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**UKRAINIAN CLONING LAWS IN THE CONTEXT OF INTERNATIONAL LAW
AND THE EXPERIENCE OF FOREIGN STATES**

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INTRODUCTION

This topic is devoted to the legal regulation of human cloning in international and regional human rights law and Ukrainian legislation, as well as the study of possibilities for its improvement.

Beginning with the consideration of the problems of legal regulation of cloning, it should be noted that the cloning procedure itself became available to mankind just recently. The main problem is the lack of a unified approach among countries to cloning.

First, today, one cannot find a single approach in international law, as to when human rights protection starts - from the moment of birth or from the moment of conception. Rhona Smith¹ points out that with the respect to the inception of the right to life, this is generally taken in international human rights law as being the time of birth. There is no prohibition of abortion, for example, under the European Convention on Human Rights. Only the American Convention on Human Rights in its Article 4 on the right to life stipulates: "Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life"². However, there seems to be an agreement, for example, in the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine as to the protection of some rights before birth. Article 18 of that Convention demands protection for the embryo where the law allows research on embryos *in vitro*. The Article 18 also prohibits creation of human embryos for research purposes.³ The latter has implications on discussion on cloning.⁴ Secondly, there seems to be an agreement in scholarly works that allowing some types of cloning presents far too many legal problems.

Most scholars, politicians, lawyers, and philosophers, both in Ukraine and abroad, tend to believe that cloning, as a method of growing tissues, of human organs as a mean of improving certain human properties, is a benefit, while human cloning should be prohibited. The global

¹ R. Smith, *International Human Rights Law* (8th Edition OUP 2018), p. 222.

² American Convention On Human Rights (22 November 196) [Online]. <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

³ Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine...

⁴ R. Smith, *International Human Rights Law* (8th Edition OUP 2018), p. 223.

attitude towards human reproductive cloning as the most controversial type of cloning varies from a total ban to a lack of legislation on this issue. The legislation of Ukraine in the field of application and implementation of cloning achievements is far from perfect, and therefore there is a need for better legal solutions. the relations in this area require a legal solution.

Thus, in this thesis moral, ethical, historical problems and mostly legal issues of cloning are investigated, and on their basis determined the need to improve the legislation of Ukraine in the field of cloning in the context of observance of human rights. To determine possible areas for improvement, an analysis of the current legislation primarily in some European Union countries in the field of cloning will be carried out, specifically regarding criminal liability for certain types of cloning and the expediency of incorporating such experience into the development of proposals for improving the legislative framework in Ukraine. In that respect, the thesis will analyze possible conflicts between different types of cloning and international human rights law to identify problems in the Ukrainian legal framework. The recommendation will be made as to how to improve Ukrainian Penal Code by adding independent crime into Ukrainian domestic legislation (Articles 448 "Human Cloning ", 449 "Import or export of human cloned embryos" of the Criminal Code of Ukraine).

On the basis of the identified basic human rights violations in the application of cloning and taking into account European experience, the systematisation of current legislation was carried out, as well as proposals for the introduction of criminal liability for certain types of human cloning and the use of their results.

XXI century is a new era in the development of man as an individual, and all of mankind as a whole. This is not only the beginning of the third millennium, the break of the ages, it is a change of consciousness, the sphere of human existence, landmarks and views on everyday life. Modern scientific technologies dominate of natural forces, creating new natural objects in an artificial way. The human cloning is evidence of this.

The second half of the twentieth century was marked by breakthroughs in science and technology. Among them, biotechnology occupies a significant place. Decryption of human DNA and the possibility of cloning human organs and humans have become a reality, which requires clear legal regulation.

Human cloning (see chapter 1 p.12 for definition) raises a large number of unresolved problems and incomprehensible issues before science. The purely technological approach to cloning does not take into account a number of moral, ethical and legal problems. Awareness of this process is extremely important. In fact, humanity is faced not only with the unknown, but also with the danger that threatens the very existence of mankind.⁵

Human cloning raises various legal and ethical questions including what constitutes a person. This is a question that cannot be answered solely by natural science. It is truly an interdisciplinary subject that may require research from different perspectives: knowledge of humanities, social disciplines, philosophy and, strangely enough, it will sound for someone, the religion to understand the essence of a man. After all, the essence of a man may not only have social, but also spiritual and transcendent character. Therefore, there are a number of moral and ethical constraints for the introduction of cloning in the medical sector.⁶

Scientific and technological advances in biology (in particular, genetics, embryology) and medicine (especially transplantology) have increased the capacity to manage and control the process of life. Considerable attention of the entire international community has attracted the issue of manipulation of human life (its artificial origin and termination) by opening up new biotechnology of "asexual reproduction" -cloning, which became the subject of consideration and discussion of scientists from many branches of knowledge (biomedicine, jurisprudence, philosophy, and others) from all countries of the world.⁷

As the issue of human cloning relates not only to medical aspects but also to ethical and legal issues directly related to human life and human rights, in particular the right to life. This raised the problem of protecting human rights and dignity in the use of modern technologies and their moral validity, and has also led to the formation of a new bioethical direction of

⁵ Savvina O, (2015) Ethical Problem of Cloning Human (Somatic Cell Nuclear Transfer). Peoples' Friendship University of Russia, 2015, 2,, p. 115

⁶ M.Häyry (2017) Synthetic Biology and Ethics: Past, Present, and Future. Cambridge, Quarterly of Healthcare Ethics . p. 186

⁷ Segers, S., Mertes, H., de Wert, G., Dondorp, W., & Pennings, G. (2017) Balancing ethical pros and cons of stem cell derived gametes. Annals of Biomedical Engineering, pg.1621

modern international human rights law.⁸

For example, the practice of cloning donor organs makes it possible to completely exclude the criminal component, by increasing the probability of cloning organs from tissues obtained as a result of self-transplantation. Consequently, over the past decades, cloning problems associated with the acquisition of identical living organisms or their organs or tissues have become the subject of heated discussions among scholars, politicians, the international community, etc.

The effects of reproductive cloning are not only biomedical, psychological, but also socio-economic, legal. It generates issues that relate to various branches of law. For example, in the field of civil law - this is the issue of identifying paternity, establishing the degree of blood affinity, succession, as well as the realisation of the reproductive rights of the clones.

In addition, their civil and political rights should also be taken into account. This raises the issue of observance of fundamental principles that underpin all human rights such as non-discrimination.

Thus, cloning, on the one hand, is a significant breakthrough in medicine, since it allows treating a number of diseases not through transplantation of donor organs, bone marrow or complex procedures, but by creating cloned organs of the body grown from their own somatic cells. The authors (de Wert, W. Dondorp, G. Pennings, S. Segers, H. Mertes) assume that, first of all, the demand for cloning technology will come from medical or socially infertile people who want to conceive a child. In response, however, it can be argued that allowing cloning for reasons of infertility can ultimately lead to the use of cloning for these other purposes, which are considered (even more) controversial (such as mentioned above).⁹

The issue of legal regulation of cloning and criminal responsibility for individual actions in

⁸ Loike JD and Fischbach RL: (2013) *Frontiers in Bioethics*. New York, pg.21

⁹ G/ de Wert, W. Dondorp, G. Pennings, S. Segers, H. Mertes (2018). *In vitro gametogenesis and reproductive cloning: Can we allow one while banning the other?*, pg. 70

this area was investigated by a number of Ukrainian and foreign scholars (Boole¹⁰, Kharatyan¹¹, Martens¹² etc.). There is also the problem of the delimitation of subspecies of reproductive cloning, which was studied by Professor Boole (France): "The separation between the embryo and the child can be relatively conditional, because it relates to the mystery of life. But we know that within two weeks from the moment of fertilization, the embryo can in no way be considered an individual (individual as one who can not be divided), because sometimes it is divided with the formation of twins. In our laboratories, billions of cells from human cells are cultivated in vitro. In these cells, those collections that they form, embodied human life. However, nobody will come to the point of talking about the human being. The true subject of respect must be only a human person".¹³

Ukrainian lawyer Kharatyan (2018) believes that "in order to improve the domestic constitutional and legal mechanism of ensuring the human right to life in the development of technologies for cloning, it is necessary to introduce legal and regulatory measures regarding:

- prohibition of human genetic modification;
- definition of criminal acts: manipulations on human genetic material, human embryos, aimed at introducing changes to the human genome, if such actions are carried out for purposes not related to the treatment or prevention of serious illness or may lead to the inheritance of the changes; a combination of human genetic material with the genetic material of animals in order to obtain chimeras; human cloning; transplantation of human anatomical materials of genetically modified animals, which has led or may lead to grave consequences".¹⁴

K. Martens explored the legal regulation of cloning in the United States as a whole and the differences in the prohibitions or restrictions on cloning in different states. This study shows that the world-wide experience of legal level cloning regulation is rich, and varies greatly

¹⁰ Baulieu, C. (1991) Biochemical and genetic analysis of a pectate lyase gene from *Xanthomonas campestris* pv., pg.447

¹¹ Kharatyan T. (2018) Constitutional right to life under conditions of development of modern biotechnologies

¹² Martens. K. (2018) The Law and Human Cloning

¹³ Baulieu, C. (1991) Biochemical and genetic analysis of a pectate lyase gene from *Xanthomonas campestris* pv., pg.447

¹⁴ Kharatyan T. (2018) Constitutional right to life under conditions of development of modern biotechnologies, pg. 18

depending on the general laws of the country or state¹⁵.

Consequently, in many countries there are legal restrictions on cloning in order to prevent the emergence of identical clones, for which there will be a problem of differentiating the rights with respect to the original.

Prohibition of cloning is becoming more widespread in different countries and internationally. The prohibition of human reproductive cloning, that is, the receipt of its genetic copies, regulated in the United Nations Universal Declaration on the Human Genome and Human Rights¹⁶, the Additional Protocol on the Prohibition of Human Cloning to the Council of Europe Convention on Human Rights and Biomedicine¹⁷, the Charter of the European Union on Fundamental Rights¹⁸. Legislative application of the prohibition of cloning is the most widespread in the legislation of European countries. Those or other forms of cloning bans are implemented in Germany, Spain, Denmark, Great Britain, Italy, France, Sweden, the Netherlands, Belgium, Slovakia, Switzerland, as well as Japan, Australia and other countries. In the United States there is a ban on state funding for research in this area.¹⁹ At present, the Ukrainian legislation prohibits human reproductive cloning (see chapter 1 p.12 for definition), and therapeutic (transplantological) cloning (see chapter 1 p.13 for definition) has a number of limitations, since transplantology mainly uses donor organs.

A number of the above-mentioned researchers of cloning issues tend to believe that cloning, as a method of growing tissues, human organs, as a means of improving certain human properties, - is a benefit (therapeutical cloning technology), while human cloning should be prohibited (all reproductive cloning technology²⁰). The global attitude towards human reproductive cloning technology varies from a total ban to a lack of legislation on this issue.

¹⁵ Martens. K. (2018) The Law and Human Cloning, pg. 1

¹⁶ Universal Declaration on the Human Genome and Human Rights (1997) [Online]. http://portal.unesco.org/en/ev.php-URL_ID=13177&URL_DO=DO_TOPIC&URL_SECTION=201.html

¹⁷ Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings (1998) [Online]. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/168>

¹⁸ CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (2012) [Online]. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12012P/TXT&from=EN>

¹⁹ Martens. K. (2018) The Law and Human Cloning, pg. 1

²⁰ Martens. K. (2018) The Law and Human Cloning, pg. 1

The legislation of Ukraine in the field of application and implementation of cloning achievements is far from perfect, because it does not adequately protect human rights (as right to life, health, privacy and some other rights), and therefore the relations in this area require a legal regulation and the definition of criminal liability for violation of human rights in the field of cloning.

In the same way, author will formulate the purpose of this study, which is dictated by the relevance of the above. It is to research the possibility of improvement of Ukrainian legislation in the field of human cloning taking into account world experience and observance of Ukraine's international obligations, including in the field of human rights law. *The main objective of this thesis is to analyze* the current state of legal regulation of cloning as a method of human reproduction and to suggest improvements to Ukrainian laws on criminal responsibility for human cloning to comply with international standards. Thus, the research problem, important to investigate, is compatibility of Ukrainian current legislation with international human rights standards.

To achieve the research objective above, the present paper will address the following *research questions*:

1. What is cloning as a socio-cultural legal concept?
2. What issues were raised during the international debates on cloning in the context of fundamental human rights and freedoms?
3. What types of responsibility for human cloning exist in modern laws of different European states?
4. What are the main trends of regulating legal responsibility for human cloning in Ukraine?
5. What is the position of Ukrainian society in relation to bringing legal liability for unlawful acts of human cloning (whereas this must justify the need for criminal liability for cloning and its consequences)?

This is a qualitative research using primarily following *methods*:

- 1) *Historical method*. This method allows exploring the development of understanding of the phenomenon of cloning from a legal, human rights perspective. In that respect history of

research into regulation of this problem in international debates on cloning will be explored. This will allow to study the history of cloning and its types, as well as to determine the basis of legal regulation of this process in the context of preventing the violation of basic human rights, such as the right to life, health, privacy and other basic rights.

2) *Analytical and Comparative method* made it possible to investigate legislation on the availability of special rules designed to regulate the issues raised by the development of modern biotechnology in order to identify best practices. This method allows to research what types of responsibility for human cloning exist in modern laws of European states such as Germany, France, and the ex. EU state - the UK in the sphere of cloning and criminal responsibility, as their experience on cloning is on the higher level than in Ukraine.

3) *The systematic and synthetic method* was used to develop the main provisions and proposals for improvement of the current legislation on criminal liability for cloning (the method allows to systematize the main tendencies in legal regulation of human cloning in Ukraine, to determine the need for criminal liability for illegal actions against human cloning, as well as to formulate the composition of crimes against cloning in the system of criminal law legislation of Ukraine).

Modern Ukrainian legislation in the field of human cloning is not perfect because it does not define a number of aspects of cloning and their possible consequences, as well as responsibility for these consequences.

There is no systematic, comprehensive analysis of this issue from the perspective of human rights that focuses on Ukraine. The thesis establishes inconsistencies between international human rights law and Ukrainian legislation and Ukrainian international obligations and implementation of these obligations in practice. As the Ukrainian legislation does not clearly distinguish criminal responsibility for human rights violations during the cloning and use of its results the proposals formulated in this study would allow to improve this legal situation. This research fills the lacuna in Ukraine regarding the criminal classification of activity in the field of human cloning and allows separation of vital medical actions from criminal acts by introducing human cloning as an independent crime into domestic legislation (Articles 448 "Human Cloning ", 449 "Import or export of human cloned embryos" of the Criminal Code of Ukraine). Additionally, the thesis proposes improvements to the (possible) state body that

would carry out organizational and regulatory oversight functions in the field of cloning (including issuing and deprivation of licenses for the right to carry out experiments related to cloning, as well as the registration of laboratories, etc.) were improved.

The first chapter discusses theoretical aspects of human cloning regulation as a moral, ethical, religious and, most importantly, a legal issue. In this chapter the author identifies that there are a number of problematic aspects that arise during the cloning process and that they have required binding regulation at the international, EU and domestic level.

In second chapter author explores the peculiarities of laws on of cloning at different levels (National and International) taking into account human rights. In the criminal codes of many leading European countries, as Germany, Spain, Denmark, Great Britain, Italy, France, Estonia and the like, there is a responsibility for reproductive cloning and trade of its results.

The third chapter examines the current Ukrainian legislation in the field of human cloning in the light of international human rights law and practice of some EU states? to confirm the hypothesis of the need of improvement. As a result, it will proposed to introduce several new articles in the Criminal Code of Ukraine, which regulate criminal liability for human cloning for reproductive purposes and its possible consequences.

