Dealing With Public Solicitation of Organs From Living Donors—An ELPAT View

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Although transplant professionals have initially been reluctant to perform transplants after public solicitation of organs from living donors, nowadays these transplants are increasingly being performed and reported. After clarifying the existing terminology, we elaborate an operational definition of public solicitation that is consistent with the Ethical, Legal, and Psychosocial Aspects of Transplantation classification for living organ donation. Our aim is to critically assess this phenomenon, from a legal, moral, and practical perspective, and to offer some recommendations. From a legal point of view, we analyze the current situation in the Europe and the United States. From a moral perspective, we evaluate the various arguments used in the literature, both in favor and against. Finally, we offer a set of recommendations aimed at maximizing the organ donor pool while safeguarding the interests of potential living donors.

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Public solicitation of organs from potential living donors represents one of the most contentious issues in living organ donation. The topic is often seen in both the (social) media and the academic literature stirring debate and provoking controversy.1,2 As with other controversial topics, the surrounding discussion is primarily dominated by emotional viewpoints, rather than by rational arguments. Public solicitation is also an issue of debate when it comes to comparing existing transplantation practices. In the United States, transplant centers routinely accept organs from living donors who have come forward after public solicitation. In contrast, in Europe, this practice is less frequent, except for a few countries,3,4 where we see quite an increase of public solicitation. For this reason, the Ethical, Legal, and Psychosocial Aspects of Transplantation (ELPAT) section of the European Society for Organ Transplantation instituted a working group to address this topic from several perspectives. In this position paper, the outcome of the discussions of the ELPAT working group Living Organ Donation is presented. The paper aims to critically assess public solicitation of organs from living donors, from a legal, moral, and practical perspective, and to offer some recommendations.

TERMINOLOGICAL CLARIFICATIONS

Public solicitation is defined in the literature as a public search for an organ by prospective recipients or their representatives,5 either from a living donor or from a dead one.6 Regarding the scope of the topic of public solicitation, we should note that public solicitation can be regarded as a continuum, as a gradient scale depending on how “public” the solicitation becomes. At one end, there are cases where recipients appeal to their church community, their sports club, or their former school colleagues. Then there are cases where the appeal is made via (social) media to the general public, in the form of billboards, advertisements, personal blogs, or announcements placed on social network sites (such as Facebook). The latter forms of communication are increasingly being used by prospective recipients.6 Finally, there are specially designed websites that act as “brokers” between recipients and potential donors (such as matchingdonors.com or floodsissters.org).

Delineating the phenomenon of public solicitation is quite challenging in itself because it can be addressed from various perspectives. In principle, public solicitation could target both deceased donation and living donation. We focused on
living donation here because public solicitation for deceased donation is generally prohibited as it conflicts with the existing allocation systems based on anonymity.7,6 There are 2 types of soliciting an organ: one that involves a financial reward in exchange for the organ, and one that does not involve a financial reward (calls for altruism from the part of potential donors). In this paper, we will focus on the latter.

In the literature, donors acting after public solicitation are labeled either as “donors to strangers”, “directed altruistic donors” or “unrelated directed donors”,7 which seems to refer to different categories of people and consequently confuses the reader. A term that would be consistent with ELPAT definitions for living organ donation 8 is solicited “specified donation,” whereby somebody donates an organ directly to the recipient specified in the public solicitation, without being emotionally or genetically related to that person. The proposal is consistent with our previous attempts to clarify the terminology on living donation (see Table 1).

**LEGAL ASPECTS**

From a legal perspective, solicitation of an organ is prohibited only if it involves financial inducement or comparable advantage.9 Although, in the absence of remuneration, public solicitation is legally allowed in North America and Europe, the practical approach differs markedly between both regions. In North America, all individuals in need of a transplant are allowed to solicit an organ from a potential living donor by appealing to all sorts of media, and transplant teams will often accept a potential donor who has stepped forward in response to a solicitation.2 9-11 The approach in Europe is different. Many European countries do not permit unspecified donation,9 that is, anonymous organ donation by a donor who is genetically and emotionally unrelated to the intended recipient, thus precluding the possibility that potential donors who respond to public solicitation would even be taken into consideration.3

For instance, in France living organ donation is only allowed by a person who is a parent, spouse/cohabitant, sibling, child, grandparent, uncle, aunt, first cousin, or spouse of the father or mother, of the recipient. In Germany, living organ donation is only allowed by a person who is a relative up to the second degree of consanguinity, spouse, registered partner, or fiancé, of the recipient or by a person who has an especially close personal relationship with the recipient. In Greece, living organ donation is only allowed by a person who is a spouse/cohabitant, a relative up to the fourth degree of consanguinity, or a relative up to the second degree of affinity, of the recipient or, upon court approval, by a person who has a personal relationship with and is emotionally connected to the recipient.12

Moreover, even in countries that permit unspecified living donation, transplant centers remain unaccommodating toward donation resulting from public solicitation, with notable exceptions, such as in the United Kingdom or the Netherlands.3 4

**MORAL ASPECTS**

From a moral perspective, we evaluate the arguments that are most frequently invoked in the literature. Taking into account that the same type of argument is often used as a ground both for and against public solicitation, we provide a thematic categorization aimed at avoiding possible confusion.

