

ROMANIA'S ORPHANS: A LEGACY OF REPRESSION

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Introduction

Shortly after Nicolae Ceausescu was overthrown on December 22, 1989, the world was exposed for the first time to the shocking images of Romania's orphans, especially its handicapped children and babies with AIDS. These children, numbering over 100,000, live for the most part in Dickensian institutions - bleak, understaffed orphanages built by the Ceausescu government to deal with the consequences of its policy of coercively raising the birth rate. The orphans are the grisly legacy of an oppressive regime in a country that lacks both democratic traditions and independent associations of professionals.

In mid-August 1990, Helsinki Watch sent a mission¹ to Romania to investigate the consequences of Ceausescu's policies for Romanian orphans and to evaluate efforts by the present government to address this situation. The mission participants visited numerous orphanages and homes for the handicapped, met with pediatricians, gynecologists and immunologists, and spoke at length with a variety of child care and human rights experts. In addition, the mission members met with Mr. Bogdan Marinescu, the Minister of Health.

Background: The Roots of the Orphanage Tragedy

Ceausescu's Pronatalist Policies

The roots of the Romanian orphanage tragedy can be found in the draconian pronatalist laws implemented by the Ceausescu regime. In the mid-1960s, dismayed at Romania's low birth rate (in 1965, the number of births over deaths was 6 per thousand),² Ceausescu introduced a series of regulations designed to guarantee a sufficient labor supply for his rapid industrialization plans. He began, in October 1966, by banning all means of contraception (except natural ones), and imposing a virtual ban on abortions.³ Shortly thereafter, in 1967, a law was passed making divorce extremely difficult.⁴

The immediate impact of pronatalism was to increase population growth (to a rate of 18 per thousand in 1967). However, as societal practices changed in response to the regulations, the numbers began to drop (in 1975, 10.4, in 1980, 7.6). In the 1980s, they plummeted (to 2.9) in the wake of severe economic stagnation.

The regime's response was to intensify its pronatalist policy. In 1985, Ceausescu introduced the so-called "demographic command bodies" which were responsible for ensuring that women underwent periodic gynecological examinations at their workplace in order that pregnancies could be discovered and registered before any attempt could be made by the woman to abort. On January 1, 1986, the anti-abortion law was amended to require that a woman have five children at home all under the age of 18 to qualify for an abortion (not, as earlier, a sum total of four), or to be over the age of 45 (not, as earlier, 40).⁵ In addition, the tax assessed on childless couples was increased from 20-550 lei to 80-925 lei per month depending on the couple's income.

¹Participants in the mission were David J. Rothman, Bernard Schoenberg Professor of Social Medicine and Director of the Center for the Study of Society and Medicine at Columbia University, Sheila M. Rothman, Director of the Externship Program in Medicine and Human Rights at Columbia University Medical School, and Holly A. Cartner, Staff Counsel for Helsinki Watch. An article by the Rothmans, "How AIDS Came To Romania," appeared in *The New York Review of Books*, November 8, 1990, and some of the information in that article also appears in this report.

²*Anuarul Statistic al RSR 1965* [Romanian Statistical Yearbook] Bucharest: Directia Centrala de Statistica, 1966.

³*Radio Free Europe Bulletin: Romanian Situation Report* (3 February 1986).

⁴*Radio Free Europe Bulletin: Romanian Situation Report* (20 March 1986).

⁵*Buletinul Oficial*, No. 76, 26 December 1985, p. 7; reported in *Radio Free Europe Bulletin: Romania Situation Report* (6 February 1987).

Women were not equally affected by the pronatalist policies. Members of the urban middle class managed somehow or other to get contraceptives on the black market. They could also obtain medical abortions - - a Bucharest student candidly informed Helsinki Watch that several years ago, when his girl friend became pregnant, the abortion had cost him 5,000 lei (or about \$50 on the black market). And several women with professional degrees reported matter-of-factly that they had simply refused to cooperate with government gynecological-inspectors who came to their institutes, without suffering any reprisals. Nor were the most rural segments of the population deeply affected. The orthodox Christians had long shunned birth control and abortion, and others, like the gypsies, had not practiced it.

