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PhD THESIS

European protection of human rights relating to Bioethics and in the context of Biomedicine applications

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Abbreviations

CAHBI - Ad Hoc Committee of Experts on Bioethics

CHRB – Convention of Human Rights and Biomedicine

CRPD – Convention on the Rights of Persons with Disabilities

ECHR – European Convention on Human Rights

CEDAW – Convention on the Elimination of all Forms of Discrimination against Women

ICPD - The International Conference for Population and Development

CJEU – Court of Justice of the European Union

CourtEHR - European Court of Human Rights

UDHR - Universal Declaration of Human Rights

EGE – The European Group of Ethics in Science and New Technologies

HUGO – Human Genome Organization

WHO – World Health Organization

UNO – United Nations Organization

ICCPR - International Covenant on Civil and Political Rights

ICT – Information and Communication Technology

UNFPA – United Nations Population Fund

The purpose of the thesis consists of the identification of the existing rules at the European level, aimed at the protection of the human rights in the bioethical and biomedical context, as well as at the verification of the level of protection provided by these rules.

For the purpose of achieving the above goal, the following research objectives have been established:

- defining, cataloguing and examining the evolution of the ethical issues or relevant biomedical applications from the perspective of the human rights - the cause;
- the consequences on the protection of human rights and the determination of the vulnerable rights and freedoms - the effect;
- identification of the legal standards and the justification of the need for a specific protection – the remedy.

The structure of the thesis comprises two parts, the first focusing on the manner of enshrining the human rights in the bioethical and biomedical field, being intended to introduce the reader into the respective field and to explain the notions used in their historical evolution (Chapter I), the sources of enshrining or protecting the human rights in the bioethical and biolaw field (Chapter II), of the most important treaty aimed at the existing field so far, CHRB (Chapter III) and its interaction with ECHR (Chapter IV).

The second part is aimed at the protection level, by complying with the regulations intended for the most important biomedical applications and of their effects over the human life, being built on the chronological principle of the human body evolution: first, the parents' rights relating to reproduction (Chapter I), then the first stages of the new body and its components (Chapter II), passing through the right to dispose of his or her own body and the dangers residing in the new biomedical technologies for the human being autonomy (Chapter III) and concluding with the end of life (Chapter IV).

Despite all limitations of the law as regards the future implications of biomedicine, the already discovered applications and publicly disclosed shall inevitably prejudice the human rights, as they are regulated at the international, European and national level.

Moreover, the reality of the daily life applications requires law-making, concrete rules, legal framework in which the players of the new legal relationships may act. Moreover, we could state, without being too wrong, that a considerable number of cases has already been gathered in the biolaw field, even if solutions are rather reluctant and, sometimes, contradictory.

All these matters will be approached in this thesis, however, the perspective on them shall be strictly legal and even more specifically, the red threat of the research shall follow the protection of the infringed human rights or potentially affected by the implications of biomedicine.

From the theoretical point of view, the scientific presentation of the biomedicine implications on the human rights, as well as the identification of the legal protection standards of the vulnerable rights and freedoms, may be integrated in certain teaching materials or may represent a source of information for other researches in the field.

The applied value of the thesis aims at two aspects.

On the one hand, the research may be a source of theoretical information for the law professionals in relation to the notions of biolaw and to the guarantee standards of human rights in this matter, opening the way to certain more detailed researches in the matter and contributing to better understand the way of operating and relating the examined notions.

On the other hand, the critical analysis of the notions defined in the thesis can help practitioners correctly identify both the problems and the potential solutions in an avant-garde field, as well as to correctly apply the protection standards of human rights in specific cases, thus, contributing to the development of an unitary practice in this field.

In the second Part, the thesis aims at identifying, from the perspective of the already established human rights, the ethical controversial issues especially derived from the interaction of biomedicine with the human rights and examine whether an answer has been given so far and if so, to what extent it is satisfactory to questions such as:

(Chapter I) Is the human reproduction a right? May this right be limited and if so, over what parts?

(Chapter II) Is there a right to influence the descendants' genes or only to pass them on?

(Chapter III) Is there a right to know the biological identity?

(Chapter IV) Is the right to die a corollary of the right to life?

and so on.

In order to answer all the abovementioned questions and many other questions, the special part of the thesis punctually approached, in separate chapters, the general context of the issue and the analysis focused on the most important fields covered by the biomedical

applications, where the specific rights and freedoms are described, created or claimed to protect the individual against the abuses of a certain new and often frightening field.

Although they have been subject to certain prolonged ethical, philosophical and legal deliberations, the implications of the biomedicine discoveries, especially in the last 60 years, related to human rights, even if at times they are subject to certain imperative legal instruments at the international level, remain open to any possible regulation in most countries worldwide. The countries which agreed to ratify such international legal instruments are generally countries the development of which does not allow them to be players on the scene of international genetics and where the national economy is very little, almost none at all affected by the limitations and interdictions of the international treaties. There are multiple reasons, however, the most important reasons arise from the main characteristics of biomedicine: lack of transparency – which is natural, since we discuss about the trade secret of discoveries, the multitude of players in the respective field – both within public and private research institutions, the direct interest of the broad masses to use the result of those discoveries[1].

The limitations of the law called to order the newly created issues arise herefrom: the difficulty to limit discoveries which have not been produced yet, however, which are somehow foreseeable, the impossibility to control what happens in the privacy of all laboratories worldwide, the difficulty to prevent the general audience from exerting pressure to turn to advantage a useful discovery.

However, since the ”human rights are values in themselves which proclaim the primacy of the human being over the social and collective interests, the research is free if only these rights are observed”[2].

Biomedicine represents a field where the controversial interests of the research, law, medicine, religion and finally, politics cross each other.

The combination of these divergent interests shall inevitably result in conflicts, and the risk for the international human rights law to lack efficiency or even be obsolete in relation to the extreme dynamics of researches is very high. That is why, it is required to update concepts, to

[1] Gheorghe Scripcaru, Aurora Ciuca, Vasile Astărăstoae, Călin Scripcaru, *Introduction in biolaw, from bioethics to biolaw (Introducere în biodrept, de la bioetica la biodrept)*. Lumina Lex Publishing House, Bucharest, 2003, pp. 13-14.
[2] Gh. Scripcaru, op. cit., p. 19.

turn to account the already existing legal instruments for an innovative purpose and even to create certain new regulatory instruments specific to that field.