(1) Fairness in allocation

The first type of argument can be labeled as “fairness in allocation.” Proponents of public solicitation underline that, to ensure a fair chance of obtaining the scarce resource of an organ, one needs to be able to do whatever it takes—including openly and publicly advertising for the need of an organ.

Opponents claim morally relevant criteria of organ allocation are replaced by media-driven criteria of attention-seeking, such as who has the most appealing story, who has the best means of publicizing his/her story more widely, who has a better PR campaign for soliciting an organ, that is, what some commentators label as “the beauty contest.”10
Studies made on the announcement pages of those actively seeking organs via social network sites show that a variety of information is displayed on the recipient profile (not necessarily medically relevant) and that only partial disclosure of donor-related risks is provided.\textsuperscript{13,14}

A stronger version of this argument holds that, by using advertising techniques, the search for organs will result in “recipient shopping” whereby potential donors choose among competing patients on the basis of a judgment of their social worthiness.\textsuperscript{15} Relatedly, it is feared that public solicitation allows donors to circumvent the limits on conditional donation because they can freely act on their discriminatory preferences just by selecting a patient within their desired group.\textsuperscript{13,15}

In response, other authors note that public solicitation does not deprive other potential recipients of an organ that they otherwise might have received. Rather, the organ offered via public solicitation is offered as a result of the solicitation and would otherwise not have been available.\textsuperscript{16,17} Along this line of reasoning, public solicitation remains fair in the balance, because possible inequities will be offset by a likely increase in the number of living organ donations.

In addition, it can be argued that public solicitation may also reduce inequities in that it can be beneficial for individuals who suffer from a life-threatening condition and have poor chances of obtaining an organ from the normal waiting list, such as highly sensitized patients or patients with a rare blood group.\textsuperscript{18}

(2) Public awareness

The second argument is related to the greater public awareness arising from public solicitation. Some claim that this is beneficial, as more people have the chance to find out about transplantation and donation.\textsuperscript{18,19} If more people become aware of the current gap between the supply and demand, this increases the chances that some of them will also step forward as donors. Others warn that media attention can do more harm than good. Usually, media coverage involves only sensationalist, tabloid-like, controversial topics. A negative image of transplantation might undermine the public trust\textsuperscript{20}; as a result, less people will step forward as donors and even deceased donation rates can be affected.

Both arguments start from an empirical observation: of all the transplant cases, cases of public solicitation have a more spectacular appeal and are more likely to be covered by the media. There are many conflicting theories on the issue of media impact on society, some complaining about a direct negative influence,\textsuperscript{21} and some speaking about contested and negotiated meanings.\textsuperscript{22} Therefore, it is debatable whether media impact for public solicitation is as straightforward as suggested by both the pro-arguments and the contra-arguments outlined above. A more nuanced theory concerning media impact is provided by the agenda setting theory,\textsuperscript{23} which states that the media indeed establish the major topics for discussion, but that their influence is limited by the public’s existing preconceptions and thus open for interpretation. From this perspective, which seems to be supported by empirical studies of media campaigns on organ donation,\textsuperscript{24} public solicitation may have a measurable impact on transplantation trends, but the impact will be limited and shaped by a variety of factors that are not entirely media-driven.

(3) Organ trade

The third argument concerns the relation between public solicitation and organ trade. Proponents of public solicitation claim that, by bringing more organs to the transplantation process, it decreases the temptation of patients to resort to illicit means to obtain an organ. This way, public solicitation contributes indirectly to the elimination of organ trade. In contrast, opponents hold that public solicitation might be a camouflage for organ trade because buying and selling organs can easily be covered by it. It is conceivable that, if the recipient is vulnerable, a prospective donor might show up, prove medically compatible, and then ask for financial compensation. From their part, donors may also be affected because they might be tempted to offer an organ in exchange for money.

The threat of organ trade is probably the most powerful argument against public solicitation, and it is supported by empirical observations. For instance, the founders of the site matchingdonors.com, have admitted that several clients of their site (would-be recipients) have received inappropriate messages from persons willing to sell them an organ.\textsuperscript{1} In a study done on Facebook profiles of would-be recipients, at least 3% reported having received the same type of messages.\textsuperscript{13,14} It is hard to estimate whether other recipients have received similar messages, or even whether they have reached a financial settlement with the donor. However, transplant centers may attempt to eliminate the suspicions by carefully scrutinizing the motivations of the pair and, in case of doubt, interrupting the procedure or pursuing unspecified donation only.