The brunt of the policy fell on the lower middle class, particularly factory workers, single women, urban gypsies, and those from disorganized or troubled families--none of whom had the money or the connections to circumvent the regulations. Their options were as limited as they were life-threatening. Some used a variety of would-be abortifacients, others availed themselves of the services of a back-alley abortionist, still others carried to term.

By all accounts, complications from abortions and attempted abortions were numerous. Dr. Mihail Ciuta, director of Bucharest's Emergency Hospital, reported to Helsinki Watch that "all dialysis equipment, as well as our other hospital resources, were frequently used to full capacity solely to care for women with abortion-related complications." Similarly, most physicians who spoke with Helsinki Watch reported that deaths from septicemia had been frequent during the Ceausescu years. Some claim that abortion-related deaths increased by 600 percent after 1966.⁶ Indeed, some physicians interviewed by Helsinki Watch were also certain that botched abortions accounted for a significant number of birth defects and handicaps.

In the end, one fact is indisputable: in the 1970s and 1980s, the number of unwanted children increased dramatically.

Ceausescu's Economic Policies

Closely interrelated with Ceausescu's coercive pronatalist regulations were his burdensome economic policies which undeniably contributed to the number of children who ultimately ended up in orphanages. Some women who were forced to give birth to unwanted babies abandoned their children immediately. Others took their children home, had little with which to feed or care for them, and ultimately abandoned them at malnutrition or dystrophic hospitals.

The regime's drastic economic policies during the 1980s are well-known and need not be repeated in any detail here. However, it should be emphasized that the standard of living in Romania dropped dramatically during the 1980s, making Romania one of the poorest countries in Europe. Ceausescu's decision to pay off Romania's foreign debt, without regard for the cost in human suffering, resulted in a policy of exporting most of Romania's agricultural produce. By 1989, when Ceausescu was overthrown and executed, the Romanian economy was in a total state of collapse. Basic goods were impossible to find on the market; electricity and water were in extremely limited supply.

Under such conditions it is not surprising that Romanian children increasingly suffered from malnutrition. In fact, the establishment of dystrophic hospitals to deal with malnutrition cases appears to have been a phenomenon of the mid- to late-1980s. Many desperate parents, unable to provide for their children, ultimately abandoned them to state institutions purportedly designed specifically to deal with problems of malnutrition.

⁶Robin Morgan, *Sisterhood is Global*, Anchor Press, 1984, p. 578.

Sadly, the dystrophic hospitals were also poorly equipped to deal with malnutrition, as they too suffered from the disastrous economic conditions in Romania. (These institutions would also play an especially detrimental role in the spread of AIDS as is discussed below.)

Ceausescu's pronatalist and economic policies combined to produce the undeniable result of thousands of abandoned children. By 1990, an estimated 130,000 children remained in orphanages and homes for the handicapped.⁷

The Orphanage System

The Ceausescu regime responded to the increase in unwanted children by putting into place a bizarre network of custodial and caretaker institutions. At the base of the system, serving all children between birth and three years old, are the leagane, as orphanages for the very young are called, under the administration of the Ministry of Health. Children considered physically and mentally "normal" go on from there to institutions that house three to six year olds, and then to those that serve six to eighteen year olds, under the jurisdiction of the Ministry of Education.

Children found to be abnormal, that is, those that a team of psychologists and pediatricians diagnose as "irrecuperable" because of paralysis, blindness, or mental disability, are consigned to separate institutions. By an odd leap of logic, the care of such children, who were classified as "unproductive," was assigned to the Ministry of Labor. To the Ministry of Labor, of course, these children were of little importance; they and their problems were completely outside the interests of the officials in the ministry, who have no training in setting up educational, workshop, or therapeutic programs for "handicapped" children. Not surprisingly, conditions in the orphanages for normal children run by the Ministries of Health and Education are not as grim as those in the institutions for the handicapped.

Western journalists have eloquently described the conditions of abuse and neglect found in institutions for the handicapped. For example, one such home in the town of Videle was described as follows:

On the second floor of the state-run institution here dazed toddlers lie or sit in iron cribs in closed, stuffy rooms. Their foreheads are speckled with flies and with scabs and bruises that come from banging their heads and mouths on crib rails. Some cry, but most are silent and appear bewildered behind their bars, with the doomed air of laboratory animals.

