

HUMAN DIGNITY AND BIOETHICS

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Abstract:

The author presents and thoroughly analyzes the Convention of Oviedo for the protection of human rights and dignity of the human being with regard to the application of biology and medicine, an international legal instrument taking into account the various ethical, social and legal aspects of their impact.

The basic idea to be found in the international documents devoted to the defence of Man's dignity, as an individual and as a species, is that the development of biology and the correlated sciences should primarily be done in the service of Man and only secondly in the service of science.

The recent developments in the field of biomedical sciences and technologies tend to confer Man an immediate and uncontrolled power of managing his own biologic individuality with major risks for the universal and defining values of the human being.

Bioethics is a new field that emerged in parallel with the huge step forward made by biomedical sciences in the last decades of the previous century. For a long time it has mainly been concerned with the technological developments in medicine while neglecting the moral and the legal aspects.

At present, specialists in medicine, law, ethics, etc., take efforts to reconcile the technological evolution in medicine, particularly in the field of genetics, with the personality of the patient, who is a set of several „tissues" but a soul as well, with public control upon the development of genetic technologies, with the physician's uncontrolled power, with the profit making vs. the moral criteria, and with the legal norms. The weight each of these has at one moment or another in the evolution of society can lead to changes that may result in a loss of society's balance, which is quite fragile anyway. It is the present solutions – moral and legal – to the challenges raised by the biomedical sciences and technologies that the future of mankind and ultimately the future of the human species depends on.

Keywords: dignity, human rights, bioethics, biomedical technologies, genetic technologies

Resume:

L'auteur présente la Convention d'Oviedo de protection des droits de l'homme et de la dignité de l'être humain face aux applications de la biologie et de la médecine, en entreprenant une vaste analyse de ce document juridique international, qui s'occupe des différents aspects éthiques, sociaux et juridiques et des incidences de ceux-ci sur l'avenir de notre espèce.

L'idée de base qui se détache des documents internationaux destinés à protéger la dignité de l'homme, en tant qu'individu et comme espèce, est que le développement de la biologie et des sciences en relation avec celle-ci doit se faire pour les mettre au service de l'homme d'abord et ensuite seulement dans le pur intérêt de la science.

Les progrès récents dans le domaine des sciences et des technologies biomédicales tendent à conférer à l'homme un pouvoir immédiat et incontrôlé sur la gestion de son individualité biologique, comportant des risques majeurs pour les valeurs universelles et définitives de l'être humain.

La bioéthique est un domaine nouveau qui a émergé en parallèle avec l'étape avant énorme faite par les sciences biomédicales dans les dernières décennies du siècle précédent. Pendant longtemps, il a été principalement concernés par les développements technologiques dans la médecine tout en négligeant la morale et les aspects juridiques.

À l'heure actuelle, les spécialistes de la médecine, le droit, l'éthique, etc., prennent efforts pour concilier l'évolution technologique en médecine, en particulier dans le domaine de la génétique, de la personnalité du patient, qui est un ensemble de plusieurs «tissus», mais une âme ainsi, avec un contrôle public sur le développement des technologies génétiques, avec la puissance incontrôlée du médecin, avec le but lucratif contre les critères moraux, et avec les normes juridiques. Le poids de chacun de ces a à un moment ou un autre dans l'évolution de la société peut conduire à des changements qui peuvent résulter en une perte de l'équilibre de la société, ce qui est assez fragile de toute façon. Ce sont les solutions actuelles – morales et juridiques – aux défis posés par les sciences biomédicales et les technologies que l'avenir de l'humanité et, finalement, l'avenir de l'espèce humaine dépend.

Mots-clés: la dignité, des droits humains, la bioéthique, les technologies biomédicales, les technologies génétiques

The Council of Europe has made public for consultation an interesting working document related to the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine

(Oviedo, 1997). The document refers to „the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment”²

² It is, as a matter of fact, a new Protocol to the Convention of Oviedo, (DH-BIO/INF/2015/7 Strasbourg, 22.06.2015).published in extenso in this issue of our quarterly (DH-BIO/INF/2015/7 Strasbourg, 22.06.2015).

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Recent progress in the field of biomedical sciences and technologies tends to confer man an immediate and uncontrolled power to manage his own biological identity with major risks threatening the universal and defining values of the human being.