For a better understanding of these conflicts, we should start from the beginning, respectively from explaining the words which we shall refer to most often in the analysis carried out herein. For example, bioethics, which represents the study of what is correct or wrong in the new discoveries or techniques in biology[3], such as genetic engineering and organ transplants, examines – even if from a different perspective from that of law – the same issues. From another perspective, the definition of bioethics should start from the word etymology, which means – in essence – ethics transposed in the particular context of biology, where ethics means the identification, the examination and settlement of dispute between values and purposes which are in competition[4]. In principle, all definitions intended for bioethics uphold that it represents the examination of the ethical questions raised by the biological research and its applications[5].

The diversity of issues being covered by bioethics varies depending on the strictness of the definition. In principle, bioethics focuses on issues intrinsically related to the human being and his or her welfare in a biological sense, however, it may also include ethical aspects related to the non-human biological environment (for example, the debates relating to the possibility to recognize rights to animals or the questions raised by biotechnologies).

The thesis does not aim at exceeding the limits of bioethics *stricto-sensu*, namely the issues related to the human being.

The first part of the thesis is also intended to the analysis, from historical perspective, of the medical ethics-law and ethics-medical ethics interaction, in order to extract the essence of common values underpinning the principles used by bioethics and biolaw.

The gradual introduction of the neologism "bioethics" in the scientific context has resulted in outlining two basic meanings. The first came/emerged through German channels (Bio-Ethik), as being equivalent to the ethics in biology, and this meaning is however, the most widespread and was introduced as such in the general sense. Subsequently, at the same time as the biology development, the application of the bioethics notions has been extended as well to

[3] See www.dictionary.cambridge.org, capture from 12 February 2018.
[4] See www.bioethics.msu.edu, capture from 20 September 2018.
[5] See www.collinsdictionary.com, capture from 20 September 2018. According to others, bioethics is a branch of the applied ethics, which examines the philosophical, social and legal issues emerging in medicine and life sciences field (www.britannica.com) or consists of the analysis of the moral issues raised by the biological, medical or genetic research and by certain applications thereof (www.larousse.fr).

the questions raised by other issues than those related to human biology (such as the genetic modification of plants or animal rights) a broader sense of the notion of bioethics has been outlined, respectively the sense of the environment ethics or ecoethics[6].

Moving forward, to the following work concept which we shall often use in the thesis, biomedicine represents the medicine based on the application of the principles of natural sciences, especially biology and biochemistry, this being a general definition[7]. More specifically, in the American version of the word, biomedicine comprises issues of medicine deriving from or related to the natural sciences, such as biology, biochemistry and biophysics[8], while, overseas, the British add another stricter interpretation and relatively distant from the semantic point of view from the generally accepted version, respectively that of the study of herbal remedies.

In a brief analysis of the biomedicine history, we find that it corresponds, in terms of concept, to the scientific action of research of the knowledge related to health and sickness in the context of the biology development or, more concisely, it is confined to the biomedical research. The natural question is raised about what exactly doesn't fit the issues related to the *bio-* prefix in medicine? Everything is *bio-* in medicine, namely is intrinsically linked to biology which underpins medicine, however, biomedicine is more than medicine, just as bioethics, applied to certain new fields, such as genetics, is more than medical ethics.

The biomedicine applications always raise specific ethical questions, to which bioethics tries to answer, but not law. Nevertheless, within its *stricto sensu* meaning of medical ethics applied to modern biology, bioethics shall be limited by its own principles. Here comes the flexibility and universality of law, which transcends both the interdisciplinary borders, and the material, terrestrial borders, thus it being capable of setting in order specific behaviors at the international level.

According to an author, "*if biomedicine is proven to be beyond the control power of any individual State, it should be controlled at international level. We need to start to concretely consider as of now how to build institutions which may differentiate between good and bad*

[6] See www.universalis.fr, note by Gilbert Hottois, capture from 22 March 2018.
[7] See www.merriam-webster.com, capture from 22 March 2018.
[8] See www.collinsdictionary.com, capture from 22 March 2018.

usages of the discovered biotechnologies and how these rules might be efficiently applied, both at the domestic and international level"[9].

Bioethics (in its strict interpretation, about which we have already reminded that it will be the tool used in this thesis for analysis purposes) applies a set of principles to each new circumstance. Actually, it shall be established as a protector of morality/correctness of the scientific approach and usage of the results of this approach.

Instead, the same approach of putting under significant scrutiny of ethical reasoning the biomedical research and its results, if it is examined from the law perspective, inextricably linked to human being, shall result in an assessment of the protection level conferred upon human rights, which, in essence, represent a more evolved and rigorous form of the medical ethics principles, given the common cultural and historical heritage of these principles, as we will show in the chapter aimed at the history of those two fields, bioethics and biomedicine.

For example, the conduct of researches on human embryos may be appreciated as evolving in agreement with the bioethical principle of non-injury, as long as embryos are not destroyed. From the judicial perspective, the conflict points are multiplied exponentially: who is the holder of embryos, is there or not an ownership right over them, whom the consent will be requested to for testing or destruction purposes, if the respective consent is requested or the depository decides, which is the fate of the embryos after the end of the research project, which is the legal status of the embryo, etc. By applying the method of "slippery slope" it may even result in a (undesirable) outcome of the domino. Therefore, defining a legal status for the human embryo, law affects on the rebound a whole fabric of legal pre-existing principles, notions and definitions. By recognizing an equal status to that of the fetus for the embryo, the legal logic results in denying the legality of the exceptions from the criminalization of abortion in the first weeks of pregnancy, an issue which is found in most laws of the European countries. If it is recognized a legal status to the embryo, which shall be equal to the newborn's status, the respective newborn shall benefit from all rights of a human being, including the right to life, and its destruction shall be equivalent to the offence of murder. By granting the embryo an own status not being similar with the status of the fetus and of the newborn, it means that we should

[9] F. Fukuyama, *Our post-human future* (*Viitorul nostru postuman)*, Humanitas Publishing House, Bucharest, 2004, p. 19.

recognize certain rights to him or her, however, different from the right to life (or to existence), but what would be those rights? As no satisfactory answer to this question has been discovered so far, most domestic laws, but also the international regulations, the ECHR case-law and the EU rules are silent in this respect.

The impossibility of the exhaustive definition of the legal framework applicable to the future medical researches, arising from the unpredictability of the biomedicine methods and improvement, shall result in the effort of attempting the post-factum regulation, with all related disadvantages, the most important being, by far, the emergence of certain biomedical applications or outcomes of the medical research testing the limits of the law existing at this time.