Down the hall, other cribs hold smaller children, pale skeletons suffering from malnutrition and disease. Despite the heat of the day, several of the children are wrapped in dirty blankets. From one still bundle, only a bluish patch of scalp is visible. Asked if the child inside is alive, an orderly says, "Of course," and pulls back the covers. The tiny skeleton stirs, turns onto its side and groans.⁸

Dr. Guilhem Delmas, a doctor with the relief organization Doctors of the World (Medecins Du Monde) stationed in Bucharest, also reported that "in one home, 40 percent of the children died last year

⁷Celestine Bohlen, "The Hurdles Are Many, but the Reward Is a Child," *The New York Times*, November 15, 1990.

⁸Mary Battiata, "A Ceausescu Legacy: Warehouses for Children," *The Washington Post*, June 7, 1990, p. A1.

of infectious diseases and neglect." Dr. Delmas said: "They die of hunger, of very dirty environment, of nobody touching them and of never getting out of their beds."⁹

The neglect described by Dr. Delmas was apparent in all aspects of orphanage life. Orphanages were so poorly funded (14 lei per day per child) that the children rarely received anything but the poorest quality of food. One observer reported that "lunch consisted of broth, stale bread and something that looked like mashed potatoes, mixed together in a rusty bucket."¹⁰ Even as late as mid-1990, Helsinki Watch observed that lunch in several orphanages consisted of nothing more than a watery soup.

Similarly, adequate clothing for children in institutions was not a high priority for the Ceausescu regime. Helsinki Watch received numerous reports that children had frequently roamed around the institutions without clothes, even in the coldest months of the year. And those lucky enough to have any clothing at all had only the filthiest rags.

Wholly inadequate funding also contributed to a scarcity of certain medicines and especially medical equipment. For example, several of the homes visited by Helsinki Watch had only the most primitive autoclave for sterilizing needles. Given that the orphanage staff frequently administered injections of various kinds, that hypodermic needles were in very short supply, and that the autoclaves were usually extremely slow or not functional at all, needles were reused without sterilization. This resulted in the spread of various diseases including hepatitis B and the HIV virus.

Most of the homes for handicapped exist in ancient buildings which, even now, are frequently in terrible disrepair.

In many of the homes, leaky roofs still funnel rain water onto the beds of children. Food is sometimes served by throwing it on the floor. Staffers hardly know their charges' names, much less their medical problems. Children are handcuffed to beds so tightly that the cuffs eat into their wrists, according to doctors. Those too small or unable to feed themselves often waste away because their milk bottles, propped on piles of rags, slip away and there is no one to right them.¹¹

One of the greatest tragedies was and still is the frequent neglect of the children by the personnel charged with responsibility for them. In fact, several Romanian human rights activists reported to Helsinki Watch that a significant amount of the suffering could have been avoided had there been trained and concerned staff. In the mid-1970's, nursing schools in Romania were closed down because nurse training was considered a low priority, and it became increasingly difficult to provide orphanages, and especially homes for the handicapped, with a sufficient number of trained medical personnel. Instead, the institutions were usually staffed by women from the neighboring villages who were poorly paid, with little or no education and certainly no training in the special needs of mentally or physically handicapped children. In its visits to such institutions, Helsinki Watch rarely observed a Romanian staffperson working or playing with handicapped children. There were no educational programs, and no physical therapy.

⁹Ibid., A34, col. 1.

¹⁰Jim Puzanghera, "In Vulturesti, a 'Small Little Hell'" *Newsday*, May 27, 1990, p. 18.

¹¹See note 9.

Helsinki Watch paid an unannounced visit to the Tatarai institution, located some thirty miles north of Bucharest, which houses 94 residents who have been judged "irrecuperably mentally handicapped." On the day of the delegation's visit, the fence along the three hundred yard driveway displayed the shirts and sweaters that had arrived by the truckload from Western Europe and the U.S. To the back of the house was a fenced-in yard, where most of the residents, in tattered underwear and towels, were sitting idly on wooden benches or lying in groups of ten to fifteen, on mattresses. Their legs and arms were so entangled that it took a minute for the delegation to spot the dozen children who were tied together, two by two, by strips of cloth around their wrists. When asked why the children were tied together, the director told Helsinki Watch that this was to prevent the children from running away.