Under the circumstances, both national authorities and international organizations should achieve a balance between scientific progress, with its specific exigencies, and the respect owed to the human being and humanity in general. The protection of human dignity – the person's and of the human race – has been in the last decades a national concern, as in the case of France where a special protection instrument was adopted in 1994. It has also been the object of international consecration in several documents as is the case of the Convention of Oviedo, adopted in 1997 under the aegis of the Council of Europe, or the Universal Declaration on the Human Genome and Human Rights also adopted in 1997 this time under the aegis of UNESCO.

However, the elaboration and the harmonization of national texts has often been found to be difficult for reasons of a religious nature, or rooted in painful past experiences, many of which refer to questions related to the contents of the very notion of human dignity. As far as the international documents are concerned, these are primarily framework-conventions that are to be further developed on specific national directions.

The basic idea in these documents devoted to the protection of man's dignity, as an individual and as a species as well, is that the development of biology and the related sciences should in the first place serve the interests of the human being and only in the second place the interests of science. This explains the double affiliation – national and international – of preoccupations in the field.³

The international legal instrument that takes into account the various ethical, social and juridical aspects related to the consequences of the application of the latest discoveries of biology and medicine is *the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and*

Medicine: Convention on Human Rights and Biomedicine, signed in Oviedo on 4 April 1997. Integrating the need to trigger an ethical revolution in order to impose certain restrictions to the impetus of the scientific revolution, it consecrates and protects to this end values that are rather universal than European, be they related to human dignity or human identity, or may they refer to the integrity of the human person.

Thus conceived, the Convention establishes principles affecting both the contemporary generations and the future ones, in an effort to fill the void of legislation in which genetics has been developing so far. As shown by referent M. Palacios in Council of Europe Parliamentary Assembly Report No. 7210 of 12 January 1995 on giving an opinion on the draft bioethics convention, democratic societies first need a global vision and then corresponding written principles. It is the duty of decision-making politicians to assume responsibility for decisions related to sometimes very complex and controversial problems. In the absence of such a commitment, the scientist and the physician would find themselves assigned a task which, under normal circumstances, is not theirs and that is the position of leaders in the social and ethical fields of society. In addition, the lack of clear rules would put the judge in a difficult position when faced with delicate situations with serious consequences. Once this landmark document came into force, the signatory States were in a position to elaborate national regulations in the latter's spirit, possibly with additions imposing even more restrictive measures to scientific research in the field and increased protection of the human being.

In recent years, the rapid progress of genetics, neurobiology and embryology has given man the possibility to interfere with the human genome and modify it, thus having the power to transform its own species. The complex nature of the situation is increased by the fact that, as compared to the evolution of sciences in the past, the time period between the acquisition of new scientific knowledge and its application in the field of genetics and medicine in general is much shorter at present.

This new situation entails a latent mistrust both on behalf of the public opinion, the religious environment and the government officials, which makes the latter approach it with extreme caution. It is the public authorities that have the mission to

³ Patrick Fraisseix, La protection de la dignité de la personne et de l'espèce humaines dans le domaine de la biomédecine: l'exemple de la Convention d'Oviedo, „Revue internationale de Droit compare”, n° 2/2000.

conciliate the either contradictory or difficult to reconcile interests, to find solutions reconciling the unstoppable progress of science with the inertia of religious dogmas and century old mentalities in relation to the evolution of man and humanity. It was therefore necessary to find a common denominator of juridical nature, an international instrument to allow the Council of Europe member States, possibly other States as well, to adopt clear and consonant legislations on the matter.

The Convention of Oviedo achieves a fair balance between the protection of the inalienable rights of the person and the common interest of humanity. As Daniel Tarschys, Secretary General of the Council of Europe said on 9 December 1998, this text would be, undoubtedly, the universal reference meant to protect the human being and its genetic heritage in the framework of the biological and the medical sciences. Thus, the first article of the Convention reads as follows: „Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine.” By internationally consecrating the dignity of the human person in close connection to that of the integrity of the human being, the above mentioned document urges States to take action to put an end to the risks of excesses or misappropriate use of biomedical interventions, promoting the idea that the individual’s fundamental rights should not be sacrificed for the sake of unrestricted scientific research, free from any moral or juridical landmarks.

The final text of the Convention came out from a long process of negotiations, which did not fall short of disputes, a process that was started in 1987 by the Committee of Ministers⁴ and continued by the Steering Committee on Bioethics.⁵

⁴ Starting in 1987, the Committee of Ministers adopted 14 resolutions and recommendations, also including Recommendation 1160 on the preparation of a convention on bioethics.