KEY WORDS

Human cloning, therapeutic cloning, reproductive cloning, Ukrainian legislation, Criminal Code

CHAPTER 1

THEORETICAL ASPECTS OF HUMAN CLONING REGULATION

1.1 Essence of Cloning, its Types and its Significance for Human Community

Scientific and technological advances in biology (in particular, genetics, embryology) and medicine (especially transplantology) have increased the capacity to manage and control the process of life. The term "cloning" means the reproduction of a biological organism that is identical at the genetic level to the donor organism.²¹ Among the main arguments of human cloning, there are the possibilities of childless couples having their own children, preserving special genetic material, ensuring scientific goals (disease control, organ transplantation, experimental material) In connection with the prospect of human cloning, the question arises of its international legal regulation.

As the issue of human cloning relates not only to medical aspects but also to ethical and legal issues, it is associated with a number of bioethical issues that are directly related to human life and human rights, in particular the right to life. This raised the problem of protecting human rights and dignity in the use of modern technologies and their moral validity, and also led to the formation of a new bioethical direction of modern international human rights law.²²

Consequently, over the past decades, cloning problems associated with the acquisition of identical living organisms or their organs or tissues have become the subject of heated discussions among scholars, politicians, the international community, etc.²³

There are currently two basic types of cloning (reproductive and therapeutic):²⁴

I. Reproductive cloning, which can be done in two ways:

a) by artificial separation of the embryo's blastomeric in the early stages of its development (already during the first week), resulting in the birth of twins;

²¹ Robertson, John A. (1999) "Two Models of Human Cloning," Hofstra Law Review: Vol. 27: Iss. 3, Article 10. [Online]. <http://scholarlycommons.law.hofstra.edu/hlr/vol27/iss3/10>

²² Robertson, John A. (1999) "Two Models of Human Cloning," Hofstra Law Review: Vol. 27: Iss. 3, Article 10. [Online]. <http://scholarlycommons.law.hofstra.edu/hlr/vol27/iss3/10>

²³ Scientific and Medical Aspects of Human Reproductive Cloning [Online]. <https://www.ncbi.nlm.nih.gov/books/NBK223960/>

²⁴ Robertson, John A. (1999) "Two Models of Human Cloning," Hofstra Law Review: Vol. 27: Iss. 3, Article 10. [Online]. <http://scholarlycommons.law.hofstra.edu/hlr/vol27/iss3/10>

b) by transferring the nucleus of the somatic cell into an egg from which its own core has been removed and its further implantation into the mother's body (in utero). This is a complex biotechnology for the creation of a cell, which contains a cellular genome, which is the genetic material required for cell division.

II. Therapeutic cloning involves the creation of an embryo by transferring the nucleus of a somatic cell, but without the intention of further implantation of this embryo. Typically, the embryo is artificially stopped at the end of a predetermined period (14 days) after receiving stem embryonic cells from it, which will be used for therapeutic purposes (for the growth of tissues and human organs).²⁵

Successful studies on the cloning of animals, especially close to medical parameters to humans, have become a cause of concern for the international community, since they have become more frequent cases of exposing illegal centers, in which attempts were made to clone a person.²⁶

Cloning has opened up possibilities for manipulating embryos precisely by the method of artificial insemination in vitro. At the same time, the creation of an embryo (clone) can not automatically create ownership of it as a thing. In the opposite case, a person created by IVF technology (like cloning) would then be considered not as a person endowed with the right to life and human dignity, but as a mere biological material (a set of donor cells). Author shares the opinion of a number of scientists (Khataryan, Kruss, Kovler) who believe that a human embryo is not just a living organism, but a full-fledged person who grows and develops at every moment of his life, from conception to death. This is not the future, but the already existing person *Homo sapiens*, which has already had a unique set of genes since its inception (own genotype). Therefore, a number of public and human rights organizations, including the UN and the EU Council, raise human rights issues in the area of medical cloning.

Certainly, therapeutic cloning is a significant step in the development of regenerative medicine used to treat many serious illnesses such as cancer, diabetes, Parkinson's disease, Alzheimer's, and others. However, its reverse side is the neglect of the right to life of a person already existing (even if it was created with the help of reproductive technologies). In

²⁵ Robertson, John A. (1999) "Two Models of Human Cloning," *Hofstra Law Review*: Vol. 27: Iss. 3, Article 10. [Online]. <http://scholarlycommons.law.hofstra.edu/hlr/vol27/iss3/10>

²⁶ Scientific and Medical Aspects of Human Reproductive Cloning. [Online]. <https://www.ncbi.nlm.nih.gov/books/NBK223960/>

addition, at the beginning of the process of cloning with artificial insemination, a large number of "reserve" embryos are created, as the probability of their survival (first in vitro and then after implantation in utero) is extremely low, and there is a constant threat to their life and development even after birth. In this connection, there was an urgent need for a clear legal regulation of cloning at the international level.

The most common reasons for favouring reproductive cloning, according to National Academy of Sciences (US), National Academy of Engineering (US), Institute of Medicine (US) and National Research Council (US) are: ²⁷

- the desire of the infertile married couple to have a genetically native child; creating your own twins; the creation of its own genetically identical donor (as a "reproduction of a person genetically identical to a living person");
- "reincarnation" of deceased relatives or other persons (as "reproduction of a person genetically identical to death").²⁸

Prohibitions on research on human cloning are due to dangers to humans, and a number of ethical issues, in particular:

a) for reproductive cloning:

- Every person is by nature unique. Human cloning is a definite attempt on this natural gift, which leads to loss of human identity;
- cloning encroaches on the dignity of a person, discriminates against it at the stage of development, uses the human being (her body) as an object, and not the subject of legal relationships, in connection with which there is a question of ownership of it. Human is seen as a source of stem cells, although in fact it is a donor without the right to be informed and voluntary consent;
- an intermediate problem that arises in the field of reproductive procreation (reproduction) of a person is storage (cryopreservation for a term of 5 years) and subsequent fate (destruction, donations for medical experiments) of unused (non-implanted) human embryos;
- Side effects of cloning are still not explored and their consequences are not regulated.

²⁷ Scientific and Medical Aspects of Human Reproductive Cloning [Online]. <https://www.ncbi.nlm.nih.gov/books/NBK223960/>

²⁸ Scientific and Medical Aspects of Human Reproductive Cloning. [Online].<https://www.ncbi.nlm.nih.gov/books/NBK223960/>

Therefore, the risks of introducing this technology to humans may have unexpected and irreversible consequences for the human race (non-viable offspring, development of new diseases, premature aging and mortality, etc.).

The effects of cloning are not only biomedical, psychological, but also socio-economic, legal. It generates many issues that relate to various branches of law. For example, in the field of civil law - this is the issue of identifying paternity, establishing the degree of blood affinity, succession, as well as the realization of the reproductive rights of the clones themselves.²⁹

In addition, their civil and political rights should also be taken into account. This raises the issue of observance of two fundamental principles that underpin all human rights (right to life, health, privacy, procreate and some other rights) and the right to equality and non-discrimination.

The rapid development of the latest biomedical technologies, on the one hand, brings salvation against many serious human health-related illnesses and, on the other, becomes a source of unrestricted interference with human nature, giving rise to ethical, philosophical and legal problems. However, the vast majority of them does not have a clear solution and are the subject of scientific debate. The thesis is that the unwise use of new technologies can lead to catastrophic consequences. With the development of biomedical technologies the uncontrolled evolution of somatic rights (the right to dispose of one's body, to one's health, etc.) in that direction and in the pace that dictates modern life can cause the loss of our traditional conceptions of man. Perhaps one of the prime examples of these trends is the phenomenon of cloning. Somatic human rights as a unique legal phenomenon that defines the sphere of free self-realization and development of a socio-spiritual being - a human being, require reliable and effective guarantees from the state, and therefore - identification and overcoming of gaps in the system of guarantees of personal human rights in general, and somatic in particular.³⁰

Thus, cloning, on the one hand, is a significant breakthrough in medicine, since it allows treating a number of diseases not through transplantation of donor organs, bone marrow or complex procedures, but by creating cloned organs of the body grown from their own somatic

²⁹ Morales N. (2009) Psychological aspects of human cloning and genetic manipulation: the identity and uniqueness of human being. Reproductive Healthcare Ltd, Duck End Farm, Dry Drayton, Cambridge CB23 8DB, UK. Published by Elsevier Inc

³⁰ Lamada A. (2012) Rapid Prototyping for Biomedical Engineering: Current Capabilities and Challenges

cells.³¹

However, a number of legal issues that arise around cloning are too large. On the positive side, it should be noted a decrease in the volume of criminal transplantology (by world statistics)³², an increase in the person's ability to dispose of his own body, etc. However, there are a number of negative consequences of cloning, when it comes not to partial cloning (organs), but about the complete cloning of humans. The newly created organism must acquire all human rights, and not be left exclusively with biomaterial, besides, such an organism has a similar set of genes that is original, which can cause confusion in identifying a person or his clone.

The emergence of whether or not to a large extent, identical individuals can create a number of problems in obtaining certain human rights, since the clone must acquire all the same rights and opportunities as the original, otherwise it will be a significant violation. Therefore, reproductive cloning has such resistance in a number of countries around the world. In addition, human cloning "unnatural" causes condemnation of religious communities and other non-governmental organizations in the field of human rights.

1.2 Overview of Legal Issues

Despite the fact that human cloning has not yet been allowed in a number of countries (complete ban on reproductive cloning in the US, Spain and Denmark, ban on reproductive cloning in Germany, France, Romania, and several other European countries), it is necessary to thoroughly study the possible consequences of its implementation, especially legal. This need is justified by the fact that the development of biotechnology in the future may reduce the risk of adverse effects of cloning, thereby provoking the lifting of the ban on certain kinds of cloning. World society must be ready for the emergence of this new reality. It should be noted that the possibility of practical application of modern scientific achievements in the field of biotechnology, and cloning in particular, requires careful study of its legal implications. It is obvious that, apart from the widespread use of analogies with other legal

³¹ Scientific and Medical Aspects of Human Reproductive Cloning [Online]. <https://www.ncbi.nlm.nih.gov/books/NBK223960/>

³² Bulletin of the World Health Organization., The state of the international organ trade: a provisional picture based on integration of available information [Online]. <https://www.who.int/bulletin/volumes/85/12/06-039370/en/>

situations, new legislation is needed to regulate this area in detail.³³

In connection with the prospect of human cloning, the question of the legal status of the clone arises. Some researchers as Kovler A.I and Kruss V. I. believe that a reproduced clone should have a full range of rights and obligations, a character for a person, without restrictions. That is, it cannot be used as a slave in order to obtain organs for transplantation. A person is automatically given ownership of his genetic code and the right to dispose of it at his discretion; the code must remain under his control. Maltreating any human being is a crime. A person has the right to determine of his own free will whether she wants to allow herself to be cloned after death, and under what conditions, and also to prohibit the cloning of already dead.

The concept of human rights is based on the concept of "human". The current European legal system is based on fundamental values inherited from the natural theory of human rights, which is deeply rooted also in Christian morality, where the notion is equally central. The foundation of the entire history of European civilization is the deep tradition of humanism, led by human as a unique creation of nature.

For example, human cloning should be carried out with the voluntary consent of the owner of the DNA, having reached the age of 18 years. A woman who will bear a clone must be capable and act of her own free will, without coercion. Scientists cite the fact that we must prohibit the cultivation of a human fetus outside the borders of a woman's body, for example, in laboratory devices.

Therefore, there is an ongoing debate about whether the cloned person has the same rights as the original. The contentiousness of these issues raises a number of debating points and does not allow one to interpret cloning as a process and the possibility of using its results in the legal field.

It becomes clear that the problem statement can not be limited to the concept of natural human development - the reduction of humans to biological beings, to a living organism. The connection of the human essence with the social, spiritual dimensions of social life, social activity and social institutionalisation of society make it impossible and limited to a purely technocratic approach to human cloning. In the social and cultural context, the connection with the biological, the organism acts as the physicality of man, which itself becomes a factor

³³ Wells DN, et al. (2003) Coordination between donor cell type and cell cycle stage improves nuclear cloning efficiency in cattle. *Theriogenology* 59(1):45-59

of social and cultural control, the development of cultural meanings and interpretations of physicality, etc. For example, the European Parliament Resolution³⁴ of 1989 recognises cloning as a serious violation of fundamental human rights, which is contrary to the fundamental equality of human beings, since it allows for racial and eugenic selection of the human race, degrades human dignity and leads to experimentation on human embryos. Therefore, cloning is prohibited at the international legal law at the level of individual types, countries or organisations.

Gametes are not required for cloning, which negates the natural reproduction of a person who is associated with family and the mutual gift of self in marriage. This form of reproduction is completely independent of marital love - spiritual, psychological and physical. Cloning completely eliminates human sexual intercourse aimed at union and reproduction. Family ties, parenting feelings under these conditions are offset. Cloning technique leads to neglect a person is already in the first moments of his life and is a serious crime against the embryo, since the clone performer has reason to believe that he "creates the embryo", and therefore is its master, that is, takes all the rights to it. The rights of the child are violated. She has the right to be the result of a special act of love for her parents and an inalienable right to protect her life from conception. The arguments against human cloning are as follows: violation of human dignity, since human life is reduced to the level of "biological material"; separation of the sphere of procreation from the true human context of the matrimonial act; destruction of human embryos; radical manipulation of the reproduction of a person, which violates the personal relationship between parents and children, which can lead to the disappearance of the concept of family and family relationships. Everyone has the right to his own uniqueness and uniqueness. Its body and genotype are also an integral element of dignity and uniqueness, whereas a cloned being is always a "copy" of someone else, which can lead to the loss of one's identity, a sense of inferiority; creation of danger of public manipulation in eugenic direction, choice of "genetically better" people; the creation of "clones" of living persons solely as a source for organ transplantation is a reduction of a person to the level of the object of consumption, which is unacceptable from the standpoint of personal bioethics.³⁵ Professor

³⁴ European Parliament resolution on human cloning (1989) [Online]. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2000-0376+0+DOC+XML+V0//EN>

³⁵ Nestor M. (2009) The Ethics of Gene Editing Technologies in Human Stem Cells

Beaulieu's arguments (France)³⁶: “The distinction between embryo and baby can be fairly conditional. Because it is about the mystery of life. But we know that within two weeks of fertilization, an embryo cannot in any way be considered an individual (individuum) because sometimes it is separated by the formation of twins. In our laboratories, billions of cells derived from human cells are cultured in vitro. In these cells, the assemblages they form, human life is embodied. However, no one will ever mind talking about a human being. Only the human personality should be a genuine object of respect”.³⁷

Cloning is said to breach a fundamental right to individuality. Uniqueness of identity and individuality are some of the most deep- felt and inherent signifiers of self. Just as a great artwork would lose its value in identical reproduction, so human beings can be said to lose their intrinsic inimitability in reproductions of themselves. ³⁸

It should be noted that both V. Kruss³⁹ and A. Kovler⁴⁰ include the right to clone in the system of somatic rights. That is, human rights that provide for the ability to control one’s body, change one’s bodily substance and have a purely personal character, are proposed to be defined as somatic. V. Kruss defines somatic rights as “... a group of those that are based on a fundamental worldview confidence in the “right” of a person to independently control his body: carry out its “modernization”, “restoration” and even “fundamental reconstruction”, change the functional capabilities of the body and expand them with technical-aggregate or medication means”.⁴¹ Expressing his opinion on the theory of somatic rights, M. Lavrik, although he refers cloning to the field of study of somatic rights, notes that there is a legislative prohibition on reproductive cloning; therefore, it is still impossible to talk about the

³⁶ Baulieu C., Gerald V., Blanca I., Robert E. Stall (1991) Biochemical and genetic analysis of a pectate lyase gene from *Xanthomonas campestris* pv., pg.447

³⁷ Baulieu C., Gerald V., Blanca I., Robert E. Stall (1991) Biochemical and genetic analysis of a pectate lyase gene from *Xanthomonas campestris* pv., pg.448

³⁸ Gogarty B. (2003) What exactly is an exact copy? And why it matters when trying to ban human reproductive cloning in Australia. *J Med. Ethics.*, pg 85

³⁹ Kruss V. I (2000) Personal («somatic») human rights in constitutional and philosophical-legal dimension: Towards the statement of problem., pg. 44.