A few of the children spoke to the delegates, and the staff explained that these children were mistakes, children who ought never to have been committed to an institution for the handicapped in the first place. The majority of the children, however, just stared vacantly into space or rocked back and forth or scuffled with each other.

Helsinki Watch also visited Timisul de Sus, ten miles south of Brasov, which once served only the handicapped over 18 years old, but now also holds 40 children transferred from a facility undergoing renovation. In the central courtyard, twenty children were confined in a pen, a noonday sun overhead, in rags and tatters, no water in sight, no toys around.

Even in Leaganul No. 5 in Bucharest, where physical therapy equipment existed and a physical therapist was present, no children were receiving therapeutic treatment during Helsinki Watch's visit. By contrast, Helsinki Watch repeatedly encountered West European nurses and physical therapists who had volunteered during their vacation time or had taken a sabbatical to work in the institutions. They were the only ones the delegates ever observed giving physical therapy to a child. In fact, they were usually the only ones holding the children at all.

Some orphanage directors were aware of the horrible conditions existing in institutions for the handicapped. Dr. Florentina Dinca, director of Leaganul No. 5 in Bucharest, reported to Helsinki Watch that she and her staff had done everything possible to keep children out of the institutions for the handicapped.

They [the institutions] are the rooms before death for these children. We give extra attention to the children with moderate handicaps and we have even altered medical records to keep children a year or two longer (past the age of 3). . . . I know if they are sent there they will die.

Although Romania is a poor country, it was not poverty alone, but a series of intentional governmental policy choices that created this nightmare. In fact, the government was perfectly able to provide adequate facilities for a select group of "normal" children when it furthered some important governmental goal. For example, several "model" orphanages were set up in Romania where foreigners could adopt children for hard currency, which Romania needed desperately.

The Aids Epidemic

Ceausescu's coercive pronatalism and wretched institutions do not by themselves explain why 683 Romanian children between the ages of one and four have contracted AIDS, and at least another 1,000 are HIV positive. The policies and the conditions were a tinderbox, but the spark came from the medical profession itself.

As odd as it now seems, Romania was at low risk for an AIDS epidemic. The country was too poor and had too little hard currency to support an active drug trade, and the regime was so repressive of homosexuality that individual practices never added up to a network of contagion. What is more, Romanians rarely went abroad, and aside from some third-world medical students and dock workers, foreigners rarely visited. Thus, the handful of cases that appeared in the mid-1980s might still be a handful--if not for the additional fact that some one or another of them donated blood.

Blood was a form of *baksheesh* in Romania, donated in return for favors done and papers processed. As Doctor Andre Combiescu, recently installed as director of Bucharest's most important medical research and production facility, the Institute Cantacuzino, informed Helsinki Watch, the regime did not coerce donations but set quotas for various regional offices. The official rate of exchange was a free meal or one or two days off from work for every donation. Unofficially donation was used as recompense for a driver's license, or for a student visa renewal, or for getting a job. Ordinary citizens, foreign students, and workers, including dock workers, had little choice but to comply, and, whether through ignorance or self-interest, those who were HIV positive also donated blood.

Romania might still have avoided an epidemic, for in a country with low-tech medicine, transfusions are rare. But Romania does have the oddest of medical institutions, the dystrophic hospitals. They were, as Doctor Combiescu traced it, a creation of the moment, an *ad hoc* response in the early 1980s to the regime's insistence, as part of its intensified pronatalism, that any death of a child under the age of one be the subject of a formal investigation. Of course, this insistence was quite ironic, given that, as noted above, the government's economic policies were the cause of increasing malnutrition and related health problems in infants.

Romanian doctors struggled to do everything possible, and then some, to get infants past their first birthday. Although the point of origin is obscure, physicians began to group these infants together, and by 1989, the so-called dystrophic wards and hospitals held some 2,400 patients.

