each other without the need for any intermediation from the members of the organized criminal group.

Only in 2009 the Sabyc Clinic achieved accreditation from the National Transplant Agency, but only a few months was closed to the facts established by the judiciary. In addition, the way on how this accreditation was obtained is subject to another criminal investigation by National Directorate for Anticorruption for alleged corruption.

In this case, the College of Physicians withdrew physicians and medical staff the right to medical practice due to their criminal conviction.

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<sup>17</sup> On the decision of the Tribunal [http://portal.just.ro/3/SitePages/Dosar.aspx?id\\_dosar=300000000314949&id\\_inst=3](http://portal.just.ro/3/SitePages/Dosar.aspx?id_dosar=300000000314949&id_inst=3); On the decision of the Appeal Court [http://portal.just.ro/2/SitePages/Dosar.aspx?id\\_dosar=300000000314949&id\\_inst=2](http://portal.just.ro/2/SitePages/Dosar.aspx?id_dosar=300000000314949&id_inst=2) (accessed 1.04.2015).

<sup>18</sup> <http://www.diicot.ro/index.php/arhiva/283-comunicat-de-pres-a-24022010-283>; <http://www.diicot.ro/index.php/arhiva/288-comunicat-de-pres-a-05032010-288>;

<http://www.diicot.ro/index.php/arhiva/219-comunicat-de-pres-a-29072009-219> (accessed 1.04.2015).

## 5. Factors favoring the development of networks of organized crime in the trafficking of cells, tissues, human embryos or surrogate motherhood

Unprecedented activity of organized crime networks, particularly their rapid development, as well as the huge sums of money to obtain are effects of a sum of factors that may be identified in particular in Eastern European countries and especially in Romania: the lack of legislation, indolence of the local authorities, the lack of funds and the corruption of the political class.

### *a) Lack of legislation*

Romania has no legislation in order to properly control and combat trafficking of human eggs and embryos. The first rules applicable in Romania which pointed out to the issue of obtaining and handling human embryos, were provided by Law no. 95/2006 on healthcare reform. This act regulates the activity of procurement and transplantation of organs, tissues and cells for therapeutic purposes (Title VI of the Act), but does not refer expressly to embryos that can not be assigned either to the concept of organ nor to that of cell or tissue, because the embryo is a human being in development, an agglomeration of cells and tissues having its own life. Because the legislator does not refer expressly to the concept of embryo, we conclude that the law as a whole, and therefore its incrimination rules do not apply to human embryos, which do not enjoy any legal protection neither criminal nor extra-criminal!

In 2005, the Romanian legislator tried to adopt a law on reproductive health and medically assisted human reproduction, covering those situations faced by practitioners in reproductive medicine and unregulated before. The reasons for the project were diverse: legal vacuum, the need to combat decline of the population, the need of legislative alignment with the standards applying in other European countries.<sup>19</sup> Despite its multiple positive reactions, by Decision no. 418 of 18th of July 2005, the Constitutional Court of Romania declared unconstitutional the majority of the provisions from Law on reproductive health and medically assisted human reproduction<sup>20</sup>.

Later, after seven years, the draft law no. 63/2012 on medically assisted human reproduction with third party donor was submitted to Parliament<sup>21</sup> but the text of the draft regulation was referring to the situation of persons involved in such a procedure without a precise regulation of the legal situation of the human products resulting from the techniques of harvesting and in vitro fertilization. Therefore the legal situation of the human embryo is not regulated; the draft only refers to human gametes, leaving aside proceedings like stem cells harvesting or embryonic divisions<sup>22</sup>.

In this context of the lack of sectoral regulations, DIICOT's efforts to control and disable organized crime networks acting in the oocytes and embryos trafficking seems a battle with the windmills.

### *b) Lack of involvement of the authorities in programs to support the infertile population*

In Romania, egg trafficking escaped totally under control of the authorities, virtual environment abounding of women claiming thousands of euro in exchange for

<sup>19</sup> <http://www.senat.ro/legis/PDF%5C2013%5C13L453EM.pdf>.