⁵ At the 7th Conference of Ministers of Justice, which took place in Istanbul on 5-7 June 1990, the participants adopted Resolution No. 3 on *bioethics*, which provided for the elaboration of a Framework Convention that was to lay down general common norms for the protection of the human person in the context of the development of the biomedical sciences. The final text was approved by the Committee of Ministers on 19 November 1996 and open for signature on 4 April 1997.

The document was opened for signature on 4 April 1997.

Romania signed the Convention as far back as 4 April 1997. It came into force on 1 December 1999, at a moment when it had been signed by 24 States and ratified by 5 of them. The Convention continues to stay open to be signed by both the other Council of Europe member States and by Australia, Canada, Japan, the Holy See and the United States, all of which took part in its redaction.

The initial text was added four Protocols⁶ which resume the most delicate and most controversial issues. The Additional Protocol prohibiting the cloning of human beings was signed in Paris on 12 January 1998. So far, it has been signed by 9 States, including Romania. The other three Additional Protocols refer to the transplantation of human organs and tissues, to the biomedical research as well as to the protection of the human embryo and fetus and to human genetics.

The Committee of Ministers also issued three recommendations related to the Convention on Bioethics and its Additional Protocols.⁷

The authors of the Convention acknowledged the perfectible nature of the document providing in its article 32 § 4 a necessary re-evaluation after 5 years of application.

In parallel with the Council of Europe, UNESCO in its turn adopted, on 11 November 1997, the Universal Declaration on the Human Genome and Human Rights. Thus, the international community was provided that same year two landmark documents: a binding one, with regional effect (the Convention of Oviedo), the other one not binding but of universal value.

⁶ Additional Protocol to the Convention on Human Rights and Biomedicine, on the Prohibition of Cloning Human Beings (Paris, 1998); Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin (Strasbourg, 2002); Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research (Strasbourg, 2005); Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes (Strasbourg, 2008).

⁷ Rec(2003)10 on Xenotransplantation and its Explanatory Memorandum; Rec(2004)10 concerning the Protection of the Human Rights and Dignity of Persons with Mental Disorder; Rec(2006)4 on Research on Biological Materials of Human Origin.

Even though the international texts have already been protecting human dignity against certain deviations of science, not all national legislations raised up to the expectations in this field so far; some are quite advanced, yet many others are fragmented or almost inexistent. Both the international and the national ones show the same determination to stop the potential dangers for the human being and for mankind represented by the new biomedical and medical techniques and try to contribute to the development of principles of bioethics and biomedicine meant to put science serve man, not man to serve science. According to Patrick Fraisseix's opinion, expressed in the above cited work: „The sense of the sacred and of the divine is no longer located today in a vertical transcendence that starts from man to reach God, but in a double transcendence: a descending transcendence from God to man and a horizontal transcendence that confronts man with his own humanity”.⁸

The defence of the dignity of the human person and the human race, viewed as shown above from the point of view of the sacred thus reconsidered in the framework of the Convention of Oviedo on bioethics, might be juridically labeled both as a subjective right and an objective right; in the first case, the tendency is to deify man, while the second case practically induces a divinization of mankind.

To begin with, we should mention that the term 'bioethics' was first used in the work „Bioethics: Bridge to the Future" published last century, in the '70s, by the American physician Van Rensselaer Potter. Etymologically, it is based on the Greek words *bios* = 'life' and *ethos* = 'custom, habit, character'. Bioethics would therefore be „an interdisciplinary field having as object the examination of all aspects of life and health, analyzed in the light of moral values and principles”,⁹ the latter meaning a series of judgments of evaluation, of finding relationships, on the basis of which an individual, a group or a community as a whole assumes attitudes in response to the various aspects of reality. Obviously, these attitudes are of a dichotomic nature since they usually oscillate

between two opposed poles, while the subject assumes that position between the two poles that fits best his/her education, culture, training and intelligence, as well as his/her short-term or long-term interests.