PRACTICAL ASPECTS

Public solicitation can raise practical concerns for transplant professionals. Sometimes, individuals interested in donating to a particular recipient wish to go ahead with the operation right away, or wish to impose conditions on the transplantation. Although it is important to take their wishes into consideration whenever possible, safety cannot be circumvented by expediency, and not all conditions may be found acceptable, for instance, donation specifically to certain categories of people.\textsuperscript{1,18} Transplant centers can prevent this “pressure issue” by making their procedures for living donation as transparent as possible and communicate them upfront with the potential donors.

Compared to other types of living donation, donation in response to public solicitation seems to carry a higher risk of problematic donor motives. This in turn increases the likelihood that transplant professionals would facilitate an act that is objectionable and, if exposed, may both undermine the public trust in the integrity of the transplant system and severely harm their own reputation. Because organ donation requires the involvement of social structures, such as transplant centers, and because it can negatively impact on third parties, rules should be imposed to minimize the chance that organs would be allocated on other than morally relevant criteria.\textsuperscript{15} To prevent that transplant teams act as facilitators of organ trade or get involved in transplant procedures which
would go against their best medical judgment, transplant centers should set clear and transparent standards for the screening of potential donors who have stepped forward in response to a public solicitation. These standards should include appropriate medical and psychosocial assessments. In some countries, an independent donor advocate is assigned to assist donors in making an informed choice and, when necessary, to discern the presence of problematic motivations, and guarantees that the organ would only be removed if it is not harmful to the donor and the transplant has a sufficient chance of success.

Some centers make an additional distinction between cases of solicitation where the recipient pays a fee to have the ad displayed publicly (i.e., on broker sites or other types of paid advertisement) and those where no fee is involved (i.e., in humanitarian campaigns or Facebook accounts/pages) to avoid possible accusations of organ trade. However, the distinction is not as clear-cut as it may seem (e.g., Facebook may charge fees for promoting a post/page to a wider audience), and it may seem incongruent with the tendency observed by some of access to health care systems being made dependent on people’s ability to pay.

An additional practical problem would arise when transplant centers would be flooded with inquiries after a high-profile case of public solicitation. A case has been reported where one announcement attracted more than 600 potential donors who offered to be tested. However, because few transplant centers will be able to deal with that many offers, it can be helpful to establish protocols on how to manage the situation where multiple donors step forward in response to public solicitation. Centers that have programs of unspecified donation or paired donation could consider directing the surplus of would-be donors to these programs. Again, it is important that centers are transparent about these policies and use the opportunity to inform potential donors, who stepped forward in response to public solicitation, also about other available options (i.e., unspecified donation). Sometimes, centers face situations that are problematic and carry a reputational risk. This was the case when the Minnesota transplant center was approached by a group of people offering to donate “en masse” on the basis of religious motives. The center performed an ethical analysis and subsequently turned the offer down. However, the members of the group later managed to donate on a case-by-case basis at hospitals across the world, as specified donations after solicitation.

RECOMMENDATIONS

On the basis of our overview and discussion of the various arguments invoked in the literature on the issue of public solicitation for living donation, we would propose the following recommendations:

Taking into account that public solicitation is likely to remain a clinical reality in countries allowing living organ donation by a donor who is genetically and emotionally unrelated to the recipient, transplant centers in these countries should review their screening procedures of potential donors to deal responsibly with donation after public solicitation. Without placing an additional burden on donors showing after cases of public solicitation, these policies should take into account the specific risks and practicalities discussed above (possibly excess calls, possibly problematic motivations, etc.). These policies should be guided by transparency, accountability, and comprehensive oversight.

However, as long as donor shortage persists, we should not condemn patients, who do not have a live kidney donor, or only have a very slim chance of finding a suitable donor (e.g., highly sensitized patients) when they decide to publicly solicit for a live donor. We, as transplant community, should optimize basic elements, such as national organ donation laws to maximize the deceased and living donor potential; we should remove misconceptions and disincentives for live donors to step forward. Paired kidney exchange and domino-paired kidney exchange should be instated. Better information should be provided to our patients (e.g., home-based education), to health care professionals, and the general public about the advantages of live donor kidney transplantation. Specific attention should also be drawn to the potential of unspecified donation in reducing the donor shortage. In countries where unspecified donation currently is not permitted, legislation might need to be reconsidered accordingly. Close collaborations in national multidisciplinary working groups to address the aforementioned issues seem to be fruitful. Meanwhile, in our opinion, we should deal with public solicitation and respect solicited donors as regular specified live donors, despite practicalities that may arise in the donor screening process.

REFERENCES