⁴⁰ Kovler A.I (2002) *Antropologiya prava* [Anthropology of law]. Moscow, Norma Publ., pg. 14

⁴¹ Kruss V. I (2000) Personal («somatic») human rights in constitutional and philosophical-legal dimension: Towards the statement of problem., pg. 44.

human right of clone.⁴²

In the international legal doctrine the concept of somatic rights is absent. Therefore, the legal regulation of cloning relates to human rights. In the system of natural and inalienable human rights, the right to the integrity of the individual occupies a special place: If not protected the physical and mental integrity of the human, then all other rights are not protected. Ensuring and protecting the physical and mental integrity of individuals in the field of biomedicine progress is one of the most pressing legal problems of today. Particular attention is paid to protecting the human right to integrity in the European Union.

The need for preventive legal regulation in this area is linked to the risk and consequences of the use of cloning technology that affect not only the present but also future generations. In particular: the cloning method is technologically imperfect, its efficiency is extremely low even in animal experiments; there is an extremely high risk for the health of women - potential participants in uncontrolled experiments; high probability of appearance of inferior individuals, uncertainty of their legal status and relations with society, which creates preconditions for family degradation, destruction of human and social values. From a legal point of view, human cloning is at odds with a number of the most important personality rights - with the right to human dignity, personality integrity, and the like. Reproductive human cloning can only be justified by the achievement of high ethical goals. There is no objective need to achieve such goals in this way, and therefore permission to clone human beings can only be an exception to the rules. A general rule should be to ban the cloning of a human being.

From a legal point of view, several countries of the world recently updated their national rules for managing human cloning and embryo research in general, and therefore there is more awareness and information among politicians in these countries. A review of existing legislation shows that there is a convergence of views regarding the rejection of legislation or guidelines that allow reproductive cloning. However, with regard to other methods for developing research on the human embryo, differences between national regulatory responses are much more important. Serious disagreements remain regarding the legitimacy of human reproductive cloning as part of research programs, even if it is to expand our knowledge in biology or to help find effective cures for modern incurable diseases.

On the other hand, it should be emphasized that although some countries have adopted

⁴² Lavrik M.A (2005) To the theory of somatic human rights. Siberian Law Herald, pg. 84

specific rules for human cloning, many others, in particular developing ones, still do not have such rules. The absence of such national regulation makes people vulnerable to external and profit-oriented scientific and technical research. In these circumstances, a more reliable legally binding international instrument will help protect the interests of these countries and their peoples. A rights-based approach justifies constraints made on the private market in setting priorities for both research and service development, in an effort to enhance public health and promote global justice.

1.3 Necessity for Legal Regulation of Cloning for the Observance of Human Rights

Since, as discussed above, there is a problem of human cloning in the context of moral, ethical, legal and other principles, so it is necessary to investigate what principles and legal rules violate this process. To this end, we will look at individual human rights and the issue of their compliance in the cloning process. The most important human rights, such as human dignity and integrity, the right to life, health, reproductive rights, etc., were selected for the study.

1.3.1 Dignity Violation Issues

The prohibition of cloning is becoming more widespread in different countries and internationally. Prohibition of reproductive human cloning, that is, obtaining its genetic copies, is called for by the UN Universal Declaration on the Human Genome and Human Rights⁴³, the Additional Protocol on the Prohibition of Human Cloning to the Council of Europe Convention on Human Rights and Biomedicine⁴⁴, the Charter of Fundamental Rights of the European Union⁴⁵. The application of the prohibition of cloning at the legislative level is most used in the legislation of European countries. Germany, Spain, Denmark, the United

⁴³ Universal Declaration on the Human Genome and Human Rights [Online]. https://unesdoc.unesco.org/ark:/48223/pf0000122990_eng

⁴⁴ Convention on Human Rights and Biomedicine [Online]. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/164>

⁴⁵ Charter of Fundamental Rights of the European Union [Online]. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

Kingdom, Italy, France, Sweden, the Netherlands, Belgium, Slovakia, Switzerland, as well as Japan, Australia and other countries apply different forms of cloning prohibition.⁴⁶

In the US, there is a ban on public funding for research in this area. 27 European countries have signed the Additional Protocol on the Prohibition of Human Cloning to the 1997 Council of Europe Convention on Human Rights and Biomedicine. The preamble to this act states that "the instrumentalization of human beings by the deliberate creation of genetically identical human beings is incompatible with human dignity and thus constitutes an abuse of biology and medicine." At the same time, the disadvantage of the Additional Protocol is that it does not differentiate between reproductive and therapeutic cloning.⁴⁷

The right to the integrity of the individual has an important place in the system of fundamental rights and freedoms of the European Community, as it is enshrined in the first section of the EU Charter⁴⁸, entitled "Dignity", namely Art. 3, immediately after the proclamation of the inviolability of human dignity (Art. 1) and the right to life (Art. 2), but before all other fundamental human rights, such as freedom from torture, ill-treatment and slavery (Art. 4, 5), the right on security and personal integrity (Article 6), the right to respect for family and private life (Article 7), etc.. This means that the violation of the human right to the integrity of the individual constitutes an encroachment on human dignity and entails the restriction of other rights and freedoms enshrined in the Charter of the EU.⁴⁹

The system of realization and protection of the human right to the integrity of the individual in the EU is at the stage of its development and improving. This right is secured in the EU through the creation of a set of legal, socio-economic and political safeguards in the field of biomedicine, both at European and national levels.

1.3.2 Right to Life

The problem of the right to life in the context of human cloning is quite wide, because on the

⁴⁶ Martens. K. (2018) *The Law and Human Cloning*, pg. 2

⁴⁷ Convention on Human Rights and Biomedicine [Online]. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/164>

⁴⁸ Charter Of Fundamental Rights Of The European Union [Online]. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁴⁹ Charter Of Fundamental Rights Of The European Union [Online]. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

one hand, the right to life also means the right to measures that improve the quality of life or prolong it, and on the other - used in the cloning process of cells or embryos are also entitled to life, however, in the case of unsuccessful cloning or use of individual organs, this right is violated, which is confirmed by the world law practice.

In the scientific literature⁵⁰, understanding the scope of the right to life varies from very narrow to very broad, but there is a tendency to expand the content of the right to life by identifying and exploring its new components. It is noted that the number of problematic issues related to the understanding of the human right to life is increasing, and that this right is difficult to secure, which does not guarantee the possibility of a primitive biological existence of a person, and it is also necessary to consolidate the guarantees of other rights directly related to the right to life. In today's environment, environmental and genetic security, as well as human security (both legally and medically) in general, is an integral part of ensuring human rights to life.

The right to life, which is inherent of human and enshrined in fundamental rights, can be violated by cloning, since unused clones are destroyed, or when replanting several embryos, not all of them survive, and even there are cases of forced removal of unnecessary lives through the destruction of embryos that threaten the life of the mother etc.⁵¹

1.3.3 Right to Procreate

The obligation to "respect" the prohibition of the reproductive cloning of human beings must be to abstain from abuses and to preserve the integrity of the individual nature of each individual, which is the source of modern ethics in human rights and rights. According to the inherent nature inherent in all of humanity, each man and woman have 23 chromosomes in the germ cells, the combination of which gives rise to a new human life - a gamete with 46 chromosomes. This natural way of reproduction is at the heart of human legal relationships regarding the social institution of family and marriage, regulating childbirth, combating the problem of infertility, and determining the legal status of a person.⁵² The reproduction of

⁵⁰ Citizens rights and new technologies: a European challenge [Online]. http://europa.eu.int/comm/secretariat_general/sgc/ethics/en/index.htm

⁵¹ Martens. K. (2018) *The Law and Human Cloning*, pg. 2

⁵² Martens. K. (2018) *The Law and Human Cloning*, pg. 3

humanity by cloning is not known or will solve the problem of infertility, but is likely to destroy or significantly deform the specified institutions of family, marriage and create a mess in the field of legal status and self-identification of personality, property rights and inheritance. Therefore, this obligation requires that the reproductive cloning of human beings be prohibited by law, not to fund such research at European and national levels, and to recognize the reproductive cloning of human beings as a crime.

The EU Charter 2000⁵³ is the first international human rights instrument to provide an outright ban on eugenics. According to Part 2 of Article 3 of the Charter, one of the essential elements of the right to the integrity of the individual is the prohibition in the field of medicine and biology of eugenic practices, especially those aimed at the selection of persons. The inclusion of this rule in the list of fundamental rights of EU citizens has caused a great public outcry. For example, German scientist Y. Habermas considers this legal document expedient and timely, especially in the context of modern global advances in biomedicine, where the scope of biotechnological intervention in human nature does not simply raise complex moral problems, as it was today, but raises questions of a completely different order - concerning the ethical self-understanding of humanity as a whole. According to the scientist, "The Charter of Fundamental Rights of the European Union⁵⁴ proclaimed guarantees the right to physical and mental integrity of a person and contains a prohibition on eugenic practice. It already takes into account the fact that conception and birth lose an essential element of our natural consciousness outside intervention ".⁵⁵

British scientist S. Jones, on the contrary, is dissatisfied with the inclusion of the ban on eugenics in the EU Charter and considers it a "Trojan horse", which will strike doctors and academics. In his view, if implemented at the national level, it would be a "lever for academic freedom and undermine the efforts of doctors in the fight against genetic diseases".⁵⁶

The fact is that the rule in question does not give any explanation as to what is eugenics and

⁵³ Charter Of Fundamental Rights Of The European Union [Online].https://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁵⁴ Charter Of Fundamental Rights Of The European Union [Online].https://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁵⁵ Charter Of Fundamental Rights Of The European Union [Online].https://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁵⁶ Jones S. EU law on eugenics attacks our freedom, (2004) [Online]. <https://www.telegraph.co.uk/news/science/science-news/3321686/EU-law-on-eugenics-attacks-our-freedom.html>

what biomedical practice can be considered as eugenic and aimed at breeding people. Therefore, in the context of this study, it is important to determine what eugenics is and what its practices are banned in the European Union.

1.3.4 Right to Privacy

The right to privacy in the context of human cloning can be violated in the aspect of physical privacy (no person without his or her free consent can be subjected to medical, scientific or other experiments). However, when creating clones, there is no free consent of the clone as a person to use it as experiments, so there is a problem of legal support for this fundamental right.

In addition, there are a number of problematic issues regarding the identification of a clone as an individual with certain rights or as property of the person from whose cells the cloning was performed. The violation of physical privacy in this case is quite debatable and ambiguous.⁵⁷

The urgent issue is the legal regulation of actions aimed not at making full copies of humans, but at obtaining by means of cloning embryos as a source of embryonic stem cells. The task of growing tissues and organs for transplantation is the real and closest opportunity to use the success of cloning in medicine. Therapeutic cloning is to create groups of cells and tissues to transplant them into the body of a sick person and to replace diseased cells or tissues. First of all, it is the use of tissues in the treatment of cancer, spinal cord disease. It is also possible to use these tissues in the treatment of diabetes, liver cirrhosis, Parkinson's and Alzheimer's⁵⁸.

Defining the rights of an embryo as a potential human and being able to use its stem cells for therapeutic effect on another's organism causes a collapse of the embryo and requires a clear resolution through criminal responsibility for human rights violations.

1.3.5 Right to Health

The right to health, as noted earlier, is the ability to obtain actions that will contribute to the improvement of human health, including through organ transplantation or the introduction of

⁵⁷ Charter Of Fundamental Rights Of The European Union [Online]. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁵⁸ Martens. K. (2018) The Law and Human Cloning, pg. 4

stem cells to activate the regeneration of the body itself. In this case, there are also contradictions regarding the possibility of cloning for therapeutic needs and the use of donor organs by informed consent of the individual.

The expected benefits of reproductive cloning, if any exist at all, are to solve the rare cases of infertility and genetic disease that cannot be treated by such safe and proven options as gamete donation and prenatal diagnosis. And cloning cannot be considered a priority for women's reproductive health, considering the global agenda of maternal mortality, sexually transmitted diseases, violence against women, and the like.⁵⁹

EU informed consent law stipulates that patients should participate in treatment, even when the consent of the representative is legally required. In general, EU law provides only 4 cases where the informed consent doctrine may not apply: 1) in the case of emergency assistance, where any delay threatens the life or health of the patient; 2) if the risks are obviously small and well known to all citizens (for example, the risk of taking blood); 3) if the patient deliberately refuses to listen to the data on the probability of death or severe disability (such refusal is recorded); 4) if the doctor believes that the patient may not psychologically suffer information trauma from the notification of the detected disease or his condition. In this case, the doctor should ask the patient whom he or she trusts to discuss with their doctor about their health and treatment. However, in the EU in the current context, this is extremely rare.

Given all of the above, it can be summarized that the rule of informed consent in European Union law comes from the concept of a fundamental human right to the physical and mental integrity of a person enshrined in Art. 3 of the EU Charter.⁶⁰ In particular, informed consent is based on the human right to respect and inviolate the integrity of one's personality, that is, the right to oneself and freedom from any external interference with one's body. From a legal point of view, this doctrine increases the patient's self-involvement in decision-making about his or her health, as the patient is seen as a holistic individual responsible for his or her own body and psyche and what may happen to them.⁶¹

At the present stage of the development of medical science, which has received powerful

⁵⁹ Shalev S. (2013) Human Cloning and Human Rights: A Commentary [Online]. <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2013/07/8-Shalev.pdf>

⁶⁰ Charter Of Fundamental Rights Of The European Union [Online]. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁶¹ Martens. K. (2018) The Law and Human Cloning, pg. 4

methods and measures for interfering with human nature, its nature, mental and physical integrity, society is not ready to take responsibility for the results of the use of new biotechnologies and experiments in the field of biomedical practice. Therefore, such responsibility is on a case-by-case basis: the individual alone and on the basis of voluntary, informed consent should decide on those biomedical procedures and measures that may be relevant to his or her body. It is this content that carries such an important element of the right to the integrity of the individual as voluntary informed consent.

1.3.6 Right against Exploitation

The legislation of all modern European countries states that the needs and interests of the individual are the highest criterion, the content of social development and the ultimate goal of society. Thus, a person is recognized as the highest social value and the modern law has viciously introduced the principle that each individual is a unique and unique personality, which has no material equivalent. This means that a person, his or her body and its parts cannot be subject to sale and to any material value, since it contradicts human dignity and transforms the person from subject to object, from the purpose in itself to a means of satisfying others needs.

The manifestation of the commitment of all European Union countries to this principle was the inclusion of a prohibition clause in the field of biology and medicine to use the human body and its parts as a source of financial profit in Part 2 of Art. 3 of the EU Charter.⁶²

Also, special legal protection in the field of modern biomedicine requires such an important component of the integrity of the body of individuals as the human body, as new opportunities for its commercial use. Through the analysis of different approaches to the problem of the commercialization of the human body, it has been determined that it contravenes the basic principles of international human rights law, in particular human dignity, and threatens the integrity of the human personality. In these circumstances, it has been clearly recognized that the prohibition to turn a person's body into a source of financial profit is an essential element of the right to the integrity of the individual and means that the person who donates organs, blood, stem cells, gametes and other biomaterials of human origin should not receive no

⁶² Charter Of Fundamental Rights Of The European Union [Online]. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

material gain from this other than the reimbursement of justified expenses such as hospitalization or lost income during the donation. This prohibition is an important guarantee of the integrity of the individual against the growing temptation to use the human body for commercial purposes and to transform the person into an object of satisfaction of another's needs⁶³.