In these units, as elsewhere, the arsenal for treatment was limited: malnutrition, accompanied by infection and anemia, was a constant threat. Since antibiotics were generally available, doctors relied heavily upon them, which in itself would not have been disastrous, except for the fact that they insisted on injecting antibiotics, rather than giving them orally.¹² Because disposable needles were unavailable, autoclaves were antiquated, and the nurses were too ignorant or too tired to spend the fifteen minutes necessary to boil the needles, Hepatitis B, and finally, the HIV virus were passed from one child to another.

The dystrophic hospitals also used a disastrous method of treatment called microtransfusion -- transfusion of a very small amount of blood from an apparently healthy person to an unhealthy one. Here again, the precise roots of the practice are shrouded in mystery. It may have been a carry-over from folk medicine. More likely, it was the result of ignorance: Romanian doctors thought that the transfused blood would be rich in proteins, hemoglobin, and antibodies, and would boost the infant's immunological system and nutritional state. They did not know what any adequately trained pediatrician knows, that microtransfusions are totally useless, without any positive effect whatsoever on the recipient.

Helsinki Watch paid a visit to the Pediatric Hospital in Brasov, a town lying seventy five miles due north of Bucharest. There were 30 children in the dystrophic ward, reserved for malnourished children

¹²In third world countries it is commonplace for patients to demand injections (of whatever sort) of their doctors. Syrups are the lowest order of drug, pills come next, and injections are the most desirable.

generally under the age of two. Four of the children are sick with AIDS, another 10 are HIV positive. These children had all been long-term patients in the hospital, and two pediatricians frankly described to Helsinki Watch how nurses had often reused unsterilized needles and doctors had administered microtransfusions of blood. In fact, these same pediatricians admitted that they still use microtransfusions in the most serious cases of malnutrition.

Some infants were sturdy enough (although not necessarily fortunate enough) to survive their stay in the dystrophic hospital, and some percentage of them, abandoned by their families, were sent to the leagane. The physicians in charge of these facilities, or those treating the inmates, sometimes practiced microtransfusions, but more often used injectable antibiotics frequently and for a variety of ailments. Dr. Roxanna Apetrie, an epidemiologist at the Ministry of Health, shared with Helsinki Watch her preliminary impressions of the charts she had reviewed of AIDS babies in two Romanian provinces, Constanta and Ialomita. Dr. Apetrie was most amazed by the incredible number of injections that these children had received both in the dystrophic hospitals and in the leagane--120 injections over a four-week period was not uncommon.

Thus, the vectors of contagion were all in place: a microtransfusion of HIV blood infected a handful of babies in a dystrophic hospital; needles were reused for administering antibiotics; the reused needle spread the HIV infection to still others in the orphanage. The result: as of June 30, 1990 (according to the latest quarterly Ministry of Health survey), the total number of AIDS cases is 741, of which 683 are children under 4 years of age. The number of children who are clinically well but HIV positive is still not known, but very preliminary data indicates that it cannot be less than one thousand. Although not all mothers of AIDS babies could be identified and tested, it appears that the disease was transmitted vertically, from mother to child, in less than five percent of the cases.

As for the outbreak of the epidemic, twenty-five percent of the cases were diagnosed in 1989, 70 percent, between January and June, 1990. Given this fact, the concentration of the disease in infants below four, and the likelihood that the elapsed time from infection to symptoms is about one year, it is evident that all of the pediatric contagion occurred after 1985, and most of it, after 1988. How much the worse to look at the wizened faces of the AIDS babies and know that it was all avoidable, that this plague was truly man-made, that its origins lie in Ceausescu's policies, and that its progression is the result of medical practices.

Violations of International Law

As mentioned above, the egregious neglect and disease that one observes in Romania's institutions is not only the product of oversight and inattention (as is often true in developed countries), but of deliberate governmental policies. Clearly, these governmental policies raise a number of important human rights issues. For Helsinki Watch, this is a novel context in which to apply international law; any attempt to articulate standards by which to evaluate the Romanian government's treatment of its orphans is, at best, exploratory.¹³

¹³It should be noted that Helsinki Watch's mandate is to monitor political and civil rights as set out in international human rights documents. Helsinki Watch does not take a stand on social and economic issues.

The Right to Privacy

Ceausescu's pronatalist policies (ie. the government's prohibition on contraceptives, the periodic gynecological examinations ordered by the state) were conducted in such a way as to be an invasion of a woman's right to privacy. Article 17(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home..."

