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THE PERSON AND THE RIGHT TO LIFE – PHILOSOPHICAL, BIOETHICAL AND LAW APPROACH

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THE PERSON AND THE RIGHT TO LIFE – PHILOSOPHICAL, BIOETHICAL AND LAW APPROACH

Loredana VLAD¹

Abstract

We live in a postmodern society, characterized by an individual morality, ethical minimalism, etc., or we could call it liquid modernity, twilight of debt or late modernity, as Jürgen Habermas stated.

Considering the conditions of such a society, where even education is achieved through ICT technologies, we consider it appropriate to make a brief review of subjective civil rights. Hence, we considered it opportune to discuss non-patrimonial rights, namely those concerning the dignity and physical and moral integrity of the person.

Keywords:

Subjective civil rights; integrity; dignity; person.th keyword;

I. Introduction

The increasingly accelerated development of the society, of new technologies determines us to rethink the condition of man in the world, especially after the Second World War, when the perspectives on human rights have changed, the legislation adapting to new social contexts, etc.

Following the atrocities that took place during the Second World War, international organizations have brought to the fore the right to life, dignity and physical and mental integrity, these rights being guaranteed by certain international documents, but also by law specific to different countries.

Each person is guaranteed the right to life, which is enshrined in various national legislative acts, but also in other acts of an international nature. For example, Article 6 of the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on December 16th 1966, states: „The right to life is inherent in the human person. This right must be protected by law. No one shall be arbitrarily deprived of his life”; The

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Convention for the Protection of Fundamental Rights and Freedoms (which was signed on November 04th 1950 and which entered into force on September 03rd 1953) provides in Art. 2 that „the right to life of any person is protected by law”, these aspects being analyzed by Moise (Rotaru) Mihaela, who underlines the fact that „in all these legal documents there is talk about the right to life, but none of them gives a definition of this right” (Moise, 2014) and that „there are a number of issues of interpretation when the states have applied these legal texts to practical cases” (Moise, 2014).

In this paper we will start from the rights of the person - respectively the right to life - to later analyze a number of issues related to the right to dignity and physical and mental integrity in the context of the accelerated development of new technologies and the emergence of areas of niche that also dedicate their studies to the human being.

So, if we are to analyze the subjective civil rights of the person, then we are talking about a classification of the subjective rights of the person, specified in the legislation of our country. However, it should be noted that:

„Subjective law is protected by the legal order. There is no right outside without this protection. The right holder must have the possibility to have his or her right respected or to exercise it through legal action. Free access to justice is primarily based on this foundation. For civil law, the protection and guarantee of subjective civil rights is a fundamental idea that is found in all civil legislation” (Diaconu & Fircă, 2014).

In this paper we will bring to the fore a number of rights regarding the sacredness of life, the protection of the human body and the dignity of the person and we consider it necessary to specify a number of issues regarding the embryo. Mihaela Moise (Rotaru) considers that there are a number of „controversies” at the international level due to the fact that the two concepts, ie „human being” and „person” are not clearly defined. Therefore, an indirect definition of the human being - the author considers - is the one found in the Universal Declaration of Human Rights (1948), which leads us to think that the „beginning of life” is the time of birth (Moise, 2014). At the level of our country, the right to life is guaranteed by law in art. 22 of the Romanian Constitution.

Therefore: not being a „subject of law” the embryo „cannot have the right to life recognized, within the meaning of art.2 of the European Convention on Human Rights (1950) and art. 58, paragraph (1) of the Civil Code” (Munteanu & Cercel, 2020).

Given the fact that in this paper we will address a number of topics covered by transhumanism (bio) ethics and law, we will further refer strictly to a number of issues concerning the right of the person to physical and moral integrity and implicitly the right to dignity taking into account the fact that new

technologies have invaded our private area, and currently through genetic engineering technologies we can operate in a person's DNA.

II. The right to physical integrity and dignity

Thomas Aquinas stated that man has a sacred character, but many times in history the sacred character of the person has been violated. This is why the dignity and integrity of the person is defended in a large number of countries, but it is also found in international treaties or conventions. When we talk about the right to dignity, we probably think of the Universal Declaration of Human Rights which states that: „dignity is inherent in all members of the human family”, and in art. 1 is shown that „all human beings are born free and equal in rights”. It should be noted that the Universal Declaration of Human Rights appeared after the end of World War II (where experiments were performed on human subjects that were considered degrading to human beings) (Lifton, 2015). Regarding dignity, the Romanian Constitution (2020) states the following: „Romania is a state governed by the rule of law, democratic and social, in which human dignity, citizens' rights and freedoms, free development of human personality, justice and political pluralism are supreme values, in the spirit of democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and are guaranteed”.

Nowadays, dignity is at the heart of jurists' debates, given that „the complexity of dignity arises from its non-legal nature: dignity is a fundamental feature of the human being or a postulate of civilization that the law must take note of” (Ungureanu & Munteanu, 2016) and is an expression of human value and should not be ignored (Apostu, 2018) and from this point of view, in Article 72, para. (1) of the Civil Code it is stated that „Everyone has the right to respect for own dignity” in the following articles being stated that „any harm to the honor and reputation of a person without his consent is prohibited”.

The right to dignity also appears in ethical and biolaw (Scripcariu et al., 2003) debates when it comes to the use of new technologies in order to bio-enhance the human being. The new fields that emerged after the 70's are centered on the human being, so they try to decipher the mysteries of man in order to make him more long-living, resistant to certain diseases, etc. (Vlad, 2019; Sandu & Vlad, 2018; Sandu & Terec-Vlad, 2016).