Of course, once agreed that, apart from intelligence (which is an individual gift that doesn't change in a lifetime), the evaluation, the previously mentioned dichotomic attitudes depend on education, culture and training (which are all undergoing continuous changes) one has necessarily to also agree that moral values and principles evolve (therefore change) as the subject himself evolves. In other words, what is considered to be 'good' at a certain moment may later be appreciated as 'bad', or vice versa, no matter whether the subject is an individual, a group or a community. What comes out is an essential characteristic feature of ethic principles and values, namely, that they are **time-dependant**, meaning that they change in time, becoming as a matter of fact one of the factors characterizing a certain period of time.

While, for instance, not very long ago, slave trade was considered something normal and even necessary, slavery is altogether differently viewed nowadays.

A second essential characteristic feature with ethic principles and values, one that also comes out from the factors influencing the evaluation a subject is always making, is the fact that at a given moment they differ from one subject to another, or to put it other way, **they are subjective** par excellence.

It is quite clear that, while he who has what to eat considers that to steal a loaf of bread is shameful, immoral, etc., therefore something 'bad', for he whose child may die for hunger the same action has the connotation 'absolutely necessary', 'vital', therefore something 'good'.

In bioethics, the judgment of evaluation is based on facts, rules and principles. Generally, the principles are fundamental rights: respect for a person's self-determination; respect for life.

The **self-determination principle** is based on the autonomy of human freedom (inviolability of the person). In law, this is not an exclusive principle: it is necessary, but not sufficient. As a matter of fact, the person's inviolability principle allows for two interpretations: on the one hand, no one shall be treated/subject to experiments

⁸ Patrick Fraisseix, *op. cit.*

⁹ Valeriu Andrei Rendec, *Forward to „Bioetica. Mijloace și căi de acțiune”*, Institutul Român pentru Drepturile Omului, București, 2004.

without his/her consent – which is clearly an application of the principle of autonomy; on the other hand, it may be interpreted as an application of the life-preserving principle, as long as it protects the person's physical and mental integrity.

The **respect-for-life principle** is the most frequently invoked principle by the western culture as a justification for moral norms, legal regulations, social policies and human rights. This principle is rooted in ancient times, in the oriental religions (particularly the Hindu one), the Jewish-Christian tradition, as well as the Hippocratic Oath. It preserved its importance even when morals and law separated from religion. This principle expresses the fact that life, and human life in particular, has an inestimable value, and this is the reason why it should be defended and protected, while it is acknowledged its sacred nature this way.

According to some authors¹⁰, these basic principles can be added others as well:

The utilitarian principle: an action is evaluated first of all in terms of the costs and the benefits; ethic acceptability depends on the consequences; one should seek for what is best for the majority. The ontological dimension of human action is excluded.

The universality principle. Inspired from Immanuel Kant's universality theory, this principle, which broadens the sphere of ethics, can be paralleled to the golden rule of oriental religions: „don't do to others what you don't want to be done to you”.

The equality principle. All human beings are equal in rights and value. The principle states that, when selecting the subjects for medical caring, the social, racial or religious criteria shall not be taken into account.

The principle of justice and equity. The most disadvantaged shall be favored.

This principle leads to **the principle of differences and equal opportunities**. Bioethics proved that technological progresses in medicine, particularly in genetics, neglected the personality of the patient, who also has a soul beside tissues. The new genetic technologies increased the accuracy of investigations and their effectiveness,

guaranteed for the truth at a higher rate, allowed the public to monitor their development, and allowed for scientific progress. At the same time, they diminished the right to privacy and private life, did not always enjoy the approval of society and public opinion, created the image of the physician's uncontrolled power (e.g. the moment of death), and developed on the basis of profit rather than moral criteria (e.g. artificial insemination).

The problems are numerous for „life itself, in its complexity, raise them everywhere, while obstinately refusing to fitting into patterns and simplifications”.¹¹ And, as with any field of knowledge, the first step towards finding the answers and the solutions is to acknowledge the existence of the problems themselves, to clarify them, and to ask the questions as clearly as possible.

Bioethics was introduced in the higher educational system as a self-standing discipline on initiative by Member of Academy Constantin Bălăceanu Stolnici Vice-President of the Foundation „Ateneul Român”, under the auspices of which the first private university in Romania, the Ecological University, was established in 1990, whose first Rector was the late Prof. Dolphi Drimer, PhD.¹² But the „leader” of the discipline of bioethics was the distinguished geneticist Constantin Maximilian, till his death in 1997.

