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International Law and Human Rights on ART

Loredana TEREC-VLAD[1]

[1] PhD in Philosophy, Ștefan cel Mare University of Suceava, Romania, loredana.vlad@fdsa.usv.ro

Abstract: With the development of new technologies, more and more issues have arisen the legal framework and ethics must respond to. From an ethical perspective, codes of ethics have been formulated that prohibit the use of new technologies in order to create hybrid individuals or to create human clones of people who exist or have existed. In terms of international law, we will highlight a few countries that have laws and articles of law that are of interest for this work, but we will also highlight the importance of observing the human rights.

Keywords: *international law; human rights; ART; RUAM legislation.*

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I.1 The human rights

The Human Rights are a consequence (we could say) of the atrocities occurred during the First and Second World Wars[1] (Terec-Vlad, 2013), but the idea of universality of the Human Rights appeared in philosophers such as J.S.Mill or Hegel or in William Lloyd Garrison. During the interwar period, more specifically in 1919, the League of Nations was established with the aim of preventing war, resolving conflicts between countries through diplomacy, negotiation, so as to lead to an improvement in global welfare. A series of rights have been introduced in the Charter of the League of Nations, which will later appear in the Universal Declaration of Human Rights.

World War II meant a conflagration that surpassed the imagination of all people who survived, but also of the posterity. Following the human sacrifices, it was proposed that states promote civil, social and economic rights, stating that they are "the foundation of freedom, justice and peace in the world"[2].

With reference to this research topic, Article 1 of the Universal Declaration of Human Rights states that: "all beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"[3]. By analyzing the concept of human dignity, Gabriela Goudenhoof emphasizes: "As the supreme value in the edifice of human rights, dignity has an axiological dimension, it must not depend on color, gender, age, nationality, health, and so on. It is applied as a professional principle in many activities: medical, social, pedagogical, legal assistance, and so forth. In the social assistance professions, the activity also takes place in the above institutions (schools, hospitals, courts) and it is all the more important to avoid the risk of transforming the human perception into a client or a simple object of social policies[4] (Vlad, L, 2020).

However, this risk of transforming the human being into an impersonal entity, whether it is called "recipient of social services" or

[1] Terec-Vlad, L., (2013), *Între naționalisme și extremisme*, Editura Lumen, Iași

[2] The Universal Declaration of Human Rights, available at: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/rum.pdf, accessed on 15.06.2020.

[3] Idem;

[4] Vlad, L., The Person and the Right to Life – Philosophical, Bioethical and Law Approaches, *European Journal of Law and Public Administration*, Volume 7, Issue 2, pp. 151-157.

"recipient of social protection" is not at all a conscious one but only assumed in the name of a generalized social good"[5]. In this context, we can bring to the fore the ideas of Emanuel Levinas regarding the "responsibility towards the other, in the conditions in which, I am morally responsible through my actions. Thus, any action I take must be aware of the harm I can cause to other people".

On the other hand, the term dignity "expresses the honor, the prestige, the consideration, the honesty, the esteem, the good faith, the probity, the fairness, the honesty, the respect, the appreciation that a person enjoys, i.e. his or her moral integrity, the moral side of the personality"[6]. In these conditions we can say that every individual has the right to be treated with dignity, and in terms of "medically assisted human reproduction technologies we believe that there are a number of limitations on the right to privacy, but also in terms of regarding reproduction".

With regard to reproduction, it was not originally introduced among the human rights, but the right to privacy is mentioned. For example, art. 12 of the Universal Declaration of Human Rights states: "No one shall be subjected to arbitrary interference with his private life and family"[7]. We believe that "the right to reproduction is a component of the right to privacy, which derives from the right to marriage"[8]. In addition to human rights, we must take into account the Universal Declaration on the Human Genome, signed in Paris on November 11, 1997, which in Article 2, letter a, reads as follows: "Everyone has the right to respect for his dignity and rights regardless of the genetic characteristics", and letter b) specifies that "individuals should not be reduced to their genetic characteristics and their uniqueness and diversity should be respected". Another "act concerning the use of new technologies for medically assisted human reproduction is the Resolution A2-327 / 88 on the ethical and legal issues in genetic engineering, an act drawn up by the European Parliament. Point 7 states the principle of the freedom in research and science". However, point 9 states that the restriction of this principle is based upon the human dignity, emphasizing that "the legislator has a duty to define and establish these limits".

[5] Gabriela Goudenhooft, Un principiu profesional, preeminența demnității umane între etic și Juridic, Studii și practici în ocupații de asistență socială, Editura Pim, Iași, 2010, pp.24-34.
[6] Liliana Rotaru-Maslo, Mihai Bîrgău, Demnitatea – un element indispensabil al personalității umane, Institutul de Stat de Relații Internaționale, Volumul IV, available at: https://ibn.idsi.md/sites/default/files/imag_file/Demnitatea_un%20element%20indispensabil%20al%20personalitatii%20umane.pdf, accessed on 15.05.2020.
[7] Declarația Universală a Drepturilor Omului, *Op.cit.*
[8] Huidu Alexandra, *Reproducerea umană medical asistată*, Editura Lumen, Iași, 2017, p. 68.