<sup>20</sup> Published in Monitorul Oficial nr. 664 from 26th of July 2005.

<sup>21</sup> [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?cam=2&idp=12651](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12651).

<sup>22</sup> <http://www.cdep.ro/proiecte/2012/000/60/3/se99.pdf>.

"donation" of their reproductive cells. This black market works successfully because people suffering from infertility are forced, by circumstances, to find themselves a donor. National Agency for Transplant publicly recognizes its helplessness saying that if an individual wants to donate oocytes, a state authority cannot intervene. By its deficiency, the Romanian favors the trafficking eggs, embryos and surrogate motherhood.

Ministry of Health, under which authority operates our National Transplant Agency tried in 2011 to take the initiative to control the phenomenon and launched the Program for in vitro fertilization and embryo transfer<sup>23</sup>, under which it granted an aid of 1,500 euros for each couple wanted to undergo such a treatment. At that time Romania was the only country in European Union that didn't fund IVF procedures. From June 2011 to 31<sup>st</sup> of December 2012 1440 medical applications were approved. In the same period 1,126 procedures were performed. As a result of the procedures performed 300 children were born<sup>24</sup>. In 2013, the Health Ministry stopped funding IVF program, having other funding priorities<sup>25</sup>. At 27<sup>th</sup> of september 2014 Health Minister Nicolae Bănicioiu announced a resumption of the program starting with 2015<sup>26</sup>.

### *c) Lack of money*

The budget for IVF and embryo transfer program started in 2011<sup>27</sup> was 4 million lei (905,817 euros), the Ministry of Health financially supporting one IVF procedure per couple, in two stages:

- 4920 Lei (1,114 euros) after the fertilization procedure (oocyte harvest by follicular puncture; harvesting and processing sperm; oocyte insemination, embryo transfer).

- 1,230 lei (278.5 euros) after confirming the completion of IVF / ET with a pregnancy, followed by birth.

The list of clinics agreed upon by the Ministry of Health in the program consisted of only six such entities.

On 25<sup>th</sup> of March 2015, the Romanian Government adopted the Resolution no. 206 on approving national health programs for 2015 and 2016<sup>28</sup> which includes the Program for in vitro fertilization and embryo transfer as part of the Program on Transplantation of organs, tissues and cells. Order no. 185 / 30.03.2015 issued by the National Health Insurance House<sup>29</sup> and its Annexes<sup>30</sup> approved technical rules to achieve national curative health programs for the years 2015 and 2016 and establish the date for the IVF program implementation on 1<sup>st</sup> of April 2015. This was a cumbersome procedure which resulted in postponing the moment at which those interested can benefit from these procedures, to the middle of 2015, considering also the bureaucracy required to approval of the application. Although the budget has been doubled for all programs for in vitro fertilization and embryo transfer, funds are

<sup>23</sup> <http://www.medicinareproductiva.ro/program-national-fertilizare.php>;  
<http://www.medicinareproductiva.ro/comunicat.pdf>.

<sup>24</sup> Statistic data provided by the site <http://www.ms.ro/?pag=203>.

<sup>25</sup> <http://observator.ro/reuarea-programului-de-fertilizare-in-vitro-in-2015-salutata-de-asociatia-sos-infertilitatea-277975.html> (accessed 1.04.2015).

<sup>26</sup> <http://www.ziare.com/articole/banicioiu+anunt+program+fertilizare+2015> (accessed 1.04.2015).

<sup>27</sup> <http://www.ms.ro/?pag=62&id=9050&pg=1>.

<sup>28</sup> Published in Monitorul Oficial nr. 208 from 30<sup>th</sup> of March 2015.

<sup>29</sup> Published in Monitorul Oficial nr. 219 from 1<sup>st</sup> of April 2015.

<sup>30</sup> Published in Monitorul Oficial nr. 219bis from 1<sup>st</sup> of April 2015.

insufficient given the high number of applications, a single insemination conditioning funding and the failure rate of over 65%.