Although the concept of privacy remains largely unexplored in international case-law,¹⁴ Helsinki Watch takes the position that certain governmental practices are so intrusive as to justify protection, especially where there is no rational and compelling countervailing governmental interest.

In the case of Romania, it is simply not rational that the government established periodic pelvic examinations of female workers out of concern for women's health. These exams were only conducted on women during their childbearing years, not on older women who would be at much greater risk of health problems. What is more, gynecological examinations were conducted so frequently as to have no justification other than to monitor the reproductive status of individual women. Finally, they were carried out at a time and place determined by the state, with no opportunity for a woman to select a doctor of her choice.

There appears to be no consensus as to the existence of a right to abortion in international law. However, while there may be controversy about a woman's right to terminate an already existing fetus, there can be little controversy about the absolute right of a woman *not* to get pregnant in the first place. This is a matter of personal preference totally outside the realm of proper state control.

The right to be free from state coercion to reproduce arises from the fundamental right to liberty and security of person guaranteed in Article 3 of the Universal Declaration. A corollary right is found in Article 12 of the Universal Declaration which guarantees the right to be protected from arbitrary interference with privacy, family and home (see also ICCPR Article 17).

The right to privacy encompasses the right of the individual to make certain fundamental decisions for herself including the right to marry (or not to marry), and whether and when to have children. When a government bans contraceptives outright, sets up a system of gynecological examinations to monitor women's reproductive status, and taxes those couples who do not choose to have children, this is an unjustified intrusion by the state in an area that has been delegated to the private sphere. That is not to say that the state may not regulate certain aspects of family life, but there must be some compelling state interest to justify such an intrusion, and any such regulation must be narrowly drawn so as not to restrict unnecessarily fundamental rights.

Freedom from Cruel and Inhuman Treatment

There can be no dispute that the right to be free from cruel, inhuman or degrading treatment is entrenched in customary international law.¹⁵ This standard has been specifically held applicable to children:

¹⁴Richard B. Lillich "Civil Rights," in *Human Rights in International Law*, Theodor Meron ed., Oxford University Press, 1989, p. 148.

¹⁵See, e.g., Universal Declaration Article 5, ICCPR Article 7.

State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child.¹⁶

and has been also applied by the United Nations General Assembly to the mentally handicapped:

The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment.¹⁷

While the prohibition of cruel and inhuman treatment has usually been raised in the context of an arrested or detained person, *a fortiori* no less protection can be considered adequate for children who, through no fault of their own, come into the custody of the state. Thus, standards which have already been articulated regarding the treatment of prisoners can, by analogy, be helpful in assessing the minimum requirements for orphanages. For example, the *Standard Minimum Rules for the Treatment of Prisoners* provides *inter alia* a prisoner shall be provided with "clothing suitable for the climate and adequate to keep him in good health" (Para. 17(I)), "food of nutritional value adequate for health and strength" (Para. 20(I)), adequate medical facilities (Para. 22), and that instruments of restraint shall not be used, except in certain, limited situations (Para. 33).

There can be no doubt that the conditions in Romania's institutions for the handicapped, as described above, failed to meet these minimum conditions, and that the treatment of children in these institutions frequently rose to the level of cruel and inhuman treatment.

These minimum rules, however, are not sufficient for the protection of children with special problems such as mental or physical handicaps. It was recognized, for example, by a United States Federal judge in the landmark "Willowbrook" case regarding conditions in an institution for the mentally retarded, that

In an institution for the mentally retarded it is impossible for the condition of the individual resident to remain static. Inside such institutions, without active programming the functions of the residents will inevitably deteriorate. Therefore, in order to keep residents from being harmed it is necessary to provide the full range of affirmative relief. . .¹⁸

A child with special mental and physical problems who is adequately fed, clothed and housed, but otherwise provided with no therapeutic activities, will deteriorate. Where the state takes responsibility for such a child, it has an affirmative obligation to take all necessary steps to prevent such deterioration. Anything less is harmful to the child's well-being.

¹⁶Convention on the Rights of the Child, Article 19; signed by Romania on September 28, 1990.

¹⁷Declaration on the Rights of Mentally Retarded Persons, U.N.G.A., adopted December 20, 1971.