I.2 Legislation in Europe

The "international law and the universal law are a starting point for establishing laws in various countries". From this viewpoint, we can say that "in European countries the legal framework regarding the use of new medically assisted human reproduction technologies has already been established. This topic is very controversial, as the legislator has the duty to watch over the well-being of the members of the society".

Therefore, in the EU Member States there are the following laws:

-Belgium: Law of 6 July 2007 (on informed consent), Law No 24 of July 2008[9],

-Estonia: Assisted Fertilization and Protection of the Embryo Act of July 1997, the law includes 5 parts and 36 paragraphs

-Finland: Act of Assisted Reproducction[10];

-Greece: Law no. 3305/2005[11];

-Italy: Law no. 40/2004[12];

We brought up only a few countries, to emphasize that there is a major EU concern about the use of new medically assisted human reproduction technologies. In the next subchapter we will analyze a series of global RUAM legislation issues.

I.3 Some legislative aspects of ART worldwide

In the world, more and more couples face infertility problems, "40% of women who use the services of sperm banks are lesbians, since 1963 sperm banks have been created in the most developed countries of the world (including the USA, Japan, France, Germany, Italy), 1.7% of children born worldwide occur as a result of using one of the RMA techniques"[13].

In Canada, the Medical Assisted Reproduction Act: Article 5: Scientific and research procedures: Article 5 prohibits certain types of scientific research and clinical procedures, including the cloning of human beings, the creation of an embryo and the selection of the gender for non-medical reasons, the modification of the genome in a way that can make it

[9] https://ec.europa.eu/health//sites/health/files/blood_tissues_organs/docs/study_eshre_en.pdf, accessed on 15.05.2020.

[10] https://finlex.fi/fi/laki/ajantasa/2006/20061237, consultat la data de 15.05.2020.

[11] https://ec.europa.eu/health//sites/health/files/blood_tissues_organs/docs/study_eshre_en.pdf, accessed on 15.05.2020.

[12] Available at: https://ec.europa.eu/health//sites/health/files/blood_tissues_organs/docs/study_eshre_en.pdf , accessed on 15.05.2020.

[13] Huidu, A., oP.Cit, pp. 109.

transmissible to offspring thus creating a chimera or a hybrid. With regard to prohibited actions, they are as follows:

(1) No one may knowingly

a) create a human clone by any technique or to transplant it into a human being, to create a different life form[14];

b) create an in vitro embryo for purposes other than the creation of a human being or the learning or improvement of assisted reproductive techniques[15];

(c) take action with the intention to create a human being, to create an embryo from the totality or from a part of a cell taken from an embryo or fetus or transplanting it into a human being[16];

d) keep an embryo outside the body of a female person after the fourteenth day of development after fertilization or creation, without taking into account any period in which its development is suspended[17];

e) take action with the intention of creating a human being, performing an act or offering, prescribing or administering something in order to obtain – or increase the chances of obtaining – an embryo of a certain gender or to identify the gender of an embryo in vitro, except for the prevention, diagnosis or treatment of sexually transmitted diseases or abnormalities[18];

f) modify the genome of a human cell or embryo in vitro so that the modification is transmissible to offspring[19];

g) transplant an egg, sperm, embryo or fetus from another life form into a human being[20];

h) take action with the intention of creating a human being by using human reproductive material or an in vitro embryo that is or has been transplanted to an individual from another life form[21];

i) to create a chimera or to transplant it into a human being or an individual from another life form[22];

j) to creates a hybrid for the reproduction or transplantation of a hybrid in a human or individual from another life form[23].

[14] Disponibil la adresa: https://laws-lois.justice.gc.ca/fra/lois/a-13.4/page-1.html, consultat la data de 15.05.2020.
[15] Idem;
[16] Idem;
[17] Idem;
[18] Idem;
[19] Idem;
[20] Idem;
[21] Idem;
[22] Idem;

"The legislative and legal plan is particularly important for ART, but there are also a number of ethical dilemmas that need to be provided as conclusions of this chapter." For this purpose, we will consider Julian Săvulescu's article in which he raises a series of "ethical dilemmas and here we want to refer to the two deaf lesbians who want to give birth to a child with the same disability". "The philosopher raises the issue that this is the socio-cultural context that they know, but he does not raise the issue of the legislation in force." "If from a moral perspective, the use of new technologies could be ethical, from a legal perspective it would violate a number of rights, as the possible child's chances of a better life would be reduced." "Săvulescu, in a different article published in prestigious journals, emphasizes that we should use new genetic editing technologies to give our children the best chances for a better life."

Conclusions

In this chapter we have emphasized "the importance of the legal framework in terms of the medically assisted human reproduction technologies. The importance of the legal framework is obvious in the conditions in which its absence would determine people to play God". Here it could be a return to the myths of the Antiquity that had the gods and demigods as protagonists.

It is appropriate to bring to the fore Rousseau's work, in which the philosopher emphasizes that when man chooses to live in communities he renounces a series of laws in order to obey others. In conclusion, the legislative framework must be perfectly aligned with the technological development and determine what actions are detrimental to man and his dignity.

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https://ec.europa.eu/health//sites/health/files/blood_tissues_organs/docs/study_eshre_en.pdf, accessed on 15.05.2020.

Huidu Alexandra, *Reproducerea umană medical asistată*, Editura Lumen, Iași, 2017, p. 68.

[23] Idem.

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