The obligation to "respect" the prohibition to turn the human body or parts thereof into a source of profit is expressed by the recognition of such actions as unlawful and punished. Fulfilling this obligation is primarily to refrain from actions that violate the bodily integrity of the individual without his or her consent and for the purpose of commercializing his or her body or parts thereof. Respect for this duty is also to proclaim the donation of donations free of charge, to prevent the creation of "black" markets for trade in human bioresources, to organize the work of law enforcement agencies in the field of prevention of trade in the human body and its parts, and to provide biomedical control services for biomedical transplantation legal regulation of this field of medicine.

1.3.7 Parenthood Issues

Human cloning technology as a form of artificial reproduction can lead to a change in social consciousness, the emergence of a number of social problems and contradictions, legal conflicts.⁶⁴ Relationships between people and clones, the rights and responsibilities of the cloned relative to their clones and vice versa - all these are not easy problems. Who will be the clones in their own perception and how will the others be treated? Will the clones not become lower-class people? Can a clone consider its clone's family? What will be the relationship between the clone and the mother, between the mother and the cloned, between the mothers of the clones? Is the clone obliged to keep their clones and will they have the right to inherit? Since three individuals are involved in the cloning process: the cell donor, the egg donor, and the surrogate mother, identification of paternity will also be a serious problem. Well, if the cell is taken from a man (then clearly who is the father), but you can clone a female cell. As for the cloning itself, in fact it falls under the classification of biological

⁶³ Shalev S. (2013) Human Cloning and Human Rights: A Commentary [Online]. <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2013/07/8-Shalev.pdf>

⁶⁴ Human Cloning And Human Dignity (2002): An Ethical Inquiry. [Online]. <https://bioethicsarchive.georgetown.edu/pcbe/reports/cloningreport/children.html>

technology, i.e. it can be patented (this is the sphere of the law on protection of intellectual property). All these legal conflicts can cause major changes in constitutional, civil, family and other areas of law.⁶⁵

Thus, there are many problematic issues in terms of respect for basic human rights in human cloning, so a thorough study of the current practice of regulating this issue in the global legislative space is required.

Thus, the aspects discussed in this section require a more in-depth review of the legal regulation of human cloning and responsibility for it in world and European law; therefore, in the next section author will consider specific legal acts of the UN, EU and individual states in the field of cloning as a criminal act.

⁶⁵ Shalev S. (2013) Human Cloning and Human Rights: A Commentary [Online]. <https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2013/07/8-Shalev.pdf>

CHAPTER 2

HUMAN RESEARCH IN INTERNATIONAL AND EUROPEAN LAW

2.1 International Legal Framework

The first efforts to reach a common international agreement on the basic principles of biomedicine were made by UNESCO and the Council of Europe (see app.2). A number of important international instruments have been adopted under the auspices of these international organizations: Universal Declaration on the Human Genome and Human Rights, UNESCO 1997⁶⁶; Convention on the Protection of Human Rights and Dignity in Respect of the Use of Biology and Medicine: The Convention on Human Rights and Biomedicine, Council of Europe 1997⁶⁷; Supplementary Protocol to the Council of Europe Convention on the Protection of Human Rights and Dignity for the Use of the Advances in Biology and Medicine on the Prohibition of Cloning in 1998⁶⁸; as well as the Additional Protocols to the same Convention on Transplantation of Organs and Tissues of Human Origin in 2002 and on Biomedical Research on Humans in 2005⁶⁹; International Declarations on Human Genetic Data, UNESCO 2003; UN Declaration on Human Cloning 2005; Universal Declaration of Bioethics and Human Rights, UNESCO, 2005. The World Health Organization (WHO), the World Health Organization (WMA), and the Council of the International Organization for the Medical Sciences (RMOM) have been actively involved in the development of these documents. Among the most important European Union documents laying down the foundations for the legal regulation of biomedicine are the following: the Charter of Fundamental Rights of the European Union 2000 (the EU Charter)⁷⁰.

⁶⁶ Universal Declaration on the Human Genome and Human Rights [Online]. https://unesdoc.unesco.org/ark:/48223/pf0000122990_eng

⁶⁷ The Convention on Human Rights and Biomedicine [Online]. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/164>

⁶⁸ Convention for the Protection of Human Rights and Dignity of the Human [Online]. <https://rm.coe.int/168007cf98>

⁶⁹ Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research [Online]. <https://rm.coe.int/168008371a>

⁷⁰ Charter Of Fundamental Rights Of The European Union [Online]. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

All international human rights instruments, since the United Nations Universal Declaration of 1948, have sought to promote the idea that man is an end in itself and not a means, and has made it a principle of national law. Most modern legal systems perceive a person as a subject of legal relations that is, as a person, which is an integral living organism as the unity of body, soul and mind, which acts in a certain social context, that is, constantly changing, evolving, and satisfying its needs.

Modern law on the right to life also contains remarks on human cloning. For example, general comment No. 36 on article 6 of the International Covenant on Civil and Political Rights⁷¹ on the right to life affirms "Every human being has the inherent right to life". Applicability of the article to the unborn and other forms of human existence (frozen embryos, clones etc.). Therefore, human cloning should take into account this right and its observance in the case of reproductive cloning. Legislative consolidation of this provision was a legal response to the progress of biomedicine. This rule means that a donor who donates organs, blood, stem cells, gametes and other biomaterials of human origin should not receive any tangible benefits from this other than compensation for justifiable expenses, such as hospitalization or lost income over time conducting the donation procedure itself.

2.2 Regional Legal Framework

2.2.1 Council of Europe

Universal Declaration on the Human Genome and Human Rights⁷² in Art. 1 proclaims the basic principle: "The human genome is at the heart of the initial communion of all members of the human race, as well as the recognition of their inalienable dignity and diversity. The human genome marks a product of humanity" At the same time, Art. 11 warns: "A practice contrary to human dignity, such as the practice of cloning for the purpose of reproducing a human personality, is not permitted. States and competent organizations are invited to cooperate with a view to identifying such practices and taking the necessary measures at

⁷¹ General comment No. 36 (2018) of International Covenant on Civil and Political Rights [Online]. <http://astra.org.pl/un-human-rights-committee-general-comment-no-36-2018-on-article-6-of-the-international-covenant-on-civil-and-political-rights-on-the-right-to-life/>

⁷² Universal Declaration on the Human Genome and Human Rights [Online]. https://unesdoc.unesco.org/ark:/48223/pf0000122990_eng

national and international levels in accordance with the principles set out in the present Declaration. "However, it should be noted that the rules of this document are declarative.

The European Parliament resolution of 1989 recognizes cloning as a serious violation of fundamental human rights, which is contrary to the fundamental equality of human beings, since it allows for racial and eugenic selection of the human race, degrades human dignity and leads to experimentation on human embryos.⁷³ The interests and well-being of the individual prevail over the exclusive interests of all society or science (Article 2 of the Convention on the Protection of Rights and human dignity in the application of biology and medicine: Convention on Human Rights and Biomedicine of 04.04.1997⁷⁴).

The human genome is at the basic of the all human beings, as well as their recognition of their dignity and diversity. The human genome marks the heritage of mankind (Article 1 of the Universal Declaration of the Human Genome and Human Rights⁷⁵). Everyone has the right to respect for his or her dignity and its rights, regardless of genetic characteristics. Such dignity undoubtedly means that a person's personality cannot be reduced to its genetic characteristics and requires respect for its uniqueness (Article 2 of the Universal Declaration of the Human Genome and Human Rights). The human genome by virtue of its evolutionary character is prone to mutations. It encompasses opportunities that manifest themselves differently depending on each person's natural and social environment, including health, living conditions, nutrition and education (Article 3 of the Universal Declaration of the Human Genome and Human Rights⁷⁶). The human genome in its natural state should not serve as a source of income (Article 4 of the Universal Declaration of the Human Genome and Human Rights⁷⁷).

⁷³ Universal Declaration on the Human Genome and Human Rights [Online]. https://unesdoc.unesco.org/ark:/48223/pf0000122990_eng

⁷⁴ Convention for the Protection of Human Rights and Dignity of the Human [Online]. <https://rm.coe.int/168007cf98>

⁷⁵ Universal Declaration on the Human Genome and Human Rights [Online]. https://unesdoc.unesco.org/ark:/48223/pf0000122990_eng

⁷⁶ Universal Declaration on the Human Genome and Human Rights [Online]. https://unesdoc.unesco.org/ark:/48223/pf0000122990_eng

⁷⁷ Universal Declaration on the Human Genome and Human Rights [Online]. https://unesdoc.unesco.org/ark:/48223/pf0000122990_eng

The Declaration of Human Cloning⁷⁸ calls on States to take all necessary measures to protect human life in the biological sciences and to prohibit all forms of human cloning that violate human dignity.

The Declaration states that scientists are concerned that calls are being made to stop, not fund or interrupt cloning research. It is pointed out that in cloning higher animals, a person may have moral complications that cannot comprehend the human mind. However, the prevailing trend is the prohibition of human cloning caused by the inability to predict and predict the results of cloning.

Initially, the Convention on the Protection of Human Rights and Dignity in Relation to the Use of the Advances of Biology and Medicine: The Convention on Human Rights and Biomedicine⁷⁹ was designated as protecting human dignity and individuality. In Art. 2 proclaimed: "The interests and welfare of the individual dominate the interests of society or science." At the same time, Section IV of the Declaration of the Human Genome calls for the latest advances in medicine to be avoided, to prevent them from being used against the individual. Many of the rules are, if not textually, the same as those of the Declaration of the Human Genome. Although the Convention does not explicitly refer to cloning, it lays down general principles for the manipulation of directly related genetic material. Art. 18 is dedicated to in vitro embryo studies: "1. If the law permits research on embryos in vitro, it must provide for the proper protection of that embryo. 2. The creation of human embryos for research purposes is prohibited⁸⁰".

The guarantee of implementation of the provisions of the 1987 Convention is the norm of Art. 1, which requires signatory parties to include "its main provisions in national law".

At the same time, the international community has come to understand the need to adopt a special document aimed at regulating cloning relationships. On November 2, 2001, the United Nations General Conference on Education, Science and Culture adopted resolution 22, which made recommendations for research into the development of common standards in

⁷⁸ Universal Declaration on the Human Genome and Human Rights [Online]. https://unesdoc.unesco.org/ark:/48223/pf0000122990_eng

⁷⁹ Convention for the Protection of Human Rights and Dignity of the Human [Online]. <https://rm.coe.int/168007cf98>

⁸⁰ Convention for the Protection of Human Rights and Dignity of the Human [Online]. <https://rm.coe.int/168007cf98>

bioethics.⁸¹ On 25 April 2003, the Human Rights Commission adopted resolution 2003/69 on Human Rights and Bioethics, which called on all States to participate in discussions around cloning.⁸² The resolution was initiated by European states such as Germany, Italy, France, Switzerland, and non-European countries were represented by Algeria. According to these documents, the agenda of the 59th session of the UN General Assembly - the International Convention against Human Cloning for Reproduction - was identified.

On July 16, 2004, the Economic and Social Council of the United Nations (ECOSOC) adopted resolution 2004/9 "Genetic confidentiality and non-discrimination", stating that the life and health of humans are inextricably linked to the development of biological sciences and the social sphere. ECOSOC "strongly urges States to continue to support research in human genetics, subject to accepted scientific standards and ethics, and to conduct such studies for the benefit of all people, noting that full respect for human rights is essential in conducting such studies. freedom and dignity of people, as well as the prohibition of all forms of discrimination on the basis of genetic characteristics⁸³."

The implementation of these provisions resulted in the 1998 Additional Protocol on Human Cloning to the said Convention. In Art. 1, it states that any intervention aimed at creating a person genetically identical to another person alive or dead is prohibited.⁸⁴

A similar attitude of the international community to the issue of human cloning is reflected in Art. 11 of the Universal Declaration of the Human Genome and Human Rights of UNESCO 1997⁸⁵, which explicitly states that "practices contrary to human dignity, such as reproductive cloning of human beings, should not be allowed". At the fiftieth session of the World Health Assembly, it was decided that "the use of cloning to reproduce a human individual is ethically

⁸¹ Resolutions and Decisions Adopted by the General Assembly [Online]. <https://www.gdrc.org/doyourbit/A-RES-57-249.pdf>

⁸² Commission on Human Rights Resolution 2003/69: Human Rights and Bioethics [Online]. <https://www.refworld.org/docid/43f3134b17.html>

⁸³ Economic and Social Council of the United Nations [Online]. <https://www.un.org/ecosoc/en/home>

⁸⁴ Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research [Online]. <https://rm.coe.int/168008371a>

⁸⁵ Universal Declaration on the Human Genome and Human Rights [Online]. https://unesdoc.unesco.org/ark:/48223/pf0000122990_eng

unacceptable and contrary to human integrity and morality⁸⁶."

In 1998, the World Health Organization confirmed that "cloning for reproduction of human beings is ethically unacceptable and contrary to human dignity and integrity⁸⁷." In 2005, the United Nations adopted the Declaration on Human Cloning, which called on its Member States to ban all forms of human cloning to the extent that they were incompatible with human dignity and protection of human life.

Indeed, current international and national laws tend to prohibit human cloning. It is not difficult to identify the reasons underlying such harmony, given the problems, safety and risks that this biomedical practice may entail. Despite the potential benefits, cloning human beings will damage the emotional and mental well-being of the individual, undermine human dignity, self-independence and autonomy of the replicant, encroach on the sense of self-determination of the donor, and create the possibility of disorder and ambiguity reproductive processes and the integrity of the human personality.

The foregoing suggests that international cloning documents, on the one hand, aim to protect a number of fundamental rights and freedoms (the right to life, individuality, genetic integrity and dignity of the individual), the "integrity of the individual" and, on the other, the natural biological diversity of mankind, which may be endangered in the event of widespread use of the cloning technique.

2.2.2 European Union

Based on this understanding of human nature, modern ideas about natural human rights have emerged. The legislation of all modern European countries states that the needs and interests of the individual are the highest criterion, the content of social development and the ultimate goal of society. Thus, a person is recognized as the highest social value and the modern law has viciously introduced the principle that each individual is a unique and unique personality, which has no material equivalent. This means that a person, his or her body and its parts cannot be subject to sale and to any material value, since it contradicts human dignity and transforms the person from subject to object, from the purpose in itself to a means of

⁸⁶ World Health Assembly position on cloning in human reproduction, p.13

⁸⁷ World Health Organization: Ethical, Scientific and Social Implications of Cloning in Human Health, Geneva [Online]. http://www.who.int/ethics/en/A53_15.pdf

satisfying others needs.

The manifestation of the commitment of all European Union countries to the principle of non-use of the human body for financial purposes was the inclusion of a prohibition clause in the field of biology and medicine to use the human body and its parts as a source of financial profit in Part 2 of Art. 3 of the EU Charter.

The right to the integrity of the individual has an important place in the system of fundamental rights and freedoms of the European Community, as it is enshrined in the first section of the EU Charter⁸⁸, entitled "Dignity", namely Art. 3, immediately after the proclamation of the inviolability of human dignity (Art. 1) and the right to life (Art. 2), but before all other fundamental human rights, such as freedom from torture, ill-treatment and slavery (Art. 4, 5), the right on security and personal integrity (Article 6), the right to respect for family and private life (Article 7), etc.. This means that the violation of the human right to the integrity of the individual constitutes an encroachment on human dignity and entails the restriction of other rights and freedoms enshrined in the Charter of the EU⁸⁹.

It is worth noting that Ukrainian lawmakers have shown increased interest in the problem of prohibition of reproductive cloning of human beings. In 2004, taking into account the provisions of the EU Charter, the Law of Ukraine "On Prohibition of Human Reproductive Cloning" was adopted. Ukraine signed the 1997 Convention on Human Rights and Biomedicine and the 1998 Additional Protocol on Human Cloning. conducting human reproductive cloning, as well as for the import into the territory of Ukraine, export from the territory of Ukraine, sale, storage or purchase of cloned human embryos.