¹⁸Paul R. Friedman, *The Rights of Mentally Retarded Persons: An American Civil Liberties Union Handbook*, Avon Books, 1976, p. 68.

Freedom of Expression and Association

The International Covenant on Civil and Political Rights sets out clearly that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers . . ." (Article 19 ICCPR) The ICCPR further states that "everyone shall have the right to freedom of association with others . . ." (Article 22 ICCPR)

The Ceausescu regime systematically isolated physicians both from colleagues abroad and from each other at home. Always hoarding foreign currencies, it made it nearly impossible for libraries or individual doctors to subscribe to foreign journals, obtain foreign texts, or travel to conferences. This intellectual quarantine made Romanian medicine a backwater preserve.

The story of AIDS in Romania is a most dramatic example of the dangerous consequences of restricting freedom of expression and association. The Romanian government not only kept medical science in the dark ages, but it also refused even to acknowledge the presence of AIDS. It impeded the exchange of information among physicians--as late as 1989, medical meetings could not include a session on AIDS. The censorship, as is so often the case, was incomplete and a touch absurd. In 1988, Dr. Ludovic Paun published a 134-page pamphlet devoted to the pathogenesis and diagnosis of AIDS, including a table on AIDS in Romania, 1985-88, and reporting eight cases of AIDS. The pamphlet closed with the instruction that it was forbidden to enter a diagnosis of AIDS or HIV infection on medical certificates; one was only permitted to refer to an opportunistic infection or pneumonia.¹⁹

The most portentous result of the regime's refusal to acknowledge the threat of AIDS was that no attempt was made to screen the blood supply. By 1985, the technology was available and widely in use, but not in Romania. (Indeed, as of August 1990, more than half of the districts still lacked the capability.) This failure to screen had devastating consequences, for the epidemic among the children, as discussed above, did not begin until well into 1988. In effect, the outbreak of AIDS among Romania's institutionalized children was not a cruel accident of fate, but the result of Ceausescu's determination to conceal the problem and to devote no resources to preventing its spread.

Restrictions on freedom of information and association resulted not only in a poorly informed medical community, but in a community that was morally and ethically compromised. In Romania, the medical profession's duty to its patients was subjugated to the conflicting obligation to serve the state's pronatalist interests. It was inevitable that in time many members of the medical profession lost sight of their ethical obligations to their patients. In such a context, the anomaly of microtransfusions seems less surprising. Surely doctors worked under enormous pressures from the government, in poor conditions and without the necessary supplies. But it is hard to avoid the conclusion that the medical profession was ultimately worn down to the point of not caring much about the long term implications of its behavior. How did this happen and why did doctors not protest against such a perversion of their profession?

The answer can be found in the restrictions on free association that existed in Ceausescu's Romania. These restrictions prevented the existence of an independent professional association that would have provided not only an important professional support network for the individual, but also a set of professional standards subject to peer review. The maintenance of high standards by an independent medical association in Romania would have acted as a critical restraint on state authority.

¹⁹Ludovic Paun, *Infectia Cu Virsul Immunodeficientei Umane (HIV)*, Romanian Health Ministry: Bucharest, 1988, pp. 119, 134.

The New Romanian Government's Policies

Since coming to power in 1990, the National Salvation Front has abolished pronatalism. Thousands of abortions are being performed daily in Romanian hospitals, but less invasive means of contraception are still unavailable. The leagane population is declining, in part because admissions are down, but in part, too, because adoptions are up. Many Europeans and some American organizations, as well as hundreds of private citizens, are giving hands-on care and habilitation to children in practically every institution and hospital: they are trying, not very successfully as yet, to provide technical assistance to the Romanian staff.

The Romanian government has increased the daily allotment for each orphan from 14 to 28 lei, and has begun to increase the pay for the staff of these institutions. In addition, nursing schools have been reestablished, and specialized training for pediatricians, physical therapists and psychiatrists is again available.

These changes acknowledged, the heritage of the Ceausescu regime will not be easily reversed. There remains even among professionals an ingrained suspicion of practically everything heard or read, particularly if it emanates from official circles. Having experienced doublespeak, lies, and rumors for so many years, they have difficulty distinguishing fact from propaganda. The Helsinki Watch mission members were shocked to see that microtransfusions continue, as does the cult of injections, despite directives from the Ministry of Health and repeated admonitions from visiting doctors and nurses.