To this end, an example is represented by the xeno-transplantation, namely the use of body tissues, cells, organs to humans, coming from animals or even plants, these issues being examined in Chapter II of Part II. At first sight, this not only violates no bioethics principle – among the classical principles known so far and generally accepted – but it supports the compliance with the respective principles, especially with the non-injury principle, as the purpose of the xeno-transplantation is represented by the improvement of the health condition or relief of the patient suffering when there is no other medical option. However, the law intervenes by applying the same method of "slippery slope" and creates a virtual danger, supposing that mixing the human DNA with the animal DNA by genetic engineering, even by pursuing the goal of the human being welfare, may have a long-term destructive effect on human dignity, understood as ensuring the genetic specificity of the *homo sapiens* in relation to other species. In other words, what would be advantageous individually, could create a collective evil.

In the area of pandemics and of genetic engineering, the health concerns have become global, not being necessarily specific to a certain region or country, and bioethics should pursue this trend. In order to solve certain bioethics concerns worldwide, they should be also translated and approached in a global language, suitable for a global strategy. This global language needs a universal foundation, and such a foundation belongs to the human rights, as *linqua franca* of bioethics[10].

[10] Elizabeth Fenton, John D. Arras, *Bioethics and Human Rights: Curb Your Enthusiasm, in Bioethics and human rights: Access to health-related goods*, Hasting Center Report, 2009, vol. 39, pp. 27-28.

From this perspective, CHRB could be deemed as a bioethics code with universal vocation, given the declared purpose of the international treaty of prime concern in the matter of protection of human rights in the context of the biomedicine applications, respectively the integration of the medical ethics principles in the law through the channels of human rights.

The field of human rights is supplemented with new opportunities each time when a new area of research emerges in relation to the human being and a new context for what we define to be human life. No matter the potentially dangerous circumstances which will occur in the future for individuals or for mankind because of the new biomedical applications, which, at this time could not even be imaged, if we managed to also establish based on certain principles, the procedural framework of regulations to be applied to them, obviously, starting from those already existing regulations, we would achieve the goal of ensuring the protection of human rights in an ethical framework, as we emphasized in Chapter II of Part I.

A pragmatic approach for the protection of human rights in the context of biomedicine applications, especially of regulating those circumstances that generally raise bioethics questions, should start from the answer which the regulation authority will give to the following two questions: is the compliance with the ethical principles a priority within the regulation? If so, is the protection of human rights generally accepted as being a priority and sufficient for the protection of the values claimed within bioethics?

The analysis of the first question represents the main objective of a broad section in Chapter I of Part I. It is a common truth that the philosophical and political vision of the regulatory authority (either national or international) leads to the application of a certain type of solutions to the disputes intended to be settled through the respective regulation. Different visions mean various solutions given to the same dispute. Expressing the level of liberalism or conservatism of these visions from the mathematical perspective, we can represent it on an axis from 0 to ∞, where 0 represents the interdiction without any exception, and ∞ is the total lack of limitation, as in the image below.

0 ----------∞ (Fig.3)

To this end, a good example is the use of the human cloning for medical purpose. Actually, the human cloning first means, obviously, the identical reproduction of a human cell

and afterwards, of a cloned embryo. At this time, the human cloning is situated at 0 on the axis, it being interdicted both at the international level, through a convention dedicated to this subject and about which we shall discuss in chapter III of Part II hereof, and at the national level, as most countries have a prohibition without exceptions at the national level, which is also valid for our country. Nevertheless, the endless opportunities which the biomedical applications tangent to cloning of certain human cells/embryos provide for biomedicine and which promise outstanding solutions for certain diseases transmitted genetically, for example, cause numerous researchers[11] to request a reconsideration, a shading of the prohibition or, in other words, a movement with (at least) one step close to ∞. We consider that to the extent to which genetics turns into a common territory, the modification of the human embryos genes, for medical purposes but not exclusively, there'll be left just one step until the legalization of human cloning. This step will be taken in the next 20-30 years, and the cursor will move towards ∞.

Another example consists of the abortion regulation, a detailed analysis being intended to the respective phenomenon in Chapter I of Part II. Since there has not been any medical possibility of a safe abortion caused by the woman herself, this private question, related to the woman's private life, was inevitably extracted from the space of her private life and brought into the public space, either when we discuss about the circumstance in which the woman tried herself to cause empirical miscarriage and did not succeed, as any complications emerged, or when we discuss about a legal fight to recognize the right to abortion, so that the woman may benefit from health care services. Once this issue is known to public, the regulatory authority could decide according to its philosophical and moral vision transposed into the political space in virtue of the applicable laws relating to the subject: from the ultraconservative variant of the total interdiction of abortion without any exceptions (as in the case of Ireland and Poland), being situated close to 0 on the axis, until the ultraliberal and completely permissive variant, as a reply to those decades of interdiction, which existed in Romania during the period from 26 December 1989 until 14 November 1996[12], being situated at ∞ on the axis.

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[11] To this end, see the report named *Is Human Reproductive Cloning Inevitable: Future Options for UN Governance*, prepared by Chamundeeswari Kuppuswamy, Darryl Macer, Mihaela Serbulea and Brendan Tobin within Biodiplomacy Programme, United Nations University – Institute of Advanced Studies, International Organizations Center, Pacifico – Yokohama, September 2007.

[12] The first Decree-Law adopted after the Revolution of 1989 repealed all provisions of the Criminal Code prohibiting abortion. Lifting the prohibition, in the absence of a specific regulation, resulted in the fact that abortion could be made by anyone and under any circumstances. As regards the abortifacient manoeuvres causing serious consequences on the pregnant woman's health condition, the judicial bodies used the legal provisions in criminal

At the same time with the emergence of a biomedical update (in this case a substance) allowing the woman to induce abortion, in a safe manner for her health, but at the same time which respects her private life and right to intimacy during the abortifacient manoeuvres (such as the RU-486 pill), as well as providing way to other future more efficient variants for the same purpose, the criterion determining the movement of the cursor on the axis has been changed. In the future, conservatism or liberalism should refer to the right of the respective woman to her home intimacy (where she will ingest the drugs needed for abortion), of her correspondence (if the pill is delivered by mail), etc., as otherwise the regulatory authority will not have any access to the circumstance that it should find in order to interdict it[13].

However, in all cases, no matter the place which the regulation occupies on the 0-∞ axis, its authors may claims, with convincing arguments that they complied with the ethical principles: in case of ultra-conservatism, they shall claim that they comply with the non-injury principle, protecting the fetus, as this shall be granted priority as compared to his or her mother, and ultraliberals claim that they comply with the same principle of non-injury, protecting mother's life in all respects, including social, when abortion is caused by social reasons, and not medical.

