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Cloning and the Creation of Saviour

Siblings from the Perspective of Criminal Law and Ethics

Florentina Pușcă¹

Abstract: In this paper we have examined the role of criminal law and ethics regarding the creation of saviour siblings, since there is no European or international settlement for this field, only for IVF technique. The concept of a saviour baby or saviour siblings means a child who is born to provide an organ or cell transplant (through the donation of body fluids, umbilical cord blood, a non-vital organ or tissue) to save a sibling from illness or death. Cloning ensures that the new child is an appropriate match for the existing person, since they would be genetically similar. Creating a child for the purpose of saving another child violates the formula of humanity because the child is created for this end. The results of this research are of interest to law school students, teachers and researchers in the legal field.

Keywords: saviour siblings; cloning; humanity; criminal law

1. Introduction

We are dealing in the third millennium with a world whose development has taken an unprecedented momentum in which science and technology open up new horizons that give hope to improving the quality of life and even the prospect of interventions on the course of one's own destiny.

The world goes through the third industrial period, one based mainly on the applications of informatics, chemistry, biology and medicine. Human society faces a series of questions that often seem to have been unresponsive or sometimes given too many answers based on considerations of the most varied (scientific, ethical, religious) and subjective opinions, so that they become a confrontation of opinions and ideas that engage large masses of supporters, without being able to provide general satisfying solutions to these issues and current questions of particular importance. They divide the society and give rise to conflicts.

Genetic research, culminating in the decoding of the human genome, the cloning issues have prompted a particular response from the public opinion and the media, triggering discussions and responses to these delicate issues from all social groups, both at national and international level. (Pattinson, 2005, p. 3)

Man desires more and more to be credited into creator, to decide his own fate, to hold power over life and death. However, in search of these possibilities, the man does not know where he is heading, if the result of these researches and changes is beneficial or harmful to him and the society.

¹ Senior Lecturer, PhD, "Danubius" University of Galati, Romania. Address: 3 Galati Boulevard, 800654 Galati, Romania. Tel.: +40.372.361.125, fax: +40.372.361.290. Corresponding author: florentinapusca@univ-danubius.ro.

Can we intervene on the human genome through biomedical techniques and where can our intervention go without becoming a threat to the very existence of humanity?

In this context, the right is called upon to react and respond to the changes made and can no longer be neglected or treated with the patented solutions at a time when these issues did not show the importance they had today.

2. Science has discovered that life arose when matter, in its eternal attempt to find the pair of lone electrons, combined three lifeless molecules in a biomolecule. These three molecules were nitrogen, a pentose and a phosphate.

The biomolecule created macromolecules representing proteins, carbohydrates and lipids, which, acting as enzymes, transporters, hormones, receptors and antibodies, were organized into a cell. The man is composed of tens of thousands of such cells, and the brain of one hundred billion. The cell is the biological unity of life. The inorganic matter is infinite. Life is the transient biological phenomenon where organically grown inorganic remains independent until it returns to the inorganic matter. (Askenasy, 2007, p. 133) Human life is concomitantly and indissolubly bodily and spiritually. By virtue of its substantial communion with the spiritual element, the human body cannot be considered to be only a complex of tissues, organs and functions, nor can it be placed in the same plane as the animals' body, but it is the constituent part of the person who manifests through it is expressed. Every human person is constituted not only from the soul, but also from the flesh, so that in the body and through the body the person itself is achieved in its concrete reality. (Moldovan, 2002, p. 152)

Since ancient times, great importance has been attached to the human body, Greek civilization has depicted it in artistic works, and Christianity has also emphasized the importance of the soul. The human body was considered at that time a component of the human person, his protection being considered important only after two millennia. This "delay" was due to the action of two factors, one of religious origin and the other of a philosophical nature, both of which denied the role and place of the human body in favor of the spirit. (Reuter, 2003, p. 53) In contemporary doctrine, it was argued that the human body can be considered a thing, but not all kinds of things. The Civil Code provides that only things that are commercially available may be subject to the conventions, which has led to the following statements: "In the situation where the human body cannot be the subject of the conventions, it would be because it would be one thing besides commerce - only one thing." It is the person the owner of his body or a simple usufructuary? The human body is not one thing, it is the person itself. If we recognize the individual as a property of his or her body, we should consider all of his acts, devices that concern him. (Francioni, 2007, p. 389)

The elements of the human body are the organs, the tissues, the blood that can be detached from it and can acquire the character of things, but not patrimonial assets, since these elements must grant the same regime as that assigned to the body. Thus, the human body cannot be an object of law, and the man, assimilated to a physical person, can only be a subject of law and not an object of law. (Friedman, 2008, p. 106)

In this sense, the whole and viable human body in the present conception of doctrine and jurisprudence cannot be sold or donated, as it would mean restoring the slavery and transforming the person into an object of patrimonial rights, while elements of the human body may, in exceptional cases, to be the subject of provisioning in so far as the law allows them, as they are not a person in the legal sense of the word. This situation can be analyzed from the perspective of personalist anthropology, according to

which the fetus and the embryo have the value of a person, yesterday's slave, deprived of the value of the person and the recognition of the dignity of the person, can now be the frozen embryo used for experiments. (Reuter, 2003, p. 101)

The lawyers opposed the accreditation of the person's right to dispose of his own body, motivating that such recognition would lead to the self-degradation of man. The right of the person on his own body is limited by the necessity of observing public order and good morals, the "measure" of which is given by law.