The poverty and industrial backwardness of the country also presents cause for concern. One wonders what will happen when the contributions from abroad slacken--as they eventually will. Blood screening equipment for the HIV virus is now arriving, but where will the replacement parts come from a year from now? Millions of disposable needles have been sent in, enough to last six months, but then what?

With these questions in mind, Helsinki Watch met with Dr. Bogdan Marinescu, the new Minister of Health, who reported that he had personally taken several steps to improve the situation of orphaned children in Romania. He had ordered that abandoned children waiting in dystrophic hospitals for two years to receive formal certification as "abandoned," be transferred immediately to neighboring leagane. He revealed no surprise, however, when Helsinki Watch reported that many pediatricians were unaware of his directive. He was surprised that, despite his instructions, microtransfusions continue. As Helsinki Watch delegates described the humiliations foisted upon the handicapped, it was clear that the Dr. Marinescu had toured the institutions. He reported that he had initiated steps to get these facilities moved from the Ministry of Labor to his own.²⁰ He also hoped to be able to reduce the size of the facilities (conceding that it would be at least a generation before orphaned children could be integrated into the Romanian population through, for example, foster care), and of the leagane as well. He expressed a desire to abolish the age differentiations between institutions to bring continuity to the children's lives (again acknowledging that a social welfare program to assist parents in keeping their children will not be realized in his lifetime).

He was more optimistic about the prospects for family planning, reporting on the supplies of IUDs and contraceptive pills that have arrived and the improved abortion equipment that has been installed.

²⁰ Helsinki Watch later learned that these efforts had proved fruitless, and that the division between the three ministries would remain in place.

He is also convinced that with the abundance of disposable needles, the spread of AIDS and Hepatitis B will decline; however, he admits that he has yet to begin a program of public education.

Marinescu acknowledged that sooner or later the numbers of outside helpers will decline, and he was working with other officials to persuade foreign companies to open factories in Romania to manufacture IUDs and disposable needles. Marinescu was acutely aware that economic development will ultimately determine the level of health care.

It is difficult to evaluate the potential for progress in the care of orphaned children and the handicapped in Romania. The Romanian social and political order remain fragile. Adequate health care and child care depend not only on the free exchange of information and knowledge and on efficient monitoring procedures, but on a degree of professional integrity and discipline in the medical profession. It was far easier for Ceausescu to degrade the medical profession than it will be for a new government to rebuild it. The starting point for this must be a recognition and acknowledgment that the medical profession was, in fact, compromised. And without a sense of mutual responsibility and discipline, and a system for collegial oversight and censure, physicians may well continue their peculiar and dangerous practices. The Romanian experience suggests that medicine depends as much as any other liberal discipline, if not more so, on freedom of expression and respect for the people it treats.

Recommendations

Helsinki Watch recommends that the Romanian government:

- * Guarantee the right of every Romanian woman to be free from governmental coercion to reproduce.
- * Ensure that children already in institutions are protected from harm and that they are moved as rapidly as possible to the least restrictive appropriate setting.
- * Guarantee the right of professional associations to operate freely within Romania.
- * Guarantee that Romanian professionals have the opportunity to associate with their peers from other countries, and to seek and receive information without government interference.
- * Establish courses in ethics in all medical and nursing schools which include an evaluation of the consequences of Ceausescu's policies for the medical profession.
- * Guarantee free access to and dissemination of all medical information about the prevention and care of AIDS.

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News From Helsinki Watch is a publication of Helsinki Watch, an independent organization created in 1979 to monitor domestic and international compliance with the human rights provisions of the 1975 Helsinki Accords. The Chairman is Robert L. Bernstein; Vice Chair, Jonathan Fanton and Alice Henkin; Executive Director, Jeri Laber; Deputy Director, Lois Whitman; Washington Representative, Catherine Cosman; Staff Counsel, Holly Cartner and Theodore Zang, Jr.; Orville Schell Intern, Robert Kushen; Intern, Jemima Stratford; Associates, Sarai Brachman and Elisabeth Socolow.

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