The fact remains that there may be as well, a more prosaic vision of the regulatory authority which could justify the ultraliberal variant, for instance the profit resulting for the private medical establishments and the medicinal products manufacturers (such as in this case, RU-486) from making abortions, and which is taxed by the State. This vision may be used by the liberal vision of the observance of woman's rights, however, as long as the individual is satisfied with the observance of his rights, the State can ensure its existence in whatever way it wants.

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matter, respectively the offences of culpably bodily injury or manslaughter. Law no. 140/1996 reinserted the offence of provoking illegal abortion, which had a different form as compared to the initial form provided for in the Criminal Code of 1968. Therefore, art. 185 incriminated the offence of pregnancy interruption by any means, in the following circumstances: except the medical establishments or medical cabinets authorized for the purpose of making abortion (art. 185, paragraph 1, letter a), if abortion was made by a person who was not a medical specialist (art. 185, paragraph 1, letter b), as well as if the pregnancy age exceeded fourteen weeks (art. 185, paragraph 1, letter c). For any details to this end, see Defining elements of the Romanian law in the matter of abortion. A historical perspective, Ancuța Elena Franț, Acta Universitatis George Bacovia. Juridica, Vol. 3. Issue 2/2014, available on http://juridica.ugb.ro/, capture from 21 December 2018.

[13] Although at first glance the situation seems to be the same as well, in the case of empirical pregnancy interruptions, existing in all spaces, no matter the kind of the regulation applicable to that space, the circumstance described by us is different in terms of two essential elements: the first is represented by the aura of legality of any medical method, authorized at least in one country, by the relevant authorities of the respective country, and the second element refers to the efficiency of the method, the abortion based on medication, namely RU-486 being incomparably more efficient and having adverse effects much reduced as compared to the empirical methods.

Consequently, claiming the same ethics, but different priorities, depending on its own view of life in its entirely, regulatory authorities with diametrically opposed views may be convinced of the ethics of their approach, no matter whether the regulation is close to 0 or to ∞. This dilemma brings us the second question: do human rights represent a generally accepted view which establish the priority of values in relation to bioethics[14]?

Human rights protection already comes on an established ground of the priority of ethical values, and the value correspondence is broadly examined in Chapters I and II of Part I of the thesis. The exportation of the human rights agenda in various conservatory societies has been and is still identical to the exportation of certain (national, religious, sexual, etc.) minorities' rights or of certain vulnerable categories (women and children, elders, disabled people). A regulatory authority which progresses in the matter of protection of human rights can only move towards ∞ on the abovementioned axis, any movement towards 0 representing a limitation of the human rights protection. This movement towards ∞ is justified by the context in which the recognition of this extremely sensitive field emerged, which involved a major change in the State view in relation to its own citizens, after the Second World War, in the countries of the Western Europe and U.S.A., for the purpose of recognizing that the individual's welfare is a priority as compared to the public interests, with certain exceptions. The model has been taken over and extended subsequently, with the national nuances specific to each State, by numerous other countries worldwide.

Consequently, the ethical principles, without the filter of human rights, shall not be sufficient for guaranteeing a correct substantive, but also procedural approach, of the bioethics issues. Nevertheless, ethics, which owes its existence to medicine, existed thousands of years before the acknowledgment of human rights in their modern form, and its principles have not varied so much since the times of Hippocrates. The culture of the human rights has not reached even a century of existence, if we consider that DUDO (1948) is the first major step in the birth of this culture, even if there were strong roots such as previous events, namely the French Revolution.

However, modern bioethics claims its existence in the combination of those two fields, ethics and protection of human rights, an issue which is obvious especially in the CHRB recitals.

[14] For a philosophical and legal analysis of this question, see Roger Brownsword, *Ethical Pluralism and Biotechnology Regulation* in *Biotechnologies and International Human Rights*, edition compiled by Francesco Francioni, Hart Publishing, 2007, pp. 60-71.

Certain authors go so far as to support a total independence of this combination of the fields where it is rooted and name the new field biolaw[15], even if its name of bioethics is further used by the Council of Europe, CourtEHR and in official documents.

Biolaw emerged from the debates imposed by the need of the law establishments to adapt to the challenges raised by the biotechnological development[16]. The purpose of bioethics would not be the triumph of a specific thesis, but the reduction of disputes in a manner which could facilitate human coexistence, while biolaw imposes rules, settling major dilemmas arising from biotechnologies[17]. Biolaw combines the usages of various biological sciences in order to describe, examine and improve law by the legal analysis of biological sciences and of the social involvements of their usages[18].

The modern society is not willing anymore to accept certain discriminatory legal solutions, as the fight against discrimination itself represents a mantra of the human rights culture. Therefore, bioethics cannot simply limit to copy the ethical principles, as it is necessary to establish a generally accepted formula to identify the value priority, when two principles or rights are in conflict.

In the previous example relating to abortion, the non-injury principle was observed and, at the same time, violated both by the conservatory and liberal regulation, the former endangering mother's life and valuing the fetus existence, and the latter removing the fetus and valuing mother's life. It would seem to be a question related to the priority of the right to life, who would have such a right, the mother or her baby? However, by adding the law filter, the elements under discussion become nuanced. Therefore, in order for the fetus to have right to life, it should be considered as an individual for the purpose of the definition accepted by the regulatory authority or have its own status involving protection, similarly with the right to life of an individual, which does not exist in most legislations within the European territory, and this element was taken into consideration as well, by the CourtEHR upon examination of various circumstances involving bioethics issues.

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[15] To this end, see D. Beyleveld, Roger Brownsword, *Human dignity in Bioethics and Biolaw*, Oxford Press, 2001, or Gheorghe Scripcaru, Aurora Ciuca, Vasile Astarastoae, Calin Scripcaru, *Introduction to biolaw (Introducere în biodrept): from bioethics to biolaw (de la bioetica la biodrept),* Lumina Lex, 2003.

[16] Fernanda Schaefer Rivabem, *Biolaw: an autonomous discipline*?, Bioetica Magazine, vol. 25 no. 2, Brasilia, May/August 2017.

[17] Jayapaul Azariah, *Bioethics Science: Is it?*, Journal of Medical Ethics and History of Medicine, 6 October 2009.

[18] Andrew W. Torrance, *The Evolution and Development of Biolaw*, Social Science Research Network, 15 May 2010.

The supporters of the human rights may find that the protection of these rights may sometimes trigger a undesirable rivalry on the ethics' part, as concerns practical consequences, even if at the theoretical level both law and ethics are based on the idea of "good". That is why this thesis could not avoid an incursion into the history of crystallization of the classical ethical principles. Challenging the limits of these principles by the legal regulations, the basis of which consists of various views on the idea of good, shall also represent a subject approached to prepare the chapters aimed at the sources specific to the respective field.