*d) Corruption among politicians and civil servants involved in providing authorizations and licenses for conducting medical procedures in assisted human reproduction*

The proliferation of criminal activity of those three criminal groups mentioned above was favored by the illegal recruiting of officials from the National Transplant Agency, the only entity in Romania which was responsible for accreditation and certification of clinics and medical personnel for the work in the field of assisted human reproductive technologies and handling of human tissues and cells. The DIICOT prosecutors showed that two public servants, the Managing Director of the National Transplant Agency, respectively, the regional Bucharest coordinator of the National Transplant Agency have committed offenses of forgery of official documents in order to facilitate Sabyc Clinic to obtain the licence in 2009. Obviously the two civil servants were "motivated" properly otherwise they would not have committed such illegal acts, prosecutors carrying out investigations in that case, from the date of the false documents.<sup>31</sup>

Besides the use of corruption is a defining feature of organized criminal groups for the expansion stage of their business.<sup>32</sup> Furthermore, using corruption at the highest level was revealed by Europol in 2006<sup>33</sup> and 2007 OCTA documents which showed that second-generation criminal groups that we made earlier speech, have an increased capacity to corrupt, and this feature was identified as a serious threat.<sup>34</sup>

## 6. Instead of closing

The activity of organized criminal groups is blooming in a new and controversial area, socially, religiously and filosofic. Not aligning the legislation to the requirements of the Oviedo Convention and the alarming state of research into the genetic and artificial reproductive field, the lack of involvement of the Romanian authorities in support of the population in order to subsidize medical procedures for in vitro fertilization are other factors favoring the proliferation of organized crime in this area. Organised criminal groups have detected this niche market, exploiting it assiduously in order to obtain huge sources of income.

Organised crime in the area of trafficking of human cells, tissues, embryos and surrogate maternity is the most advanced form of organized crime, properly integrated within political, economic and social institutions of the contemporary society, which makes it almost impossible to identify as a criminal organization.<sup>35</sup>

<sup>31</sup> <http://www.diicot.ro/index.php/arhiva/283-comunicat-de-presa-24022010-283>.

<sup>32</sup> There have been identified four phases of action of the organized criminal groups: 1. the identification and determination of the business phase; 2. the expanding of business phase; 3. The strengthening of business phase; 4. the location of business phase. Corruption is a technique used in the expansion phase of the business, alone or along with other techniques, such as violence. On this issue: Geoff Dean, Ivar Fashing, Petter Gottschalk, *Organized Crime. Policing Illegal Business. Entrepreneurialism*, Oxford University Press 2010, p. 76.

<sup>33</sup> [www.europol.europa.eu](http://www.europol.europa.eu).

<sup>34</sup> OCTA 2007, p. 12; [www.europol.europa.eu](http://www.europol.europa.eu).

<sup>35</sup> Edwin H. Stier, Peter R. Richards, *Strategic Decision Making in Organized Crime Control: The Need for a Broadened Perspective*, National Institute of Justice Symposium Proceedings: Major Issues

Criminalitatea organizată în domeniul traficului de celule, țesuturi umane, embrioni sau maternitate surrogat este forma cea mai avansată de criminalitate organizată, foarte bine integrată în cadrul instituțiilor politice, economice și sociale ale societății actuale, ce face aproape imposibilă identificarea sa ca organizație criminală.<sup>36</sup> Organized criminal groups operate as networks with a strong transnational feature, being almost impossible to combat due to weak national legislation.

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in *Organized Crime Control*, in Margaret E. Beare (editor), *Transnational Organized Crime*, Ashgate, UK, 2013, p. 65.

<sup>36</sup> Edwin H. Stier, Peter R. Richards, *Strategic Decision Making in Organized Crime Control: The Need for a Broadened Perspective*, National Institute of Justice Symposium Proceedings: Major Issues in Organized Crime Control, in Margaret E. Beare (editor), *Transnational Organized Crime*, Ashgate, UK, 2013, p. 65.