2.2.3 Responsibility for the Cloning of Human in the Modern Law of Foreign Countries

Cloning as an independent crime occupies a special place in the Special Part of the Criminal Code (hereinafter - the Criminal Code) of many states (see app. 3). This act is usually classified as a specific category of crimes against a person (Hungary, Colombia, Romania, El Salvador, Estonia). Thus, in the Criminal Code in the middle of the section on crimes against

⁸⁸ Charter Of Fundamental Rights Of The European Union [Online]. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁸⁹ Charter Of Fundamental Rights Of The European Union [Online]. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

a person, the composition of the crime is referred to in the chapter "On genetic manipulation", in the Criminal Code of Romania - "Crimes related to genetic manipulation", in the Criminal Code of Estonia - "Illegal treatment of the human embryo"⁹⁰.

However, there is also a fundamentally different approach. In the Criminal Code of Moldova, this crime is contained in the chapter "Crimes against the peace and security of mankind, war crimes". At the same time, a number of other cloning-related composition were referred by the legislator to the section on "Health Crimes".

According to the analysis of foreign legislation, the legal structures of cloning are quite simple and local. Some of them have no definition of cloning at all. For example, Art. 144 of the Criminal Code of Moldova states: "The creation of human beings by cloning is punishable by imprisonment for a term of 7 to 15 years." In the Criminal (Penal) Code of Estonia, it is a problem of "Human cloning, as well as the creation of a hybrid or chimeric person" (p. 130).

Article 130 of the Criminal (Penal) Code of Estonia⁹¹ "Prohibited Acts with Embryo" provides for criminal liability for human cloning, as well as for the creation of a hybrid or chimeric person punishable by monetary penalties or imprisonment for a term up to three years. However, genetic scientists have concluded that it is impossible to obtain viable stem cells from chimeric (hybrid) embryos. In particular, Council of Europe Recommendation No. 1046⁹² of 24 September 1986 on the use of embryos and fetuses for the purposes of diagnosis, therapy, research, industrial use and trade, in Article 13 (d), urges the governments of the participating States prohibit anything that may be considered as unwanted use of the embryo or fetus, including:

- implantation of a human embryo into the uterus of another animal or vice versa;
- merging of a person's gametes with that of another animal;
- creation of embryos from sperm of different people;
- embryo attachment or any other action that may give rise to chimeras.

The rule provided for in Article 131 of the Criminal (Penal) Code of Estonia⁹³ "Abuse of

⁹⁰ Penal Code of Estonia [Online]. <https://www.riigiteataja.ee/en/eli/522012015002/consolide>

⁹¹ Penal Code of Estonia [Online]. <https://www.riigiteataja.ee/en/eli/522012015002/consolide>

⁹² Recommendation 1046 (1986) Use of human embryos and foetuses for diagnostic, therapeutic, scientific, industrial and commercial purposes [Online]. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15080&lang=en>

⁹³ Penal Code of Estonia [Online]. <https://www.riigiteataja.ee/en/eli/522012015002/consolide>

human embryo or foetus", which criminally defines an extracorporeal creation of a human embryo, carried out without the purpose of transferring the embryo to the right or having an establishment, or by a person who has no legal right to do so, or the extracorporeal storage of the human embryo in a non-frozen form beyond the statutory deadline, or the implementation of a human embryo agreement at a monetary order punishable by monetary recovery⁹⁴.

In those criminal liability laws where the concept of "cloning" is disclosed, it is only about its reproductive (not therapeutic) variety. In the Criminal Code of Hungary, Spain, Colombia, Romania, we are talking about the creation of "genetically identical human beings", in the Criminal Code of Mexico (Federal District) as the creation of human beings by cloning, and in the Criminal Code of El Salvador (Art. 140) human reproduction.

In Spain, criminal responsibility for cloning a human embryo is also provided for in a separate legal act on human rights to reproduction (Derecho a la reproducción humana (inseminación y fecundación in vitro)) adopted in 1988⁹⁵. In 1995, criminal responsibility for cloning began to provide and the Criminal Code of Spain.

Thus, under the Criminal Code of Hungary, a person who creates a genetically equivalent genetic person is brought to criminal responsibility during an experimental study or in the framework of a medical procedure. Only in the Criminal Code of France is the differentiation of responsibilities between reproductive and other types of cloning⁹⁶.

At present, some of the European nations have fairly clear and defined positions regarding the legal status of the body and the mode of treatment of parts of the human body. In France, for example, legislation on the ethics of biological research, adopted in 1994, contains the principle of non-commercialization of the human genome and any parts of the human body. This legislation is the most expressive example of the implementation of a personal, non-property approach to human rights in relation to its body. Yes, in Art. 16-1 of the Civil Code

⁹⁴ Penal Code of Estonia [Online]. <https://www.riigiteataja.ee/en/eli/522012015002/consolide>

⁹⁵ Derecho a la reproducción humana (inseminación y fecundación in vitro) [Online]. <http://www.juridicas.unam.mx>.

⁹⁶ Criminal Code of France [Online]. https://www.legislationline.org/download/id/8360/file/France_CC_am092019_fr.pdf

of France⁹⁷ states that the human body and its parts are not subject to patrimonial rights, and Art. 16-5 states that agreements designed to impart patrimonial value to the human body, its elements or products are invalid. Thus, under French law, an individual is protected from encroachment on his integrity by imposing a ban on commercialization of the human body, since in the absence of property rights to the human body, individuals can only "donate" their organs or tissues, of course with their own informed consent. In addition, the legislation of the French Republic does not allow the person who agrees to experiment with himself to be rewarded for taking items or collecting products of his body. In France, it is also forbidden to provide information that allows the identification of a donor who donates an item or product of his body or the recipient of such a donation. The donor may not be acquainted with the recipient, and vice versa: only in the case of a therapeutic need, only donor and recipient physicians can access information that allows the identification of these two stakeholders.

The UK Human Organ Transplantation Act 1989 prohibits the sale and sale of human organs⁹⁸. This provision also confirms the British Human Tissue Act 2004, which in Art. 32 prohibited the commercial conduct of human material intended for transplantation⁹⁹. This act extends the prohibition on commercialization of the human body to all biomaterials of human origin (with certain exceptions, such as nails and hair) used for transplantation. Under the law of that country, in addition to the actual sale and purchase of human body parts, the offence also recognizes the mediation of trade in organs and tissues of human origin, such as placing a supplier, negotiating the purchase or sale of human material.

Important in the context of the study of the prohibition of reproductive cloning of humans as an essential element of the right to personality integrity in EU law is the definition of the very concept of "cloning of human beings". The cloning of human beings in EU law refers to the process of creating a new person genetically identical to another living or dead person. Such an interpretation of this concept is given by the European Group on Ethics and Modern Technologies and most international documents relating to the legal regulation of the issue

⁹⁷ The Civil Code of France [Online]. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwig_PuUvovoAhVmxosKHaWfCbYQFjAAegQIAhAB&url=https%3A%2F%2Fwww.legifrance.gouv.fr%2Fcontent%2Fdownload%2F1950%2F13681%2Fversion%2F3%2Ffile%2FCode_22.pdf&usg=AOvVaw0QZoE4vEx8YiypWcjgNbYY

⁹⁸ UK's The Human Organ Transplants Act 1989 [Online]. <http://www.legislation.gov.uk/ukpga/1989/31/enacted>

⁹⁹ UK's The Human Tissue Act 2004 [Online]. <http://www.legislation.gov.uk/ukpga/2004/30>

under study¹⁰⁰.

The European Parliament defines human cloning as the creation of human embryos that share the same genetic set with another human dead or alive at any stage of its development from fertilization, without any difference as to the method used. The 1998 European Commission Directive on the protection of biotechnological inventions defines cloning as any process, taking into account the methods of splitting an embryo, which intends to produce a person with the same nuclear genetic information as another, living or dead person¹⁰¹.

The most detailed concept of cloning is defined in the report "Ethical Aspects of Cloning Technology" by the Group of Advisers on the Ethical Application of Biotechnology, which was introduced in 1997 at the request of the President of the European Commission. This document stated that cloning is the process of creating a "genetically identical" organism. According to this report, the human cloning process can occur both by dividing a single embryo when nuclear genes and a small number of mitochondrial genes are "identical", and by transplanting a nucleus when only nuclear genes are "identical". The Advisers Group, however, noted that genes may be altered or lost during human development, gene set may be identical, but it is unlikely that the genes themselves will ever be completely identical. Therefore, in the current context, it was decided to use the term "genetically identical" in the context of defining cloning biotechnology in the sense that it "shares the same nuclear gene set¹⁰²".

From the definitions above, the concept of "cloning of human beings" can be summarized that this biotechnology is an alternative to sexual reproduction. Human reproduction through cloning can be called "unnatural" reproduction, because it produces genetically identical offspring. For the natural (sexual) way of reproduction of a person is characteristic that the offspring are genetically different from their parents. This is the meaning of evolution and development, and it is this reproduction that gives rise to a new combination of genes that gives the right to claim that each person is unique.

¹⁰⁰ European Group on Ethics in Science and New Technologies (EGE) [Online]. https://ec.europa.eu/info/research-and-innovation/strategy/support-policy-making/scientific-support-eu-policies/european-group-ethics-science-and-new-technologies-ege_en

¹⁰¹ Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions

¹⁰² Ethical aspects of cloning techniques [Online]. <https://op.europa.eu/en/publication-detail/-/publication/e71ab82d-252b-11e9-8d04-01aa75ed71a1/language-en/format-PDF/source-118123361>

2.2.4 Current Debate

With the development of society, the latest technologies and medicine, a category of human rights as human rights of the fourth generation - has already been recognized by many scholars. Traditionally, the rights of the fourth generation have been attributed to the rights to artificial insemination, euthanasia, organ transplantation, cloning, the right to independent living on religious, moral grounds, etc. These fourth-generation human rights include health care (so-called somatic rights) in the fields of artificial insemination, euthanasia, organ transplantation, cloning and other rights. However, the exercise of these rights causes a great deal of debate, as it contains a number of unresolved issues.

Opponents of the legislative ban on the transformation of the human body into a source of financial gain in European law seek to legalize the sale of organs and parts of the human body, and put forward three main arguments to defend their position. The first is that people have the right to liberty, autonomy and self-determination and should therefore be free to do whatever they wish with their own bodies. The general scheme of understanding freedom in a field such as transplantation appears in a slightly modified or sharpened sense. Establishing the needs and interests of the individual is the highest criterion, the content of social development and the ultimate goal of society has been transformed into the freedom to realize human rights in relation to one's bodily existence, the freedom to violate the integrity of one's body, the freedom to dispose of one's own biomaterial¹⁰³.

Given the ban on human cloning, it is still necessary to look for ways of legal regulation of this field of medicine and biology. It is almost impossible for artificial barriers to halt the development of science. Sooner or later, we will be confronted with the need to regulate certain social relationships that arise from new discoveries in the field of cloning. It is necessary to strive to implement the principle of "regulation in advance" when the law provides the boundaries within which the social relations associated with cloning develop.

The UN Declaration on Human Cloning¹⁰⁴ signed by leading scientists of the world, laureates of many, including the Nobel Prize, for awards in success in various fields of science, became

¹⁰³ Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions

¹⁰⁴ United Nations Declaration on Human Cloning [Online]. <https://undocs.org/en/A/RES/59/280>

vital. The Declaration states that scientists are concerned that calls are being made to stop, not fund or interrupt cloning research. It is pointed out that in the cloning of higher animals, humans can have moral complications that will not be able to grasp the human mind. However, the prevailing trend is the prohibition of human cloning caused by the inability to predict and predict the results of cloning.

The use of cloning techniques as one of the possible forms of human reproduction should not be prohibited by law, but must be strictly controlled by scientists, the state, and the public. Cloning a human body is different from cloning its individual cells. It is a form of asexual reproduction of a person and can be used by both man and woman to reproduce their genotype. The human clone resulting from such a procedure is a certain resemblance to the so-called "delayed genetic twin". As a result, the question arises as to whom to consider the organism obtained - a twin of the person or his child. R. Chester¹⁰⁵ proposes to consider the genetic father and the resulting cloning child as representatives of different generations. Until the result of modern scientific technology creates an artificial uterus, a man who wished to clone himself would have to find a woman who would become a surrogate mother for the clone. In the absence of medical contraindications and a desire, the woman can bear and give birth to her clone herself or also resort to the services of a surrogate mother (illegal in some countries). The least problematic from the point of view of the law, at first glance, is the case when a married woman, with the consent of her husband, wishes to use the cloning technique as a form of artificial insemination and is about to bear the clone herself. In the event that one spouse decides to clone himself and the other agrees, there is no legal problem. The couple is recognized as the parents of a child born as a result of cloning. If one of the parties does not recognize their paternity or maternity, there are legal mechanisms in foreign countries to resolve this problem, similar to how this problem is addressed in the case of ordinary children¹⁰⁶.

When a man is about to have a baby by cloning, he is in any case facing the problem of a surrogate mother. This problem also exists in the case of artificial insemination¹⁰⁷. A surrogate mother carrying a clone of a man is a gestational rather than a genetic surrogate, so a

¹⁰⁵ Chester R. (2001) Cloning for human reproduction: one American perspective.

¹⁰⁶ Chester R. (2001) Cloning for human reproduction: one American perspective.

¹⁰⁷ American Society for Human Genetics (ASHG) [É.-U.]. (August 2017) Human Germline Genome Editing, p.

surrogate mother may challenge her parental rights in court on the basis of the birth of a given child. A genetic surrogate will be a woman who agrees for the artificial fertilization of her egg with the sperm of a potential father and for the implantation of the egg. Gestational is called a surrogate pregnancy, in which a woman agrees for the money to implant an embryo obtained by fertilizing another woman's egg. Such a surrogate mother has less reason to sue, since her DNA can be detected only in the mitochondria of the cells of the clone organism, but not in its genotype¹⁰⁸. Currently, the laws of some US states provide for maternity of a gestational surrogate mother for a baby, despite the fact that she has no genetic connection to it.

The examples above illustrate the need to use traditional legal principles developed for human reproduction, and in cases of human cloning, which is another method of combating infertility. However, the reaction of various state, religious and public institutions of modern states is overwhelmingly limited to the prohibition of human cloning research. First of all, the field of artificial insemination is insufficiently regulated by law. There are many problems: the lack of infertile couples has no other way to give birth to a child than to pay huge sums to the appropriate clinics; surrogate mothers may be operated depending on the situation and the payment for their services. At present, these issues are regulated by concluding relevant agreements between the parties. The question remains: should society try to legislate the market for these services in order to put the parties to such an agreement in a clearly equal legal position?

The main argument against cloning is often called that in the early stages of human cloning involves the destruction of one embryo in order to obtain another, which will continue to develop. However, in denying this, it should be noted that more than 60% of embryos that we receive as a result of natural fertilization are not implanted into the uterine wall and do not develop further. An interesting fact is that both the cloned embryo and the embryo produced in vitro from two gametes are more legally protected than after being placed in the body of the mother, since she may eventually have an abortion for various reasons. Assuming that human cloning becomes a reality, then a man or woman can clone themselves without the help or consent of the other party, except for the surrogate mother. This perspective undermines traditional family foundations, above all the idea of a partnership in child-rearing. We believe that the problem that arises in this connection, the separation of the child - emotionally and financially - from the potential second "father" must be legislated at the level

¹⁰⁸ American Society for Human Genetics (ASHG). (August 2017) Human Germline Genome Editing, pg. 168

of law-enforcement bodies by the time when human cloning becomes a reality¹⁰⁹.

Human cloning is a new and, at the same time, unexplored legal field that requires legislative regulation to prevent abuse. Below are some proposals made on various aspects of cloning, which are considered in the law to meet public needs¹¹⁰.

1. Clones of humans must formally have the same legal rights and responsibilities as any other human being. Humans will not be allowed to keep a clone as a pet or second-class person for their body parts. Poor treatment of any human being is a crime regardless of the closeness of their genetic code.