However, there are a few states where certain biomedical applications have considerably been promoted, thanks to a favorable legislative path. These are neither the most developed states, nor the most liberal in relation to the human rights, however, they have legislative gaps allowing for medical care activities not being allowed in other countries. Spurred by the fact that they are legal, but also by the market demand, the clinics practicing them turned into veritable oasis of the respective biomedical applications.

For example, the liberal legislation of Ukraine[19] as regards the surrogate motherhood strongly encouraged the development of the players evolving in this field at the national level, respectively the private clinics, the medical specialists, the concerned surrogate mothers, etc. It was only a matter of time until medical tourism developed to this end, the concerned persons coming both from Europe and outside the continent. The basis of this legislative approach is, probably, of economic nature, given the discrepancy as compared to the observance of the human rights generally in Ukraine, however, this aspect is of the least importance. It is certain that there is a state providing free access to a ultramodern biomedical application of this kind, and the great number of concerned persons clearly show the future trend, respectively the liberalization of laws and of other countries to this end.

For the same purpose, the strong development of the private clinics practicing artificial insemination in Greece turned this country into a destination place for the persons concerned with this biomedical application, as the Turkish permissive laws – allowing the ovary transplantation – led to a medical tourism – with extreme consequences[20] - in this country. Hesitations at the level of the Council of Europe and of the European Union to decide whether these issues are permitted or not, and if so, to what extent, shall lead to any discrepancies and

[19] See https://www.hg.org/legal-articles/ukrainian-surrogacy-laws-28807, capture from 13 May 2019.
[20] To this end, see https://worldnewsdailyreport.com/101-year-old-woman-gives-birth-after-successful-ovary-transplant/, capture from 21 December 2018.

medical tourism many years from now, even if this could be avoided, since certain issues left in a grey area, but which raise the citizens' interest, may put any state in some unusual situations which are difficult to solve, without being difficult to imagine the transposition of these issues at the supranational level[21].

Furthermore, the extremely prudent approach of this field at the European level (both at the level of the Council of Europe and at the semi-federative level of the European Union) shall represent a huge obstacle for the recovery of disparities in relation to the progress in this field of competitors, especially in U.S.A. and China[22]. Although at this time, the hesitation relating to the approach of the sensitive subjects dealt with by bioethics and biolaw in a form which should require solutions is an expression of the observance of sovereignty of the national States of Europe, which can decide at their own discretion, the absence of a common cause in the legislation affecting the field of biomedical research (except biotechnologies) shall make difficult the settlement of issues likely to emerge for lack of cohesion of players on the European scene of the respective field. What will be allowed for us in certain European countries, will be prohibited in other countries, as the case-law of the CourtEHR shows us, to the general confusion of citizens who do not understand why they could enjoy a medical innovation or invention in a country, and in another country they are criminally convicted if they try the same thing.

On the other hand, the prudent approach of the field is also a confirmation of the fact that interdictions or their lifting could also endanger other human rights. No matter the reasons of this reluctant approach – as compared to any legislations strongly encouraging the biomedical research and the commercial operation of results, such as those from Turkey and China – it is predictable that keeping this trend could result in loss of ascendant which (still) exists in the biomedical research in the laboratories based in Europe, especially in those of the well-known academic environment. This trend is obvious in the field of genetic engineering. Cloning the first sheep, in-vitro manipulation of cells to obtain the first human embryo underpinning the artificial insemination technique and many others would have never existed if researchers had considered the ethics issues, and not the technical part of their work. Which means that it is realistic to

[21] For example, raising such a question at the level of the European Court based in Strasbourg several times or the accumulation of certain situations requiring a unitary regulation at the EU level.

[22] Susan Millns, *Consolidating bio-rights in Europe* in *Biotechnologies and International Human Rights*, edition compiled by Francesco Francioni, Hart Publishing, 2006, pp/71-72.

imagine that any future discovery which will be put in the light of the worldwide media – and today any piece of news circles the world in a few minutes – no matter how unethical it would be, it shall represent an open door to the future, which cannot be closed anymore. Human cloning is a proof to this end. Once the basic technique was carried out on animals, which soon has been improved to monkeys[23], it's just a matter of time until it is performed by somebody and to people. Yes, there is an agreement interdicting cloning, however, it has not been adopted by all countries worldwide, at least a significant part thereof, so that human cloning may be improved to the maximum extent in those countries not interdicting it, a subject to be dealt with in chapter III of Part.

The second issue making difficult the drafting of clear rules of biolaw is specific, respectively the unpredictability of the future biomedical applications and of the effects which they will generate in human life. The current rules shall correspond to a great extent to the tomorrow future difficult to guess, at least insofar as they are useful to the purpose for which they have been made up until the adoption of certain more relevant regulations. Moreover, if at the beginning the research projects only aimed at removing certain human diseases or sufferings (for example, the removal of the gene which determined porphyria), at present, the genetic engineering can rather answer to certain no-essential issues. Could the parents' choice of the change of hair or eyes colour to a child be an aesthetic issue, non-justified to be approved as a genetic manipulation for medical reasons, however, if the same genetic manipulation aims at the removal of certain genes deemed to be involved in the choice of the sexual orientation? Or of the racial characteristics? Will genetics be deprived of political implications, as it is, as long as it claims to repair only serious medical issues not having another solution? It is difficult to foresee how the world States will react as regards the regulation of these future situations, however, it is certain that in Europe, it is likely to provide a common answer if efforts were intensified to this end.

The third issue of biolaw shall be the quick globalization of biomedical research. Any well-equipped laboratory, including one established on a vessel in international waters, could genotype and perform researches which are completely or partially interdicted in certain countries.

[23] Denis Normile, *These monkey twins are the first primate clones made by the method that developed Dolly* in Science, 24 January 2018, available at www.sciencemag.org/news/2018/01/24, capture from 23 February 2018.

The most important issue of biolaw is the curse of "success" of the biomedical research. The biomedical research costs money. Sometimes, amounts are huge. Investors, either in the private or governmental field, want results, but not for the abstract welfare of mankind, but for the commercial operation in the medical or pharmaceutical field of those results. Sometimes, why not, in order to have a military ascendant against the external or internal enemies, the numerous biological weapons being a direct or accidental result of such researches.