Ever since bioethics was introduced in the educational system as a self-standing discipline, the Romanian Association for the United Nations (ANUROM), an NGO affiliated with the World Federation of United Nations Associations (WFUNA), and the Romanian Institute for Human Rights (since 1991, when it was established), in collaboration with the International Institute of Law of French Expression and Inspiration (IDEF), got involved actively with the assertion and evolution of bioethics in Romania. They advocated the project in the framework of several activities and events, such as: the courses of the

¹¹ Valeriu Andrei Rendec, *op. cit.*

¹² See S. Nicolau, *Nevoia de bioetică. Începuturile învățământului universitar de bioetică* în Comisia Națională a României pentru UNESCO, Comitetul Național Român de Bioetică, Institutul Român pentru Drepturile Omului, Colegiul Medicilor din România – Filiala Iași, „Simpozion Național cu participare internațională *Educația în bioetică și drepturile omului*”, UNESCO, 2005.

¹⁰ Prof. Astărăstoae, Prof. Ortansa Stoica.

International University of Human Rights, the 15 sessions of the International Symposium on „Human Rights – Spiritual Dimension and Civic Action”, etc.

Professors at the Faculty of Law of the Ecological University such as late Prof. Sanda Ghimpu, PhD (Dean), late Prof. Victor Dan Zlătescu PhD creator of the modern school of comparative law, introducer of the Comparative Law in the Romanian Academic Education System and President of the Romanian Society of Comparative Law, titular member of the International Academy of Comparative Law, Prof. Irina Moroianu Zlătescu PhD titular member of the International Academy of Comparative Law, Director of the Romanian Institute for Human Rights and former Secretary of the Romanian Society of Comparative Law were concerned with achieving a connection between bioethics and human rights and took efforts to organize various international events devoted to bioethics, comparative law and human rights.

In time, other bodies and organizations got involved to support the project as well: the Romanian National Commission for UNESCO, the Romanian Society for Comparative Law, Association Clubul de la Cheia „Victor Dan Zlătescu”.

When in 1996, on initiative by the late Prof. Constantin Maximilian PhD, Member of Academy, the first International Bioethics Symposium organized in Romania on *Ethic and Economic Options with Medical Care* took place in Oradea – Băile Felix, both IRDO and ANUROM were represented. The Symposium enjoyed the assistance of the Academy of Medical Sciences of Romania and the presence of the President of this forum himself, the late Prof. Ștefan Milcu PhD, Member of Academy; it also enjoyed a remarkable international participation (11 European countries were represented) and was a small step forward on Romania's way towards the European science and civilization. Representatives of the Romanian Institute for Human Rights and the Romanian Association for the United Nations were also present at the second edition of the Symposium that took place in the same place in April 2000 on *The Physician-Patient Relationship: Ethic and Economic Options with Medical Care*. Other events on the same topics that enjoyed the participation of representatives of IRDO were the 2nd National

Symposium with international participation, organized by the University of Bucharest Institute of Genetics under the auspices of Romania's National Commission for UNESCO and in collaboration with the University of Agronomic Sciences and Veterinary Medicine, as well as the more recent Open Workshop of the Romanian National Committee of Bioethics¹³, organized in Bucharest in June 2003, whose topic was the issue of bioethical education. Also, in 2005, the Romanian National Commission for UNESCO, the Romanian National Bioethics Committee, the Romanian Institute for Human Rights and the Romanian College of Physicians organized at Cheia a National Symposium with international participation on „Education in bioethics and human rights” (16-19 November 2005).

In recent years, the impact of biotechnologies upon the very nature of man and society has come to seriously jeopardize certain universal values, characteristic of the human being.¹⁴

Mentioning the confrontations between the promoters of absolute freedom of scientific research and ecologists, we should point that there are several problems related to the future of mankind, raised by the development of the genetic manipulation techniques, by the state-of-the-art biotechnologies and by bio-industry.

In order to have a normal evolution of the human race, it is necessary that a sustained activity of information be performed and the democratic access of individuals to the law-making process be provided, for the laws in this field are extremely complex and have consequences both in the average-run and the long-run.

The development of bioethics may have a major impact upon the future of our species.

At a time of great challenges¹⁵ of science and technology, to resort to ethics is a prerequisite with solving the complex problems raised by the management of progress in the field, for the

¹³ Both the Romanian Institute for Human Rights and the Romanian Association for the United Nations are represented in the Romanian national Committee of Bioethics.

¹⁴ See Sanda Pîrvu, *Prespectiva bioetică a cercetărilor de genetică*, in „Bioetica. Mijloace și căi de acțiune”, Ed. IRDO, București 2004, p. 35 et seq.