2. A person must not clone without his or her written consent. Any person is automatically granted the right to own their genetic code and to dispose of it at their own discretion; the code must remain under its control. A person should be allowed to determine his fate: whether he wants to clone himself after death, and under what conditions. Prohibit the cloning of minors because they have not yet reached the maturity to make this kind of decision.

3. Human clones should be born and born only by an adult, acting on their own free will, without coercion. The cultivation of human fetus outside the body of a woman, such as in laboratory apparatus, should be prohibited. There is currently no technology for artificial fruit production.

4. There is a reason to believe that the predisposition to violence and killing is genetically determined. The cloning of convicted murderers and other cruel offenders should be banned. There are enough criminals in the world without their artificial creation. The ban must undoubtedly extend to the known mass murderers of the past¹¹¹.

The above considerations indicate that the legal significance and power of a particular human right is not an issue that can be resolved once and for all. The legal validity of human rights may change over time, as some elements of it that have not been considered relevant at some point in time may become so in the future.

Given that the importance of certain elements of the right to the integrity of the individual may change over time, the question arises as to how its legal validity will change in the future. There are two factors that prevent you from making any predictions. First, the legal

¹⁰⁹ Kharatyan T. (2018) Constitutional right to life under conditions of development of modern biotechnologies

¹¹⁰ Martens. K. (2018) The Law and Human Cloning [Online]. <https://www.lexology.com/library/detail.aspx?g=81132fd8-f391-48a7-ad0b-7f96eda2caf8>

¹¹¹ American Society for Human Genetics (ASHG). (August 2017) Human Germline Genome Editing, pg. 168

validity of the right to the physical and mental integrity of the individual in the future will depend on the willingness of EU citizens, national mechanisms of justice and law enforcement, courts, lawyers, doctors and scientists to apply it in their practice. The second factor is the degree of biotechnical development of a particular country, which will expand the possibilities of practical interference with the physical and mental integrity of the individual, and possibly completely change the types of self-understanding of our human race¹¹².

Despite all this, there is a tendency in the world to recognize a new category of biomedical individual rights, among which the right to physical and mental integrity will occupy one of the first places. Following the adoption of the EU Charter¹¹³ by EU lawyers and experts in bioethics, scientific work is underway to clarify the normative content of the human right to the integrity of the individual in the field of biomedicine, and mechanisms for the protection and enforcement of this right at international and national instances are being developed very slowly. Thus, it can be argued that this rights is slowly but surely penetrating modern life and law-enforcement practices, including through restrictions on the use of cloning for purposes other than therapeutic effects.

In almost all countries in the world where cloning is specifically criminalized, it is punishable by a term of imprisonment. However, the maximum penalty for such criminal offenses varies significantly. In particular, they are: 3 years in Estonia; 5 years - Brazil, Spain; 6 years - Colombia, Mexico, El Salvador; 10 years in Great Britain, Hungary, Romania, Slovenia, USA, Japan; 15 years in Moldova; 30 years or life imprisonment in France¹¹⁴.

Therefore, the prohibition of cloning is also becoming more widespread at the level of national legislation. However, it has to be stated that the most industrialized countries, such as the United States, the United Kingdom, France, Germany, Italy, the Netherlands, Russia and some others, are currently concerned about this problem. Cloning is a progressive method of medical recovery, so its total prohibition hinders the development of medicine and violates the human right to health, so developed countries are seeking optimal legal regulation between

¹¹² Martens. K. (2018) The Law and Human Cloning [Online]. <https://www.lexology.com/library/detail.aspx?g=81132fd8-f391-48a7-ad0b-7f96eda2caf8>

¹¹³ Charter Of Fundamental Rights Of The European Union [Online]. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

¹¹⁴ Martens. K. (2018) The Law and Human Cloning [Online]. <https://www.lexology.com/library/detail.aspx?g=81132fd8-f391-48a7-ad0b-7f96eda2caf8>

cloning authorization and basic human rights¹¹⁵.

There is currently some debate about the possibility of decriminalizing certain types of reproductive cloning¹¹⁶, as well as the fight against criminal donation in the context of human cloning. There are also experiments on cloning in different countries, in particular in China, but these debates are aimed primarily at strengthening human rights protection, and secondly at the possibility of using cloning as a medical act.

The problem of human cloning has not only technological and moral aspects. It should be considered more broadly, in the context of the progress of science, the possibility and necessity of its regulation, including the legal and ethical aspects of any research work. And it is about the legal regulation of human cloning at national and international levels. This is the case when the legal influence has a cautionary character and allows to trace the emergence and development of a new branch of legal regulation. Thus, every phenomenon that arises in society generates relationships that need their own clear legal regulation. Similarly, the advancement of biomedicine, such as cloning, has raised many issues that need to be addressed and regulated through legal rules.

Thus, author examined how criminal liability for cloning is regulated in international and European legislation, and now we can proceed to consider this issue directly in the legislation of Ukraine in order to formulate proposals for its improvement.

¹¹⁵ Kharatyan T. (2018) Constitutional right to life under conditions of development of modern biotechnologies

¹¹⁶ Martens. K. (2018) The Law and Human Cloning [Online]. <https://www.lexology.com/library/detail.aspx?g=81132fd8-f391-48a7-ad0b-7f96eda2caf8>

CHAPTER 3

CURRENT STATE AND DIRECTIONS OF IMPROVEMENT OF UKRAINIAN CLONING LEGISLATION

The prohibition of cloning in Ukraine concerns mainly reproductive cloning, since therapeutic cloning is partial and does not have such consequences. The problem with reproductive cloning for Ukraine is that such cloning can become a source for the "black market" of organs for transplantation, as well as other criminal acts with the results of reproductive cloning. Therefore, it is advisable to examine the specific features of Ukrainian legislation in the field of counteracting reproductive cloning and the use of its results, and to suggest possible improvements to the criminal legislation on cloning in the context of human rights protection.

3.1 Ukrainian Cloning Laws and Problems of Human Rights

Human cloning is a new and poorly researched legal field that requires full and clear legislative regulation to prevent abuse in this area. Ukraine has moved towards introducing international cloning legislation into its own legal system. Its first steps were the adopted laws - the Law of Ukraine "On transplantation of organs and other human anatomical materials"¹¹⁷ and the Law of Ukraine "On prohibition of human reproductive cloning"¹¹⁸.

The Law of Ukraine "On transplantation of organs and other human anatomical materials"¹¹⁹ "refers to the conditions for the provision of fetal material for transplantation. According to this Law, fetal materials are anatomical materials of a dead embryo (fetus) of a person (Part 7, Art. 1)¹²⁰. For transplantation, they are provided with the consent of the woman who decides to have an abortion. In addition, no remuneration is paid to her and the damage caused by the

¹¹⁷ Law of Ukraine On Transplantation of Organs and Other Human Anatomic Material [Online]. <https://zakon.rada.gov.ua/laws/annot/ru/1007-14>

¹¹⁸ Law of Ukraine "On prohibition of human reproductive cloning" [Online]. <https://zakon.rada.gov.ua/rada/annot/en/2231-15/sp:100>

¹¹⁹ Law of Ukraine On Transplantation of Organs and Other Human Anatomic Material [Online]. <https://zakon.rada.gov.ua/laws/annot/ru/1007-14>

¹²⁰ Law of Ukraine On Transplantation of Organs and Other Human Anatomic Material [Online]. <https://zakon.rada.gov.ua/laws/annot/ru/1007-14>

embryo removal is not compensated. But some doctors who want to make money pay \$ 200-300 for abortion women, bringing their baby to the right time when the age of the cells is optimal. As a rule, it exceeds the three-month term stipulated by the Ukrainian legislation for abortion. Doctors provoke a miscarriage from which punctures are taken.

In order to minimize this situation, it is necessary to legally define the list of social indications for artificial termination of pregnancy. We propose to present it as follows: presence of a court decision on deprivation or restriction of parental rights, pregnancy as a result of rape, stay of a woman in places of imprisonment, disability of 1-2 groups in a husband, death of a husband during pregnancy of a wife, presence of one and spouses of status a refugee or internally displaced person who is not married.

The Law of Ukraine "On Transplantation of Organs and Other Anatomical Materials"¹²¹ limits the possibility of organ removal, making it practically impossible to obtain organs suitable for transplantation. In Ukraine, organ donors can be legally only relatives, spouses who need transplants, deceased, who have given their written consent for selection to their respective organs or their relatives before death.

Specialists offer several solutions to the problem. Among them are the creation of artificial organs on the principle of the apparatus "artificial kidney", with the help of which thousands of people live; transplantation of organs from animals to humans - xenotransplantation; organ cloning. Therapeutic cloning is considered to affect only ethical standards, and in the states there is a prohibition only on reproductive cloning. Therapeutic cloning is the same as reproductive but with a restriction of up to 14 days for the embryo to grow. In the first 14 days, embryonic cells are formed, which can be further transformed into specific tissue cells of individual organs of the heart, kidneys, liver, pancreas, etc., and used in medicine for the treatment of many diseases. In many countries, therapeutic cloning and stem cell experiments are permitted for medical purposes. Thus, the Law of Ukraine "On Prohibition of Human Reproductive Cloning"¹²² is prohibited in Ukraine, which forbids the carrying out of human cloning, as well as the importation and removal of cloned human embryos into the territory of Ukraine. The explanatory note to the Law states that the Charter of Fundamental Rights of the

¹²¹ Law of Ukraine On Transplantation of Organs and Other Human Anatomic Material [Online]. <https://zakon.rada.gov.ua/laws/annot/ru/1007-14>

¹²² Law of Ukraine "On prohibition of human reproductive cloning" [Online]. <https://zakon.rada.gov.ua/rada/annot/en/2231-15/sp:max100>

European Union¹²³ prohibits only reproductive cloning and does not prohibit therapeutic cloning. That is, this Law does not apply to therapeutic cloning. And this can lead to the fact that some laboratories "under the banner" of allowed cloning will conduct experiments on reproductive cloning. In addition, the danger of therapeutic cloning lies in the fact that under the guise of allegedly cloned organs and tissues, organs and tissues illegally removed from living humans can be sold. However, given the speed at which the Ukrainian legislature adopts and amends the legislation, not one intermediary will have time to do so on a person who "sells himself parts" to survive.

According to the definition given in the law, human cloning is the creation of a person who is genetically identical to another living or dead person, by transferring to the left without a nucleus a female germ cell of the somatic cell nucleus. The key words here are human creation. And this action is forbidden.

Article 1 of the Law¹²⁴ prohibits reproductive cloning itself. As noted in the explanatory note to the bill, therapeutic cloning by this law is not prohibited and its legal status will be determined later after further scientific and public discussions.

It follows from this article that therapeutic cloning of man and cloning for any purpose of other organisms, including the creation of chimeras, are allowed in Ukraine by "mixing" the biological material of man and another organism. This contradicts the position regarding the individuality and inviolability of the human genome. The purpose of reproductive cloning is the birth of human. Therapeutic cloning is the subject of further scientific and public debate, with the subsequent determination of its legal status. In addition, this law prohibits the importation into the territory of Ukraine and the removal of cloned human embryos from its territory.

Reproductive human cloning is prohibited in Ukraine (Article 1), as well as the import to the territory of Ukraine and the removal of human cloned embryos from the territory of Ukraine (Article 3)¹²⁵. At the same time, the Law does not prohibit the cloning of other organisms. According to Art. 2 of the Law of Ukraine "On Prohibition of Human Reproductive

¹²³ Charter of Fundamental Rights of the European Union [Online]. https://www.europarl.europa.eu/charter/pdf/text_en.pdf

¹²⁴ Law of Ukraine "On prohibition of human reproductive cloning" [Online]. <https://zakon.rada.gov.ua/rada/not/en/2231-15/sp:max100>

¹²⁵ Law of Ukraine "On prohibition of human reproductive cloning" [Online]. <https://zakon.rada.gov.ua/rada/not/en/2231-15/sp:max100>

Cloning"¹²⁶, human cloning is the creation of a person who is genetically identical to another living or dead person, by transferring to a woman's germ-free germ cell the nucleus of a somatic human cell. Since therapeutic cloning involves the cessation of embryo development within 14 days, it is obvious that the article of the Law refers specifically to reproductive cloning. This inaccuracy of the Law is quite serious and should be corrected by replacing the term "human cloning" in such a definition with the term "reproductive human cloning".

"Article 2. For the purposes of this Law, the following terms are used in the following sense: human cloning is the creation of a person genetically identical to another living or deceased person by transferring a non-nucleated female germ cell to the nuclei of a somatic human cell; human embryo is a human embryo under development for up to eight weeks." This article provides a list of terms used throughout this document. However, this list, in our opinion, is incomplete, and the definition of some terms in it imprecise. For example, in formulating the definition of the term "cloning", the legislator has defined only one way of its implementation - the method of replacing the kernel. Partitioning cloning by this determination is not foreseen. Accordingly, there is a danger of interpreting this law narrowly, literally: it is forbidden to clone a person by the method of nucleus replacement, but allowed to clone a person by the method of partogenesis.

For a clearer understanding of the Law, the definition of the term "reproductive cloning" should be added to the list of terms. This is a key term that needs to be clarified at the legislative level. To do this, you either need to replace the term "cloning" with the term "therapeutic cloning", indicating in it all known methods of cloning known in modern science (or not to specify a specific method), or to supplement the list of terms with new ones. In the latter case, "reproductive cloning" should include the creation of an embryo and the subsequent cultivation of a human being that contains the genotype of the identical genotype of another living or dead person. Created in this way, a person has all the rights and obligations established by law. From the analysis of Article 2 of the Law¹²⁷, there is a lack of state response by criminal legal means to import into the territory of Ukraine or export from its territory cloned fruits, ie living human organisms at the stage of development after 8

¹²⁶ Law of Ukraine "On prohibition of human reproductive cloning" [Online]. <https://zakon.rada.gov.ua/rada/not/en/2231-15/sp:max100>

¹²⁷ Law of Ukraine "On prohibition of human reproductive cloning" [Online]. <https://zakon.rada.gov.ua/rada/not/en/2231-15/sp:max100>

weeks. Such a gap can be eliminated by adding to the list of terms referred to in Article 2. the term "human fetus".

"Article 3. On the importation into the territory of Ukraine and export from the territory of Ukraine of cloned human embryos. The importation into the territory of Ukraine and the export from the territory of Ukraine of cloned embryos are prohibited¹²⁸." The imperative established demonstrates poor lawmaking techniques and is therefore difficult to put into practice. From the stated provision of the law it is not clear which embryos are prohibited: created for the purpose of reproduction or for therapeutic purposes. The answer can be found by examining the history of the adoption of this law in general - in international legal acts and world discourses on this topic. The UN General Declaration on the Human Genome and Human Rights states that the embryo, in particular, cannot be the object of commercial relations ("... the source of income" - Article 4). commercialization in the field of human cloning, secondly, extends to any clone embryos created for therapeutic or human reproduction. Therefore, Article 3 of the Law should be supplemented with the words "for any purpose" after the words "human". In this version, this provision will clearly reflect the will of the legislator to regulate relations in the field of transport of human embryos. To remedy this shortcoming, it is proposed to add to the object of illegal transport referred to in Article 3 of the Law, another - the "fruit of man". Therefore, Article 3 of the Law is proposed in the following wording: "On the importation into the territory of Ukraine and export of cloned embryos or human fruits from the territory of Ukraine. Importation into the territory of Ukraine and export of cloned embryos or human fruits from the territory of Ukraine is prohibited.