For example, decoding the human genome represented the joint work of a lot of researchers of more than 30 universities worldwide, the total estimated costs amounting to USD 50,000,000,000. During works, which lasted approximately 20 years, the researchers' linking arms for the common good of mankind was almost palpable. However, once the respective decoding has ended, investors intend to recover their investment. This means that the project outcomes shall not be made available to the entire mankind free of charge, as it was the final desire upon initiation of the project. Some individuals, such as, for example, the American researchers, who, however, had the most valuable contribution, at least from the financial perspective, intended to request patents for various applications of genes or genotype, discovered in the decoding process. A simple analysis is aimed at these issues in Chapter II of Part II.

The gratuity of scientific discoveries to the benefit of the entire mankind shall only remain a desire, as long as there are no (political, legal) means to require such a vision. This is also the case of the surrogate motherhood in the abovementioned case. Bioethics approached this issue with reluctance, stating (based on the method of slippery slope) that the acceptance of the rental of the woman's womb for a pregnancy would result in the degradation of the woman's human dignity. Therefore, there were two legislative solutions in the countries which adopted this point of view: first, the interdiction of the surrogate motherhood, and the second, maintaining a legislative gap in this field (this is also the case of our country). If the analysis of the effects of the surrogate motherhood legalization would be made from the correct perspective of any legislation (to whom it is useful, to whom it causes harm), we would easily notice that we should not come close to 0 on the permissiveness scale, but to ∞. Why? Since the persons involved in the surrogate motherhood have, each of them, an interest for this scheme, and the part of the State should only be to verify not to exist any abuses during the development of the parties' agreement. Moreover, the assumption that a woman will be pregnant without being materially co-interested, actually lacks any support (even if this is deemed as a measure to save

the woman's dignity in the legislations which allow surrogate motherhood, as long as she is not interested), as the legalization of the contrary does not reduce at all the value of the concept of woman's dignity, as a person or as mother. Therefore, the lack of a natural basis for interdiction[24], which should correspond to a collective psyche self-censorship, deprives the conservatory, prohibitive legislation in the matter of any authority, as well as in relation to other bioethics issues.

The paradox is that, in the biolaw field, any prohibition intended to save a right shall violate a least another right. Naturally, the regulatory authorities at the national level and their consent for certain common items translated in various forms of treaty at the international level have the final say about what is permitted or not. However, this transposition into legal rules of the individuals' possibility to access the present or future biomedical applications should also aim at the satisfaction of the human needs, and not only to the protection of certain principles. Ignoring the normal, justified interest of any person in feeling that he or she may have access to the scientific conquests of mankind, if this does not cause any harm to a certain/some person/persons, will result in strong tensions in the society over time, and these tensions shall lead, in turn, to the imminent desire of the diametrically opposed settlement of the prohibited issues.

For example, genetic programming of human embryos may include any gene alteration, from the modification of a gene responsible for the transmission of a genetic defect until the bio-morphological characteristics. Who are the persons interested in accessing these opportunities of modern genetics? On the one hand, parents avoiding serious concerns through genetic engineering – a disease transmission – on the other hand, persons intending to create their own child, according to their wishes. The interest of the first category is justified from the ethics point of view, and the interest of the second category is not justified from the strictly ethical perspective. However, as long as there would be no prohibition (permissiveness goes towards ∞

[24] The collective psychic upholds the idea of justice as existing in correlation with naturally injurious actions: for example, it goes without saying that any form of murder, batter, cripple is a harm, however, it is only accepted a grading of the seriousness of the results and sanctions for the good functioning of the society. Creating an artificial danger, which is not perceived by the collective consciousness as such – for example, the impairment of the idea of human dignity – is not sufficient for the prohibition related to this virtual danger be imbedded also in the collective psyche, resulting in a self-censorship. This is also the case of theft, no matter the sophisticated, modern form in which it would be committed, or of other actions, such as incest. Common sense tells us that, when the danger is only claimed, an action should be permitted to individuals by the State, as otherwise, the prohibition is likely to be perceived as abusive, and from a certain level of this abuse, individuals could even appeal to extreme methods to evade prohibition.

on the axis), both categories of parents can see their dream come true. When total prohibition intervenes relating to accessing the genetic manipulation (permissiveness is at 0 on the axis), both categories of parents shall gang up on the regulatory authority, since they perceive the respective prohibition, even if for various reasons, as being an abuse. If only certain aspects are prohibited, such as the manipulation of the bio-morphological characteristics deprived of medical interest, the two groups of interests are separate, and, at the same time, the regulatory authority gives satisfaction to the access to the biomedical application, verifying its effects.

A gradual approach of prohibitions, at the same time combined with a careful selection of the benefits of the biomedical applications will extend the sustainability of certain regulations deriving from the protection of human dignity, being examined in Chapters III and IV of Part I and with the specific nature intended to each biomedical application in those four chapters of Part II.

Of course, the most suitable variant consists of ensuring a balance between the freedom of scientific research and the ethical and moral standards specific to law, by ensuring a realistic margin for the satisfaction of the commercial interests, which might arise from a scientific discovery in the biomedicine field. However, there is no consensus at the level of the European States as regards the prioritization of the values underpinning the regulations intended for biomedicine.

As the results of the researches in the biotechnologies field do not involve (so) many controversies as regards the use of the human biological components, and the economic impact of the development of such sector is significant in the economy of the European Union, it has been required the approach to regulate them in detail. The biomedical research in the respective field was strongly encouraged by the European Union, by projects and development plans about which we shall remind in chapter II of Part I hereof. For example, the reproductive cloning of animals was encouraged for the development of the livestock sector, and at present, the European Union is based on specimens of animals raised for meat and milk, which have been obtained by this method from champion parents, with the effect of increasing productivity.

However, everything which fall under the umbrella of biomedicine and is related to human being produces echoes in the field of human rights protection and arises unavoidable

controversies. At the level of the European Union, the Charter of Fundamental Rights[25] represents a Convention of the human rights extended also with higher standards than its grandmother, emerging under the aegis of the Council of Europe after the Second World War. The Charter guarantees that human rights will be further at the heart of concerns of the institutions of the European Union, including in the future regulations relating to biolaw issues. A comparative image of the human rights protection from the specific perspective of the ECHR and CHRB represented the subject matter of the detailed analysis in Chapter IV of Part I.

Instead, the bioethics issues were approached rather tangentially, insofar as the technical part of a biotechnology involves a legal status and only punctually. The great dilemmas relating to human being in connection with the biomedical research and with its results are, for now, left to the mercy of general principles and of the legal rules which might be applied by analogy.