¹⁵ See Irina Moroianu Zlătescu, Rodica Șerbănescu, *Spre o Cartă etică universală*, in „Bioetica. Mijloace și căi de acțiune”, Ed. IRDO, București 2004, p. 14 et seq.

benefit of the human being, of all human beings, not to their detriment, or the detriment of some of them.

The juridical thinking will not be able to give the correct solutions except within the logic of this ethic postulate, just the same way that a regulation, as welcome and correct as it may be in a certain field, will not be implemented effectively without the large endorsement of certain ethic norms characterizing those tasked to apply it.

In this context, a number of questions may be asked: is the adoption of a universal ethics charter necessary and possible? If so, on what conditions, and what are the previous stages to be gone through?

The progress of science and technology should be accompanied by the progress of social thinking. Juridical thinking will not be able to offer the correct solutions except within the logic of this ethic postulate, just like a regulation, no matter how adequate and correct in a field, will not be effectively put to practice without a sustained support of ethic norms to which those who are to apply it abide.

Structured in systems whose originality went beyond the limits of the national philosophy, the inter-war Romanian rationalist thinking turned *progress* into a cardinal topic for meditation.

In the view of professor Dimitrie Gusti, progress in social thinking, considered as a general law of the human race, is equal to the transition from authority to autonomy.

As professor Gusti believed, in order to be able to understand how such a transition is made one should answer the question: *What is the criterion for moral actions? Why is a certain deed considered to be good while another one bad?*

In his opinion there are two possibilities for establishing criteria and interpreting actions: a) by appreciating the action in terms of the purpose – meaning that an action is good or bad if its purpose is good or bad, and b) by analyzing the reasons motivating the pursuit of the respective purpose, the action being considered good or bad also in terms of the inner motivation it comes from.

Hence two possible ways of considering actions, which give birth to two types of systems: the first one, heteronymous, where „the purpose I am pursuing may be imposed from the outside...”. I am pursuing this purpose because it is imposed

to me, even if I believe it to be bad; and, the second one, the autonomous system, where a certain purpose, even though no longer my own but everyone's purpose, is the one I choose to undertake and none else, as I am aware of it. This involves a conscious choice and the possibility to make decisions. In an autonomous system, the purpose is willful, not imposed.¹⁶

What kind of universal ethic charter are we envisaging? In respect of human rights and the democratic norms, we cannot choose but the autonomous system, embraced by most people or by the most influent ones, even if to some people it would only be a heteronymous system.

Is the adoption of such a charter possible? If so, under what circumstances? What preliminary have to be taken?

In the context of these questions, a significant post-war experience comes to mind. It consists in the adoption of the Universal Declaration of Human Rights on 10 December 1948. It would be useless to emphasize here the importance of this fundamental document.

In the present day, characterized by globalization, chances for the globalization of certain values, principles and norms are to our opinion much bigger.

It is more and more important to become aware of the need for cooperation and tolerance, to find the common denominator among the values cultivated by different cultures and civilizations and to cast our eyes over the future rather than the past.

As it is known, the ethics of science and technology is one of the five main priorities of UNESCO, which, as Koïchiro Matsuura, former Director General of UNESCO, showed in 2009 on the occasion of the analysis of the International Bioethics Committee activity, proves the „determination to place scientific and technological progress in a context of ethical reflection that is rooted in the cultural, legal, philosophical and religious heritage of the various human communities”.¹⁷

In order to be protected against the possible deviations of biomedical researches and make all

¹⁶ Dimitrie Gusti, *Curs de etică* (1931-1932) în D. Gusti, „Opere”, vol. II, Ed. Academiei, 1969, p. 252.

¹⁷ Koïchiro Matsuura, Address at the opening of the third session of the Intergovernmental Bioethics Committee.

people enjoy their results and progress, an ethic consideration is necessary, meant to go far beyond the traditional medical deontology. It is also necessary to permanently take into account social responsibility and the respect for a person's dignity and liberty.