"Article 4. Liability for violation of this Law. Persons guilty of violation of this Law shall have civil, administrative or criminal liability in accordance with the laws of Ukraine¹²⁹." The statutory provision provides for the occurrence of various types of legal liability (civil, administrative or criminal), which is envisaged for violation of this Law and should be contained in the relevant national regulations. However, none of the relevant codes contains rules providing for liability for violations in the field of human cloning. There are no general

¹²⁸ Law of Ukraine "On prohibition of human reproductive cloning" [Online]. <https://zakon.rada.gov.ua/rada/not/en/2231-15/sp:max100>

¹²⁹ Law of Ukraine "On prohibition of human reproductive cloning" [Online]. <https://zakon.rada.gov.ua/rada/not/en/2231-15/sp:max100>

rules, we can not do. Let's prove this by the provisions of the Criminal Code of Ukraine. Suppose that there is a fact of import of cloned embryos into the territory of Ukraine. What criminal law enforcement actions are the authorities responsible for taking? To determine these measures, and in this case we can only speak one thing - criminal liability, it is necessary to find in the Criminal Code of Ukraine the grounds for its occurrence, ie the appropriate composition of the crime. Based on the algorithm for qualifying the action, before identifying the immediate object of the assault, you first need to find out the generic object that was harmed by the crime (or threatened its task).

Art. 4 of the Law provides that persons guilty of violation of the said Law shall bear civil, administrative or criminal liability in accordance with the laws of Ukraine. However, no relevant changes have been made to both criminal and civil and administrative offenses to date.

3.2 Criminal Liability for Violation of Laws in the Cloning and Reproductive Area

The legal analysis of the current Criminal Code of Ukraine gives grounds for claiming a legal loophole in this matter, since none of the criminal law norms contains any sign of a crime that could be the basis for bringing to justice for illegal cloning actions.

Based on the structure of the Particular part of the Criminal Code of Ukraine, we consider it necessary to place in the Chapter XX "Crimes against peace, security of humanity and international law" as a necessary norm concerning criminal responsibility for human cloning¹³⁰. After all, human cloning, like ecocide, genocide, the use of weapons of mass destruction, etc., encroaches on public relations that have emerged as a result of compliance with international law on cloning and undermines the foundations of humanity.

The immediate main object of cloning is social relations, which ensure the dignity of man as a representative of the human race, the individual integrity and integrity of the individual. At the same time, the additional object of the performance is the life and health of the surrogate mother, the procedure for regulating medical activity.

The following terms should be clearly distinguished: the right to personal security (security of the person) and the right to personal integrity (integrity of the person). The first involves the

¹³⁰ Criminal Code of Ukraine [Online]. <https://www.legislationline.org/documents/action/popup/id/16257/preview>

prohibition of arbitrary arrests and the unlawful placement in custody. The second should be understood as the right to mental and physical integrity. In the light of biomedical research, the right to personal integrity should be interpreted as the right to freedom from interference with a human body for research purposes.

The concept of "dignity" includes respect for the birth of a person, during his life and after his death. Therefore, in our view, the relevant provisions of domestic criminal and civil law require adjustment. For example, the Criminal Code of Ukraine¹³¹ provides for responsibility for the abuse of the bodies of the dead, but for such treatment of the human embryo no responsibility comes. And as we can see, no relevant changes have been made to the Criminal Code of Ukraine on the implementation of commercial agreements, including the sale and sale of organs and tissues, illegal fertilization and implantation of embryos.

An additional feature of the object of human cloning as a crime may be the victim: in the case of physical and moral harm to the surrogate mother.

As we can see, the legislative position is to differentiate between two types of cloning: therapeutic and reproductive, and, of course, prohibiting the latter. On the one hand, we think it would be advisable to introduce therapeutic cloning on the territory of our state gradually, that is, to start for a certain period, to prevent abuse, scientific miscalculations, violations of ethical and moral principles. Subsequently, with the adoption of the proper legislative framework, the creation of all the necessary bodies (for example, an ethics committee composed of independent experts) to support this process through the development and implementation of government programs to study the problem, analyze scientific, practical, The experimental experience of foreign countries, taking into account the opinions of scientists from different spheres of life, as well as public opinion, can be said about the possibility and expediency of allowing therapeutic cloning in Ukraine. On the other hand, the process of therapeutic cloning is unlawful, since it involves the actual violation of the right to life, that is, the creation of a new life by killing, since the necessary stem cells must be removed from the living embryo, which will have to be killed accordingly by removing it from the womb.

Accordingly to criminal law, persons guilty of violating the statutory prohibition of reproductive cloning can only be held criminally liable if their actions create a danger to the

¹³¹ Criminal Code of Ukraine [Online]. <https://www.legislationline.org/documents/action/popup/id/16257/preview>

life or health of the individual - for the unlawful conduct of human experiments (Art. 142 of the Criminal Code of Ukraine¹³²). The risk of serious adverse effects from such an experiment far outweighs the potential benefits of conducting such an experiment, which means that human cloning is too great a risk to the lives and health of both women and children or fetuses. However, if the creation of such danger is not proved, the person is not criminally liable, since according to Art. 2 of the Criminal Code of Ukraine, the basis for criminal responsibility is the commission of a person of socially dangerous act, which contains the crime, provided by the Code. However, this paragraph was removed from the Code. Such a rule seems necessary, its disposition should include an indication of the illegality of such research. Therefore, we believe that Art. 142 of the Criminal Code of Ukraine shall be supplemented with the new part 2 in the following wording: "2. Illegal reproduction of a person by the method of reproductive cloning is punished <...>". Accordingly, Part 2 shall be considered Part 3 and shall be reworded as follows: "3. The acts provided for in Part 1 and Part 2 of this Article, committed against a minor, two or more persons, by coercion or deception, as well as if they caused a lasting disorder of health of the victim, shall be punished <...> ». Addition of the Criminal Code of Ukraine¹³³ to such a norm will mean fulfillment of another obligation of Ukraine, which it has made before the world community. It is worth noting that the fulfillment of the requirements of international acts, of which Ukraine is a party, is another reason for criminalizing certain actions in the field of medical activity. For the most part, this concerns crimes that are of concern to the entire human community because of their international distribution or threat to all of humanity. For this reason Art. 142¹³⁴, which provides for criminal liability for unlawful conduct of experiments on a person.

¹³² Criminal Code of Ukraine [Online]. <https://www.legislationline.org/documents/action/popup/id/16257/> preview

¹³³ Criminal Code of Ukraine [Online]. <https://www.legislationline.org/documents/action/popup/id/16257/> preview

¹³⁴ Criminal Code of Ukraine [Online]. <https://www.legislationline.org/documents/action/popup/id/16257/> preview

3.3 Directions of Improvement of the Ukrainian Cloning Legislation for the Observance of Human Rights

On the basis of the identified basic human rights violations in the application of cloning and taking into account European experience, the systematization of current legislation carried out, author substantiated the inconsistency of the Ukrainian legislation and the lack of implementation of the international community's requirements regarding the legal basis for cloning. In this chapter author has formed proposals for the introduction of criminal liability for certain types of human cloning and the use of their results. The author has developed proposals for introducing human cloning as an independent crime into Ukrainian domestic legislation (Articles 448 "Human Cloning", 449 "Import or export of human cloned embryos" of the Criminal Code of Ukraine).

The objective side of the composition of the crime of "human cloning" is formed only by active actions, that is, actions: from the cell of any part of the human body (somatic, ie non-sexual) remove the nucleus. At the same time, the nucleus is also removed from the female germ cell (egg). The somatic cell nucleus is then introduced into the ovum. An egg with a new nucleus is exposed to an electrical current that stimulates division. This is how the embryo appears. The cloned embryo is then implanted in the uterus of the surrogate mother, who carries it up to natural and biological births. The peculiarity of the crime of cloning is that it is not possible to practice the objective side with one person. Experts estimate that these experiments will require at least a small team of scientists, minimum laboratory conditions and a budget of \$ 1-2 million. In addition, the specificity of the medical and scientific activities performed precludes unawareness of the nature and purpose of the experiments and the commonality of the crime with other participants. So, here we should talk about complicity.

The crime of cloning entails the onset of a number of socially dangerous material and intangible consequences. Material consequences include the appearance of a cloned human being, the death of a surrogate mother, or the severity of serious harm to health. The onset of such consequences requires additional qualification under Art. 119 of the Criminal Code of Ukraine ("Murder by negligence") and Art. 128 of the Criminal Code of Ukraine ("Negligent

serious or moderate injury”)¹³⁵. The intangible consequences in this crime are dignity, morality, ethics and the like. The composition of this crime should be considered material as the crime will be completed only from the moment when the criminal result foreseen by the disposition as the emergence of a viable cloned human being. As we propose to impose criminal liability for reproductive cloning, the moment of occurrence of a criminal result will be the moment from which one can speak about the beginning of life of a cloned child. This moment comes with the first sigh when the newborn's lungs are straightened, as the first cry usually indicates. If the cloned embryo ceases to develop, there will be miscarriages, complications that will lead to the need for an abortion or cause the death of a surrogate mother before childbirth; the perpetrators will be responsible for the attempt to clone a person (Part 2 of Article 15 of the Criminal Code of Ukraine)¹³⁶. If the actions of the perpetrator are interrupted beyond his will at an earlier stage - the execution of a preliminary conspiracy to commit a crime, the search for accomplices, the search, manufacture or adaptation of tools and facilities, the equipment of the laboratory and the creation of other conditions for its commission - the responsibility will come for the preparation for cloning human (part 1 of Article 14 of the Criminal Code of Ukraine)¹³⁷.

The method of committing a crime as part of the human cloning crime is a mandatory feature of the objective side - the creation of human beings by cloning using laboratory equipment, medical instruments, chemical reagents, etc.

The intent in the crime of cloning a person will be pre-conceived (between the emergence of the intention and its realization will be a rather significant period of time) and simple concretization (guilty persons clearly and clearly imagine the consequence of their actions - the appearance of the cloned human being). Accordingly, the subjective side of the crime of human cloning involves direct intent.

The motives of people who commit human cloning can be different - religious (sectarian), selfish (cost of human cloning at CLONAIID company is about \$ 200,000), career (whatever it is, human cloning is most a scientific discovery that can bring the author immortal glory). If

¹³⁵ Criminal Code of Ukraine [Online]. <https://www.legislationline.org/documents/action/popup/id/16257/preview>

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¹³⁷ Criminal Code of Ukraine [Online]. <https://www.legislationline.org/documents/action/popup/id/16257/preview>

the motive in this crime is an optional feature of the subjective side, then the goal is a must. The purpose of this crime is to create a human being through cloning.

The specificity of the subject of this crime is that cloning can be carried out by both the general subject of the crime and the special one. After all, the implementation of the objective side of cloning is carried out only by a special subject of crime, more precisely by a special executor: a person who has knowledge in the field of genetics, molecular biology, reproductive medicine - scientist, laboratory assistant, research worker, etc. As we see except the sign general subject (individual, conviction and age of criminal responsibility) to the special - are attributes that follow from the occupation and profession of the person. The role of the instigator, the organizer and the accomplice in the cloning can be played by the general subject. When proposing to introduce into the criminal legislation of Ukraine "Human cloning" as an independent composition of crime, it is necessary to solve the question of the age of criminal responsibility of the subject of crime. Speaking about the perpetrator of the crime, it can certainly be only a person who has reached 16 years. The complexity is the legislative definition of the age of criminal responsibility of the person who acted as a co-conspirator, organizer and instigator in the cloning. Given the threat of cloning to humanity, it would be appropriate to foresee criminal liability for this crime from the age of 14. However, we consider it appropriate to set a criminal age for this crime - 16 years. After all, actions related to human cloning are difficult for the perception of the mind of a minor child (such a person is not always able to assess the criminal nature of such actions and, as a result, may be involved in a crime).

Reproductive cloning in a separate article is also possible. The social conditionality of the criminalization of this act comes from Ukraine's international commitments, which it has assumed, having signed and ratified a number of these international regulatory legal requirements. In addition, this article of the Criminal Code of Ukraine complements the Law of Ukraine "On Reproductive Cloning of Human", which provides for establishing criminal liability for violating its norms. Conducting such experiments is not a problem of one state, which is to violate its moral prohibitions. , this is a worldwide problem. That is why we believe that this crime should be placed in Section XX of the Criminal Code of Ukraine "Crimes against Peace, Security of Humanity and International Law Order". The generic object of this crime is the safety of mankind. The direct object will be the same. Since this section contains three types of generic object, we have placed our article just after the group of crimes, the immediate object in which is the safety of humanity, that is, after article 447.

The subject of this crime is a cloned human embryo at the age of 14 days. In this case, the subject of this crime will not be the embryo of another creature other than human. Cloned embryo means an embryo that has arisen as a result of the replacement of a nucleus by an egg of a somatic cell containing a genotype other than a "parent" egg (a method of substitution), or as a result of parthenogenesis, that is, the splitting of cells under the influence of electricity. The age of the embryo is paramount for the proper qualification of the action. After all, if a cloned embryo is detected in humans at the stage of development for more than 14 days, it may indicate the presence of a target in the crime subject to carry out reproductive cloning. The use of an embryo at the onset of its development up to 14 days should not entail criminal liability. The objective side of this crime is manifested only through per commission. The action is to take active action - to carry out one of the following ways of artificially creating an embryo. By itself, the action of creating in different ways cloned embryo does not form the composition of this crime. The presence of the composition of this crime may be indicated by the presence of the embryo at the age of more than 14 days and / or the subject's recognition of the purpose of the clone. The socially dangerous consequence arises from the moment of reaching the embryo of 14 days of age, because during this period already begins to form the "embryo" of the central nervous system, the functional division of cells and the like. From this point, it is possible to trace the development of not just a person, but a cloned person with all its features and the possibility of creating a danger to society, since such a person is a source of "dangerous knowledge".

Abandonment of such an embryo can clearly indicate the presence of the purpose of reproductive cloning. Therefore, by its construction, this composition of crime is material. For example, committing the described actions within an organized group, that is, under the influence of several persons or at least one person. criminal age (16 years). We consider, in principle, that carrying out the relevant manipulations by a specialist does not indicate the special status of the subject, because in this case the person violates the common prohibitions for all - the reproductive cloning, therefore, it is a common subject. The subjective side is expressed only in the form direct intent. An indispensable feature of the subjective side is the goal - to create in a "artificial" way a human being, not, for example, the collection of embryonic pluripotent stem cells. The person who clones the cells aims to grow a human being from these cells, which is forbidden not only internationally but also nationally. It is this awareness of the individual that is the key to proving the consequence for the proper qualification of the act. is considered complete from the time the cloned embryo reaches 14

days development. Provided that the target of the crime subject is to create a cloned embryo for reproductive purpose, even if such embryo has not reached 14 days (it has stopped the development of the embryo itself), then these actions should not lead to criminal liability. If a person, with the intention of creating a cloned embryo for reproductive purposes, voluntarily refuses to bring the crime to an end until the embryo reaches the 14-day stage of development (it has stopped the development of the embryo itself), then these actions should not lead to criminal liability. If a person voluntarily refuses to carry out reproductive cloning, one should pay particular attention to the fact that this person intentionally discontinues the development of the embryo through its cryopreservation. For such actions of the subject it is necessary to establish the purpose of cryopreservation (this embryo will be used with a reproductive purpose or with therapeutic) and to act according to the general rules of qualification of action. ; Part 3 - committing this crime by an organized group or as a part of a criminal organization. Qualifying attributes are intended to commit this crime in complicity. Criminal protection of his life should not be extended to an artificial embryo. As noted, this article of the Criminal Code provides for the security of mankind. Therefore, the destruction of this object of crime will not contravene criminal law.

Article 449 "Import or export of human cloned embryos" of the Criminal Code of Ukraine.