The ban on marketing the human body or parts of it is expressly provided for in the French Bioethics Law as well as in the European Convention on Human Rights and Biomedicine adopted by the Council of Europe.

In Romania, the civil legal status of the human body is regulated by Law no. 95/2006 on health reform, with subsequent amendments and in the Code of Ethics of the College of Physicians in Romania.

3. The technique of creating saviour siblings is not a cloning technique, it is designing or creating a saviour sibling (brother or sister capable of donating vital tissues to another pre-existing child) (Sheldon & Wilkinson, 2004, p. 533) to save the life of another previously born brother who suffers from a serious, even fatal illness. This child is created using the genetic material of the same parents, the genetic dowry being similar to the pre-existing, but not identical child.

The doctrine has identified four categories of saviour siblings:

- children naturally designed to provide cellular material for a bigger brother;
- children conceived in vitro fertilization and submitted to the embryonic phase for a pre-implant genetic diagnosis and leukocyte antigen test to ensure that: a) the future child does not suffer from the same illness as his brother; b) that the future child is compatible for a future transplant of cells or tissues; Within this category, two subgroups can be distinguished: saviour siblings created for the purpose of harvesting umbilical cord blood stem cells and saviour siblings created for post harvesting of cells and tissues. (Stănilă, 2015, pp. 177-178)

From an ethical point of view, cloning violates the uniqueness of human genetic identity, family principles, the principle of sexual reproduction between a man and a woman, the principle of kinship relations violates the right to human dignity, the clones being simple lab products without genetic identity.

Saviour siblings are copies whose genetic features can be chosen by parents to become simple consumer products, appreciated for their characteristics and not for their value as human beings. Saviour siblings would be simple medical instruments used to save the life of another human being, violating the Kantian principle that humans are not mere objects, but their intrinsic value is closely linked to the value of their existence as human beings. (Dickens, January 2005, pp. 91-96)

If the creation of saviour siblings assumes the purpose of only harvesting umbilical cord blood stem cells at birth, it remains only the ethical and emotional dilemma of the purpose of bringing it into the world. If the creation was made for post-birth sampling, cells and tissues, we can discuss physical integrity by conducting sampling procedures and psychological integrity, as the child will find out what the purpose of his or her birth was, and the relationship with the family could be seriously affected.

An alternative procedure for the creation of saviour siblings would be the development of umbilical cord blood storage banks, umbilical cord blood stem cells being used later if it is discovered that the infant is suffering from any disease.¹

Regulating cloning and procedures to create a sibling saviour is necessary in light of the medium and long-term consequences that these procedures might have on the minority.

At this time, there is no European or international regulation covering the creation of saviour siblings, with only provisions governing the technique of in vitro fertilization and the use of PGD techniques (genetic pre-implantation diagnosis) and HLA (compatibility test of different tissues of origin based on the antigenic characteristics on which the success of a graft depends). (Stănilă, 2015, p. 185)

Regarding the creation of human embryos, the Committee of Ministers of the Council of Europe approved in 1997 the text of the “Convention for the Protection of Human Rights and Dignity of Human Being” with reference to the application in biology and medicine, which in Article 18 recommends adequate embryo protection where that country permits in vitro research. The second part of the article contains the provision: “the creation of embryos for research purposes is prohibited”. The Oviedo Convention (1997)² provides for the prohibition of obtaining any financial profit from the use of any part of the human body.

In response to successful mammalian cell cloning attempts, in particular by embryo separation and nuclear transfer, the Council of Europe has developed the Protocol on the *Prohibition of Human Cloning*, which entered into force on March 1, 2001, in order to prevent any abuse of such technologies by their application to human beings on the grounds that it is contrary to science for the intentional creation of genetically identical human beings.³

The Romanian law does not allow reproductive cloning or the production of embryos for research, incriminating eugenic practices in article 62 of the Romanian Civil Code. There are prohibitive provisions provided for by a civil law, without any associated sanctions, and without any reference to a criminal norm of criminality in the event of non-compliance with these imperatives. In Romania, assisted human reproduction is not regulated and embryo research is not prohibited. Law no 95/2006 on health reform incriminating the trafficking of cells, tissues or organs, the procurement and transplantation of organs, tissues or cells of human origin without the consent under the law. (Stănilă, 2015, p. 194)

4. Conclusion

The field of cloning and the creation of saviour siblings are turning points in drawing the lines of bioethical argumentation, which may or may not favour the development of unprecedented scientific research. Although the perception of lawmakers in different countries differs in terms of allowing techniques or prohibiting others, their concern is to ensure that legislation is suited to the progress of biomedical and genetic research. (Stănilă, 2015, p. 194)

¹ Roșu, Raluca (2013). *Saviour Siblings – Should the law allow such a burden to be imposed on a child?*, <http://thestudentlawyer.com/2014/04/08/saviour-siblings-should-the-law-allow-such-burdens/>.

² The convention on Human Rights against Applications of Medicine and Biotechnology, ratified by the Romanian Parliament on 20.02.2001, by Law no.17, published in the Official Monitor no.103/23.02.2001.

³ In the content of the document it is given the meaning of a human being that is genetically identical to another as the carrier of the set of nuclear genes identical to the other being. So the meaning of the act is not interpretable by the notion of identity.

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