Instead, the Council of Europe, as a difference from the European Union, can afford the luxury to dream at ethical rules without the pressure of the commercial view, which should regulate the biomedical applications and their results on human life. That is why, the most important international tool intended to biomedicine, CHRB (representing the quintessence of numerous previous efforts of standardization of the principles in the matter), which claim paternity and maternity from the famous UDHR and ECHR (according to its own recitals) only uses the words economic and commercial in a prohibitive context. Moreover, a special analysis shall be devoted to this treaty in Chapter III of Part I.

Attempts to legally limit the impact of the outstanding results of the innovative discoveries of biomedicine on the human rights and human dignity have a three decade history at the level of the most important international or European forums.

Therefore, according to art. 1 paragraph 1 of the CHRB, the purpose of the agreement consists of the protection of dignity and identity of the human being and guaranteeing, without any discrimination, the observance of any person's integrity and of the other fundamental rights and freedoms in relation to the applications of biology and medicine. In fact, the convention refers to biotechnologies used both in human and veterinary medicine, as well as in genetics.

[25] Although it was adopted on 7 December 2000, at Nice, the Charter received another status after signing the Treaty of Lisbon (2007), entered into force on 1 December 2009, which provided for in art. 6, paragraph (1): "The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties". Starting with 1 December 2009, the Charter of Fundamental Rights of the European Union became mandatory for the institutions of the European Union and for the Member States.

In October 2005, the UNESCO General Conference adopted Universal declaration on bioethics and human rights. For the first time in history, the Member States and the international community committed to observe and apply the fundamental principles of bioethics indicated in a text. The declaration sets forth principles regarding human dignity, human rights and fundamental freedoms.

The Council of Europe adopted recommendations for the same purpose, among which we mention the Recommendation of the Council of Europe 934/1982[26] regarding genetic engineering, Recommendation 1046/1986 regarding the use of human embryos and fetuses for therapeutic, scientific, industrial and commercial purposes, the Recommendation of the Council of Europe 1100/1989[27] regarding the use of human embryos and fetuses in scientific researches. The Additional Protocol to CHRB regarding the prohibition of cloning human beings shall be situated at the same level[28].

However, it is further required a mapping of the unlimited possibilities of biomedicine of affecting the human legal status, and there is even the risk of birth of a human being different from the legal human, holder of rights.

In virtue of human rights, "*each individual is entitled to assess the quality of his own life, as the State could not require a unique concept about existence*"[29]. That is why, the scientific research should observe, for example, the right to human genome integrity, which is an aspect of the individual's right to self-determination. The obligation of informing the couple which intervenes in sharing the genetic heritage arises therefrom, when there are used biotechnologies intended for procreation.

For example, the reproductive human cloning – a genetic technique allowing to obtain certain identical individuals from the genetic point of view – could represent a danger for the natural unique genetic identity, which is now specific to each individual. The consequence could

[26] Adopted by the General Assembly on 26 January 1982. Text available on http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=14968&lang=en, capture from 12 December 2019.
[27] Adopted by the General Assembly on 2 February 1989. Text available on https://www.coe.int/t/dg3/healthbioethic/Texts_and_documents/INF_2014_5_vol_II_textes_%20CoE_%20bio%C3%A9thique_E%20(2).pdf, capture from 12 December 2018.
[28] Open to be signed in Paris, on 12 January 1998 and entered into force on 1 March 2001. Text available on https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/168, capture from 12 December 2018.
[29] Gheorghe Scripcaru, op. cit., p. 20.

consist of the creation of a subcategory of people – the copies – and also the removal of the advantageous effects for immunity that the natural genetic diversity guarantees.

Each biological species is quite unique, being a unique result of the evolution, possessing a unrepeatable genofond[30], and in relation to the human species, the inclusively genetic diversity provides the progress in nature and in society.

The medically assisted reproduction allows for bloodline under conditions of infertility[31]. The medically assisted human reproduction inevitably involves interventions on human embryos, which concomitantly aim at removing or reducing certain defects or malformations. Although the goal initially pursued by the inventors of medical techniques was noble – the discovery of certain methods of blocking the transmission of certain major genetic shortcomings - as researches were extremely controversial, even within the medical community. In the version of 1983, the Declaration of Helsinki recommends that medical researches related to biomedicine pursue "*only the promotion of human, without threatening its integrity*"[32].

However, it is inevitable that the natural desire of obtaining competitive descendants should be highlighted by those biotechnologies allowing for the improvement of the features of the future child from the time of artificial conception. Therefore, the development of a sector of medical services is natural – both in the research field, and in the medicine field – intended to operate this seam from the commercial point of view.

The entire decoding of the human genome within the Project of Human Genome"[33] opened a broad pathway towards the technical possibility of carrying out any genetic variations intended to a human embryo. The gene mapping, as well as the establishment of the manner in which the genetic characteristics are transmitted have become a subject of requests for the protection the intellectual property, with the unintended consequence of appropriation by certain individuals or nations of the rights on a certain part of the human genetic material.

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[30] Gheorghe Scripcaru, op. cit., p. 22.

[31] It is estimated that a percent of 5-6% of children born at present worldwide benefited from these new methods. See http://attainfertility.com/article/ivf-statistics, capture from 12 December 2018.

[32] See http://www.wma.net/en/30publications/10policies/b3/, capture from 21 March 2018.

[33] The human genome project (HGP) represents the international program of cooperation in research whose objective consisted of the complete mapping and understanding all genes of human beings. All our genes together are known as "genome". International Human Genome Sequencing Consortium published the first human genome project in Nature magazine, in February 2001, with the sequence of three billion base pairs, namely, approximately 90% of the genome. An amazing finding of this first project was represented by the fact that the number of human genes seems to be significantly smaller than the previous estimates, which varied from 50,000 to 140,000 genes. The complete sequence was completed and published in April 2003. Information available on https://www.genome.gov/12011238/an-overview-of-the-human-genome-project/, capture from 18 February 2018.

Despite all international recommendations, in countries which are not Parties of CHRB and which have neither specific internal regulations applicable for the protection of human embryos and fetus, techniques such as the combination of the genomic characteristics – for considerations strictly related to the parents' will, and not based on medical criteria – or the determination of the fetus sex followed by the abortion of the feminine fetuses are a daily reality, which cannot be ignored[34].

Biotechnologies used in the matter of procreation raise the question of the moment when the embryo becomes or may be deemed a person. The research committee on human fertilization and embryology within the Health and Social Security Department of Great Britain drafted the Warnock Report[35], a framework of legal rules with a major medical impact and based on the medical embryology research, intended to provide the medical professionals a set of directives in the procedures of embryos manipulation, including FIV. As it aimed at the delicate subject of the starting moment of human life, the report generated numerous controversies.