The social danger of this crime is the commercialization of relations in the detection and use of human embryo, so there is a threat of devaluation of human dignity and identity, the devaluation of man as biological species agreements. The direct object in this offense to which the assault is directed is international law, according to which the human genome cannot be source of income (Article 4 of the Universal Declaration of the Human Genome and Human Rights). When determining the object of this crime horizontally, it is possible to distinguish the principal object, which coincides with the direct one, and an additional object. The latter can be attributed to public morality. Reducing the threshold of moral sensitivity entails spiritual degradation of society, which, in turn, threatens the marginalization of society, and as a consequence - an increase in the level of crime. as well as a chimera. The stage of embryo development does not matter for qualification. The objective side is manifested in the unlawful movement across the customs border of Ukraine of the object of the crime. Illegal movement can be manifested in one of two actions - import to the territory of Ukraine and export of cloned embryos from the territory of Ukraine. dangerous enough to elect his protection, criminal measures. The composition is formal in structure. The setting, method of committing this crime or the instrument for committing it to the qualification is not. The

subjective side is expressed in the form of intent, both direct and possible. The purpose, motive, have no meaning for qualification. The cloned embryo shall be recognized as a qualified person for this crime if imported or exported through the customs border of Ukraine if these actions were committed by prior agreement of a group of persons (Part 2) or committed within an organized group or / and within a criminal organization (Part 3). This crime must be distinguished from contraband (Article 201 of the Criminal Code) by the object and direct object which is harmed by these two crimes. After all, smuggling is first and foremost an economic crime, encroaching on the legal order of trade in the state and maintaining the fiscal order. Only objects that are legally permitted objects of business may be smuggled in. The cloned embryo is not.

Not to mention that while moving a cloned embryo across the customs border of Ukraine, the damage is done to established international law and order.

CONCLUSIONS

In the course of scientific research of the current state and prospects for the development of cloning as a method of human reproduction, author came to the following conclusions:

1. Human cloning is the creation of a person genetically identical to another living or dead person, by transferring of the nucleus of a somatic human cell.

Depending on the production goals one can distinguish cloning aimed at: the creation of the human being as a method of reproduction (reproductive cloning); obtaining embryonic stem cells from a cloned embryo (therapeutic cloning); study of genes for the development of genetic engineering and the use of research findings in pharmacology (molecular cloning or cloning of DNA genes).

2. Cloning advocates claim:

1) the personal right of everyone to the reproduction, to the continuation of the genus, which is an independent component of the autonomy of the individual (along with other such rights as the right to contraception, in vitro fertilization, artificial insemination, etc.);

2) the prohibition on cloning would be contrary to the principle of freedom of research. According to laureates of the International Academy of Humanism, "the moral and ethical problems generated by cloning are no more than those already encountered by such technologies as nuclear energy, recombinant DNA or computer modeling. They are just new.¹³⁸ "

Opponents of cloning believe:

1) cloning is more like copying what is already there than creating a new human face. This cannot be called the full right to reproduction, continuation of the genus, but rather the right to control nature in the person of another person with previously defined genetic characteristics;

2) cloning undermines the clone's autonomy and personality. Parents and society will see such children more quickly as objects, a means of meeting their ambitions, achieving certain genetic capabilities and talents. Thus, the value of such a child will depend entirely on compliance with the set criteria;

3) cloning will inevitably undermine the traditional norms of family and marriage,

¹³⁸ O.V. Savvina (2015) Ethical problems of cloning humans (SCNT) [Online]. https://pdfs.semanticscholar.org/f a 9 b / 9 8 3 a b 6 f a c f b 7 5 3 2 e 0 9 7 b f 4 1 9 9 b e 8 a 1 b 4 c d 4 0 . p d f ? _ga=2.122905486.400966395.1586086812-1095850706.1586086812

motherhood and paternity. This will have serious consequences for society as a whole, jeopardizing not only human dignity but also its social identity.

3. The legal regulation of the cloning procedure in most countries and internationally at the present stage is characterized by a clear ban. This imperative is relatively reproductive and does not extend to therapeutic cloning. However, this does not preclude the provision of reproductive cloning health care services in favorable jurisdictions or in neutral seawater. The social danger of reproductive nature lies primarily in its transnational character.

4. The ambiguous legal assessment of cloning in the laws of foreign countries is conditioned by the polarity of public perception of cloning from a medical and moral ethical point of view, as well as by peculiarities of national, religious, spiritual traditions and historical experience. Some states are in the position of legalizing cloning, while others are criminalizing such actions.

Criminal liability for cloning is provided for by special laws (Brazil, Germany, United Kingdom, Japan), however, mainly as an independent crime, cloning is included in the criminal codes of states (Spain, Colombia, El Salvador, Estonia, Romania, etc.).

5. Both international and national laws of foreign countries, while prohibiting the creation of children by the cloning method, at the same time allow stem cell research, normatively fixing the possibility of destruction of clones on the 14th day of embryo development. Stem cell research inevitably involves cloning embryos, as doctors consider it appropriate to use patients own cells in their treatment (patients treatment). The cloned cells will be genetically identical to the cells of the patient and, thus, can theoretically overcome the problem of graft rejection. Low-differentiated embryonic stem cells in many countries are derived from purchased or gifted embryos made in private clinics, especially those involved in extracorporeal fertilization.

6. Although Ukraine has ratified a number of international cloning instruments, legislative regulation to prevent abuse in this area should be considered unsatisfactory. The laws passed - the Law of Ukraine "On Transplantation of Organs and Other Human Anatomical Materials" and the Law of Ukraine "On Prohibition of Human Reproductive Cloning" - are only the first bricks of the legal basis of cloning in Ukraine and leave a number of important issues outside the legal field:

1) the absence of a state body that would carry out organizational, managerial and supervisory functions in the field of cloning (including the issuance and revocation of licenses for conducting experiments related to cloning, as well as the registration of laboratories, etc.).

Must act at the Ministry of Health of Ukraine or the National Academy of Sciences of Ukraine with the involvement of leading Ukrainian specialists in the field of biology and medicine;

2) legislative unresolved attitude of the Ukrainian society to gene therapy: it is advisable to introduce into the Law of Ukraine "On transplantation of organs and other anatomical materials to a person" a legal norm that would legalize the transplantation of an organ grown by the method of regeneration from cells taken from the recipient organ itself;

3) unclear legislative formulation: "Reproductive human cloning is prohibited in Ukraine. The effect of this Law extends to the cloning of other organisms "(Article 1 of the Law of Ukraine " On Prohibition of Human Reproductive Cloning ") casts doubt on the legality of conducting animal cloning procedures in Ukraine. In order to prevent abuse by law enforcement agencies and to prevent the unlawful persecution of genetic innovators, the legislator is obliged to clearly spell out this provision, taking into account the interests of Ukrainian genetics.

4) the imperfection of the legal regulation of therapeutic cloning (lack of official definition of "therapeutic cloning", a clear list of allowed and prohibited experiments in the field of therapeutic cloning, etc.). There is a need for legislative resolution of the authorization of experiments on stem embryonic cells and the handling of biological material, which is widely used in experiments. Avoiding artificial late abortions (for monetary enrichment) is possible by: permitting the use of fetal materials from embryos no more than 14 days old or prohibiting the use of fetal materials in general (to use embryos no older than 14 days grown in vitro and not in experiments used for artificial insemination).

7. The indifference of Ukrainian society to the problem of human cloning and the growing number of states that have criminalized this phenomenon is exacerbating the interest of so-called "cloning entities" in carrying out human cloning in Ukraine. The gap in the criminal law of our state makes it impossible for such persons to be held criminally liable: "The absence of a crime makes criminal liability and, accordingly, punishment."

Criminal liability for human cloning should be set out in Section XX, Crimes against Peace, Security of Humanity and International Law, of the Criminal Code of Ukraine. After all, human cloning, like ecocide, genocide, the use of weapons of mass destruction, etc., encroaches on the social relations that have emerged as a result of compliance with international law on cloning and undermines the foundations of humanity.

8. "Human cloning" as an independent composition of crime has the whole set of objective and subjective features:

1) the immediate main object of cloning are social relations, which ensure the dignity of a person as a representative of the human race, individual integrity and integrity of the individual, and an additional object - the life and health of the surrogate mother, the order of regulation of medical activity. An additional feature of the object of the crime may be the victim (in case of physical and moral harm to the surrogate mother);

2) the objective side of the crime is formed by socially dangerous actions that form the process of cloning and socially dangerous consequences: the appearance of a cloned human being, the death of a surrogate mother or causing harm to health of varying severity (consequences of material nature) and encroachment on dignity, morality, ethics, etc. (non-material consequences). An indispensable feature is the method of committing a crime - the creation of human beings by cloning (using laboratory equipment, medical instruments, chemical reagents, etc.);

3) the subjective side of the crime involves the direct intent and purpose of committing the crime as a mandatory feature - the creation of a human being by cloning. It is possible to commit a crime for various reasons (religious, selfish, careerist, etc.) that do not affect qualification.

4) human cloning can be carried out both by the general and the special subject of crime: the perpetrator - the special subject of the crime, due to the specific nature of occupation and profession (a person with knowledge in the field of genetics, molecular biology, reproductive medicine), and instigator, organizer, accomplice - general (any natural, convicted person who has reached the age of 16).

In this topic following research questions were studied:

1. What is cloning as a socio-cultural legal concept? Successful studies on the cloning of animals, especially close to medical parameters to humans, have become a cause of concern for the international community, since they have become more frequent cases of exposing illegal centers, in which attempts were made to clone a person. Cloning has opened up possibilities for manipulating embryos precisely by the method of artificial insemination in vitro. At the same time, the creation of an embryo (clone) can not automatically create ownership of it as a thing. In the opposite case, a person created by IVF technology (like cloning) would then be considered not as a person endowed with the right to life and human dignity, but as a mere biological material (a set of donor cells). The human embryo is not just

a living organism, but a human being that grows and develops every moment of its life, from conception to death. This is not the future, but the already existing person *Homo sapiens*, which has already had a unique set of genes since its inception (own genotype). Therefore, the world community raises the issue of human rights in medical cloning. As the issue of human cloning relates not only to medical aspects but also to ethical and legal issues, it is associated with a number of bioethical issues that are directly related to human life and human rights, in particular the right to life. This raised the problem of protecting human rights and dignity in the use of modern technologies and their moral validity, and also led to the formation of a new bioethical direction of modern international human rights law.

2. What issues were raised during the international debates of cloning in the context of fundamental human rights and freedoms? Most scholars, politicians, lawyers, and philosophers, both in Ukraine and abroad, tend to believe that cloning, as a method of growing tissues, of human organs as a mean of improving certain properties of what, is a benefit, while human cloning should be prohibited. The global attitude towards human reproductive cloning as the most controversial legal regulation type of cloning varies from a total ban to a lack of legislation on this issue. However, a number of legal issues that arise around cloning are too large. On the positive side, it should be noted a decrease in the volume of criminal transplantology (by world statistics), an increase in the person's ability to dispose of his own body, etc. However, there are a number of negative consequences of cloning, when it comes not to partial cloning (organs), but about the complete cloning of humans. The newly created organism must acquire all human rights, and not be left exclusively with biomaterial, besides, such an organism has a similar set of genes that is original, which can cause confusion in identifying a person or his clone. The emergence of whether or not to a large extent, identical individuals (like the same-sex twins) can create a number of problems in obtaining certain human rights, since the clone must acquire all the same rights and opportunities as the original, otherwise it will be a significant violation. Therefore, reproductive cloning has such resistance in a number of countries around the world. In addition, human cloning "unnatural" causes condemnation of religious communities and other non-governmental organizations in the field of human rights.

3. What types of responsibility for human cloning exist in modern laws of different European states? To determine possible areas for improvement, an analysis of the current legislation of leading European countries (as Germany, GB, Denmark and other EU members) in the field of cloning was carried out, features of criminal liability for certain types of cloning were

identified and the expediency of incorporating such experience into the development of proposals for improving the legislative framework in Ukraine.

4. What are the main trends of legal regulation of legal responsibility for human cloning occur in Ukraine? The legislation of Ukraine in the field of application and implementation of cloning achievements is far from perfect, and therefore the relations in this area require a legal settlement. Thus, in this work moral and ethical problems and historical and legal principles of cloning are investigated, and on their basis determined the need to improve the legislation of Ukraine in the field of cloning in the context of observance of human rights.

5. What is the position of Ukrainian society in relation to bringing legal liability for unlawful acts of human cloning? On the basis of the identified basic human rights violations in the application of cloning and taking into account European experience, the systematization of current legislation was carried out, as well as proposals for the introduction of criminal liability for certain types of human cloning and the use of their results. The author has developed proposals for introducing human cloning as an independent crime into Ukrainian domestic legislation (Articles 448 "Human Cloning ", 449 "Import or export of human cloned embryos" of the Criminal Code of Ukraine). The implementation of these articles will help protect human rights when cloning and using its results.

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APPENDIXES

Appendix 1

Human rights in cloning problem

Right to Life	The right to life, which is inherent of human and enshrined in fundamental rights, can be violated by cloning, since unused clones are destroyed, or when replanting several embryos, not all of them survive, and even there are cases of forced removal of unnecessary lives through the destruction of embryos that threaten the life of the mother etc.
Right to Procreate	The reproduction of humanity by cloning is likely to destroy or significantly deform the specified institutions of family, marriage and create a mess in the field of legal status and self-identification of personality, property rights and inheritance.
Right to Privacy	The right to privacy in the context of human cloning can be violated in the aspect of physical privacy (no person without his or her free consent can be subjected to medical, scientific or other experiments).
Right to Health	The right to health is the ability to obtain actions that will contribute to the improvement of human health, including through organ transplantation or the introduction of stem cells to activate the regeneration of the body itself. In this case, there are also contradictions regarding the possibility of cloning for therapeutic needs and the use of donor organs by informed consent of the individual.
Right against Exploitation	Special legal protection in the field of modern biomedicine requires such an important component of the integrity of the body of individuals as the human body, as new opportunities for its commercial use.

Chronology of International Legal Framework

Year	Law	Organization
1997	Universal Declaration on the Human Genome and Human Rights	UNESCO
1997	Convention on Human Rights and Biomedicine	Council of Europe
1998	Convention on the Protection of Human Rights and Dignity for the Use of the Advances in Biology and Medicine on the Prohibition of Cloning	Council of Europe
2000	Charter of Fundamental Rights of the European Union	UN
2002	Additional Protocols to the same Convention on Transplantation of Organs and Tissues of Human Origin	Council of Europe
2003	International Declarations on Human Genetic Data	UNESCO
2005	Biomedical Research on Humans	Council of Europe
2005	UN Declaration on Human Cloning	UN
2005	Universal Declaration of Bioethics and Human Rights	UNESCO
2018	International Covenant on Civil and Political Rights	UN

Chronology of European and Ukrainian Legal Framework

Year	Law	Country
1988	Derecho a la repro-duccion humana (inseminacion y fecunda-inion	Spain
1989	The Human Organ Transplants Act	UK
1995	Criminal Code of Spain	Spain
2001	Criminal Code of Ukraine	Ukraine
2004	The Human Tissue Act	UK
2005	Criminal Code of France	France
2012	Criminal Code of Hungary	Hungary
2014	On transplantation of organs and other human anatomical materials	Ukraine
2015	Penal Code of Estonia	Estonia
2015	On prohibition of human reproductive cloning	Ukraine

Corpus delicti of human cloning

Feature	Parameter	Value	
Object	Basic object	Dignity of human	
		Integrity of human	
	Additional object	Life and health of surrogate mother	
		Regulation of medical activity	
Objective side	Mandatory		
	1 Socially dangerous act	cloning process	
		2. socially dangerous consequence	Tangible: the appearance of a cloned organism, the death of a surrogate mother or harm to her health
			Intangible: encroachment on honor, dignity, health etc.
	3. Cause	Causing connection	
	4. Method	Cloning	
	Optional	place, time, instrument, method, situation of crime	
Subjective side	Mandatory		
	1. guilty	direct intent	
	2. Aim	creation of the human body by cloning	
	Optional: Cause	1) religion; 2) profit; 2) business	
Subject	General	crime organizer	
	Special	direct executor	
Victim (optional)		Surrogate mother	
Qualifications	Aim	Use of organs, cells or tissues of a cloned organism	

	Cause	Profit
	Complicity	Participation of several persons
	Special subject	Use of official position