In the next chapter we will analyze, from the perspective of law and ethics, the new changes that technology can bring to the human being, answering the question: when is the right to dignity being violated?

On the other hand, the right to integrity of the person is found in Article 3 of the Charter of Fundamental Rights of the European Union, as follows:

- (1) „Everyone has the right to physical and mental integrity”;

(2) „In particular in the fields of medicine and biology, it must be respected”:

(a) „the free and informed consent of the person concerned, in accordance with the procedures laid down by law”;

(b) „prohibition of eugenics practices, in particular those aimed at the selection of persons”;

(c) „prohibition of the use of the human body and its parts as such as a source of profit”;

(d) „prohibition of cloning human beings for reproductive purposes”.

With regard to the Civil Code, the rights inherent in the human being are guaranteed; therefore art. 61 states:

(1) „The life, health and physical and mental integrity of any person shall be guaranteed and protected equally by law”.

(2) „The interest and wellbeing of the human being must take precedence over the sole interest of society or of science”.

Art. 62 paragraph (1): „No one may harm the human species”. Since man cannot be analyzed from only one perspective, because he lives in human communities, the legislator gives him a series of rights and freedoms, but also duties, so that, taking into account Art. 22 of the Romanian Constitution, Cristian Ionescu states: „from a theoretical perspective it results that the substance of the constitutional provisions contained in art. 22 of the Basic Law is not a liberality, in the legal sense, from the constituent power, but the part of obligations incumbent on the state from the tacit social contract concluded by it with each of its citizens, clauses from which, by democratic and humanistic extension, also benefit other persons in its territory. Only in this way can the foundations of the state guarantee of the right to life be explained, as well as of the right to physical and mental integrity” (Ionescu, 2016).

At the same time, it is considered that as far as the person is concerned, there has been a mutation of freedoms towards rights, „the boundary between personality rights and civil liberties [...] being in constant motion” (Chelaru, 2011).

Article 63:

(1) „Any medical intervention on genetic traits aimed at altering the offspring of the person is prohibited, except for those concerning the prevention and treatment of genetic diseases”.

(2) „The use of medically assisted human reproduction techniques is not permitted for the choice of the sex of the future child except for the purpose of avoiding a serious inherited sex-related disease”.

However, there are a number of dilemmas regarding the physical and mental integrity of man, but most of the time they are solved with the help of both the national and international legal framework.

III. Transhumanism and the right to dignity and integrity

Transhumanism is a philosophical and cultural movement that supports the idea of human bio-enhancement through new technologies (Bostrom, 2006). Regarding bio-enhancement technologies, we highlight the following: technologies in the field of genetic engineering, medically assisted human reproduction technologies, technologies (for the time being prospective) that concern the unloading of consciousness in a digital device (Vlad, 2019). There are a number of case studies presented in the literature, including the one presented by Julian Săvulescu on the two deaf lesbians, who want to give birth to a child with the same disability (Săvulescu, 2002).

(Bio) ethical debates have aroused the interest of many professional spheres, on the one hand considering that man has no right to create individuals with disabilities for various reasons such as marginalization, discrimination, etc., and on the other hand emphasizing that the deaf are part of the deaf communities and this is the only reality they know. For this couple, normalcy is actually deafness, which is why the decision to have a child with this disability.

In the literature, philosophers, bioethicists, doctors and not only have expressed their opinion on this case, being considered quite a controversial one, however from a legal perspective genetic manipulation is prohibited, if these procedures would harm the future person. It is considered, in this case, that the right to dignity would be harmed and undermined, as is obvious, genetic manipulation in order to create individuals is prohibited in the legislation. There are some aspects related to genetic engineering provided in the Penal Code, but, as mentioned above, an individual is considered a person only after the moment of his birth and detachment from the mother by cutting the umbilical cord. The situation is complex, especially since in some countries, genetic manipulation is allowed in cases where the future person could inherit, from parents or close relatives, a number of incurable diseases, etc. But if genetic engineering is used to give the future person „the best chance for a better life” (Săvulescu, 2009), then is it still being violated? To answer this question, we emphasize that the Romanian legislator includes in the list of personality rights also the right to dignity, „any prejudice to the right to dignity makes the victim feel moral (mental) suffering and exposes him to the risk of social exclusion” (Bratiloveanu, 2019).

Dilemmas regarding the violation of the right to dignity arise, from our point of view, when we talk about activating the gene of violence or morality in order to create more moral individuals and to carry out actions considered good for as many people as possible and for society in general. But here too are a series of dilemmas aimed at free will, in the sense that changing the human nature of the individual limits his free will, the person being

predestined to do a series of actions that in the conditions of non-intervention, he could not achieve.

IV. Conclusion

Nowadays, there is more and more talk about technologies, which are part of our lives through all the artifacts we use. Many times, the question arises of the limits of these new technologies and how far they can enter our lives through interference. However, the most heated debates are in the field of human bio-enhancement technologies, where the concept of dignity occupies an important place in the discourse of scientists, philosophers, lawyers, (bio) ethicists, etc. In this paper we have brought to the fore a number of concepts such as the right to life, dignity and physical and mental integrity. The fact that genetic manipulation could harm human dignity is analyzed from the perspective of human rights, but also of some articles in the Romanian Civil Code, as we sought an answer on the limits of using medically assisted human reproduction technology. There are many controversies regarding the right to life, but also those regarding the right to dignity or physical and mental integrity.

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