The human genome is enacted by UNESCO as a common heritage of mankind, however, there are no coercive regulations which should prevent the gene modification except at the national level, in certain developed countries. The CHRB provisions strengthen the idea that the interest and welfare of the human being should take precedence over the sole interest of the society or science (art. 2), and the additional Protocol to CHRB regarding the prohibition of cloning expressly interdicts this method of genetic variation.

The most difficult task is to get consensus on the relevant principles for biomedical activities. All modern biomedical applications have an impact on the intimate elements of the human being – genes, reproduction, bio-morphological standard of human being – which generates controversies from the beginning in relation to the limits, values and framework in which these applications may be developed and applied.

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[34] See http://passeurdesciences.blog.lemonde.fr/2012/06/03/y-a-t-il-un-genocide-invisible-des-femmes-en-asie/, capture from 12 December 2019.

[35] In 1982, a committee was set up in Great Britain in order to investigate the *in vitro* (FIV) and embryology fertilization technologies, as a reply to the concern regarding the speed of development of these technologies, as well as to the birth of Louise Brown, in 1978, the first child born through the agency of this technology. The role of the committee was to develop principles for FIV and embryology regulation. The Committee was chaired by the philosopher Mary Warnock and concluded that the human embryo should be protected, and the research related to embryos and FIV be allowed, together with the appropriate protective measures. The Committee proposed the establishment of a regulatory authority with the mission of licensing the usage in treating, storing and investigation of human embryos outside the human body. This body subsequently became the Authority of Human Fertilization and Embryology. Information available on http://www.ncbi.nlm.nih.gov/pubmed/6146804, capture from 18 March 2018.

Recommendation no. 1046/1986 of the Council of Europe[36] regarding the usage of human embryos and fetuses for therapeutic, scientific, industrial and commercial purposes, enumerates among the biomedical applications generating concern regarding the consequences on the status of human embryo and fetus, the following: the possibility of testing and select fetuses, embryos and gametes depending on the absence or presence of certain characteristics, the possibility of obtaining and introducing a certain genetic material in order to bring improvements, the prenatal diagnosis allows for the removal of fetuses containing undesirable genetic characteristics, the pre-implantation diagnosis allows for the selection of embryos (in the case of *in vitro* fertilization), and only embryos having the desirable genetic qualities are implanted and the genetic engineering allowing for the selection of genes according to any kind of criteria[37].

The genetic engineering represents a set of techniques applied by genetics and biotechnology and which could include the manipulation of the human genetic material, especially for the purpose of creating mixed bodies which may be used thereafter in the field of organ transplantation – for example, creating mice which contain the human genes responsible for the creation of ear or human skin grafting or pigs developing human cornea[38].

All these biotechnologies have an impact which cannot be entirely made at this time upon the society development as a whole, by the direct prejudice caused to the status of human being and of the manner in which it is valorised by the international community, and the future dangers, from the perspective of breach of the fundamental human rights are analysed in Chapter II of Part II.

The last chapter of Part II of the thesis is devoted to the bioethics issues of the life end. Outlining a right to assisted suicide is increasingly shaping in the context of the medicalized and technologized world in which we live and allowing for the life prolongation until ages at which, some other time, nature did not allow us to evolve. This life prolongation raises the question of the dependency of the elder or person immobilized due to a injurious incident upon his or her body on other persons in whole, including in relation to the possibility of voluntarily ending life. Another aspect of the assisted suicide consisted of the gradual extension, in certain countries but especially at the level of public opinion, of the idea that the right to assisted suicide is not related

[36] Text available on http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=15080&lang=en, capture from 12 May 2019.
[37] Rec 1046 (1986), item 14.1.4., text available on http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15080&lang=en, capture from 12 May 2019.
[38] See http://www.nature.com/news/new-life-for-pig-to-human-transplants-1.18768, capture from 24 February 2016.

to elders or gravely sick persons, however, that it finally represents an expression of the right to dispose of his or her body, life.

Invoking this right reached the level of the CourtEHR and in a sufficient number of cases to outline the contradictory trends of the European judges, namely the prudent approach not to officially acknowledge a right of assisted suicide (in order not to contradict with the lack of consensus upon the subject at the level of the Member States of the Council of Europe), and on the other hand, encouraging an increased autonomy of the individual, transposed in the acknowledgment of the right to dispose of his or her own body.

Summarizing the most important aspects established at the European level in relation to the end of life, by regional regulations or by the practice of the CourtEHR, we found that stopping a treatment for life-sustaining care, at a patient who is no able to express his or her will, and following the application of the legal procedure to substitute his or her consent, shall not be equivalent to Euthanasia and complies with the provisions of art. 2 of the ECHR, and the refusal of the patient for a treatment in the absence of which he or she can die, forms part of the right to the individual's autonomy, protected by art. 8 of the ECHR.

At the same time, it cannot be invoked the existence of an autonomous right to suicide, based on the provisions of the Convention, which involves to refer to the State authority in order to force a third party to help or perform the judicial hanging act, however art. 8 protects the freedom to suicide, as an expression of the right to private life of the individual.

Shaping the right to die (naturally) is a transposition of the individual autonomy and of his or her right to decide about his or her own body in the context of the modern, transhumanist view over the human body, which seeks for immortality by hybridization with technology, in different forms. Insofar as human transfers himself or herself in a robotized form and/or transfers his or her conscience in a computer or other similar technological forms, the life and human dignity concepts should be rewritten, since they shall not correspond anymore to the new realities decisive for establishing the values of society.

As a final conclusion, we noticed that the technological evolution has reached a development ratio in a geometric progression, bringing in society the seeds of certain future ages, while social mentalities relating to certain human rights, such as the reproductive rights or the right to self-determination, remained tributary to a judicial conservatism with deep historical roots.

In the absence of certain clear, mandatory regulations doubled by sanctions, it is illusory to image that they will sacrifice the freedom of research before certain abstract concepts such as human dignity and human rights – as CHRB generously claims in its first article.

Society needs the effects of biomedical progress, and the law should exercise its intent to represent as well the art of good (not only of equity), which means that regulations should be focused on opening the horizon, and not (only) on useless and offensive prohibitions. The technological progress forces the courts, which first face the practical effect of the new discoveries, to adapt old rules to high-tech situations. The only solution of a court is to appeal to positive law, namely to apply the existing laws to the new situations, and many times the result will be a flagrant inequality.

Finally, only future can tell us to what extent all fears exposed in this thesis will be confirmed or not. It is certain that progress can be stopped neither in biomedicine, nor in biolaw.