Bioethics shall determine the adaptation of two basic principles in the medical practice: confidentiality and equality, both before the disease and before death.¹⁸

Attention should focus on the respect of the dignity of those who are treated and implicitly the dignity of those treating them, for there is no subordination relationship between them, but the equality in dignity and rights of persons with different responsibilities. The regional legal instrument taking into consideration the various ethic, social and juridical aspects of the application of the latest discoveries in biology and medicine is the Council of Europe Convention on Human Rights and Biomedicine, also known as the Convention of Oviedo.¹⁹ Integrating the need to trigger an ethic revolution, the Convention consecrates and protects to this end rather universal values than European ones, be it either human dignity or human identity, or the integrity of the human being.

The relationship between human rights and bioethics has been a preoccupation for the United Nations and particularly for UNESCO for several years now, but it is deeply rooted in the entire activity devoted to the acknowledgement and protection of human rights.

In Romania, the international regulations in the field of human rights are an integral part of the domestic law.²⁰ Thus, according to Article 11 paragraph 2 of the Constitution, treaties ratified by Parliament according to the law, are part of national law. Unity of public law is therefore ensured on the basis of precedence of international regulations. It is a consecration of the precedence given to the interpretation of international norms

¹⁸ See Octavian Popescu, *Etica profesiilor de medic și farmacist în relația cu bolnavul și în prescrierea medicamentelor*, in „Bioetica. Mijloace și căi de acțiune”, Ed. IRDO, București 2004, p. 19 et seq.

¹⁹ Signed by Romania on 4 April 1997; in force since 1 December 1999.

²⁰ See Irina Zlătescu, *Romania*, in *International Encyclopaedia of Laws: Constitutional Law*, Kluwer Law International, The Netherlands, 2013, p. 89 et seq.

in the field of human rights in applying the corresponding national legal provisions, constitutional or of a different nature. In this respect, paragraph 1 of Article 20 provides that the constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights and with the covenants and other treaties Romania is a party to. Thus, the Universal Declaration, which was not adopted as an international convention, received within Romanian law the value of a constitutional norm. It is applicable law, of course to the extent its provisions are to be found in an internal legal provision, which, nevertheless, is not an obstacle since the constitutional declaration of rights and freedoms implies such an agreement.

Finally, precedence of the international regulations that conflict with an internal regulation (paragraph 2 of Article 20) is a principle that ensures dynamism in the development of internal law in terms of international developments in the field of human rights, integration of the internal law with the international one, and their unity as an expression of the unity of public law.²¹

The progresses of scientific research, particularly in the field of genetics, impose a reconsideration of the regulations in the field of human rights. In this undertaking, one has to remark that the 'gender' dimension is present more significantly than it used to, while women have been showing greater interest and desire to actively get involved with it.

The reproductive technology, primarily, has a strong impact on both women and men.

The gender dimension²² demands for increased attention to such issues as the rights of the patient, access to healthcare services, the consent given with full awareness about the facts and consequences,

²¹ The exception referring to the application of the most favourable legal provision was added in the revised text of 2003.

²² See Irina Moroianu Zlătescu: *Drepturile femeii – reglementări internaționale și naționale*, IRDO, București, 1995; Idem, *Drepturile femeii – egalitate și parteneriat*, IRDO, București, 1997; *Égalité de chances, égalité de traitement*, IRDO, București, 2000, with a preface by G. Conac, Honorary Professor University Paris I; Idem, *Drepturile femeii și bioetica. Aspecte specifice*, in „Bioetica. Mijloace și căi de acțiune”, Ed. IRDO, București 2004, p. 30 et seq.; Idem, *Protection against Racism and Discrimination*, Ed. IRDO, 2011, p. et seq.

confidentiality of the data related to the status of the embryo, which all assume specific aspects, important in terms of women's rights. It is also worth emphasizing the need for better knowledge to be reached through pluri- and inter- disciplinary research as well as through partnerships between specialists and institutions of various concerns, including those concerned with human rights.

All these efforts were no surprise. They were a natural continuation of older preoccupations, representing a response to the extremely complex issues raised by the present state-of-the-art of biomedical sciences and technologies, also in terms of human rights, or rather all the more in terms of human rights. Such issues as those

referring to cloning and human cloning, transplants of organs and donation of organs, euthanasia and eugenics, sex-shift surgery, interventions to influence the gender of the fetus, just to mention a few of the best known and most delicate ones, are all issues for which the contemporary society shall have to find answers and solutions rather sooner than later. The future of mankind, the future of man as a species ultimately will depend on the way these challenges are solved. And it is only by getting involved that one can influence something. For, as the late Constantin Maximilian PhD would say, „*bioethics is the point of intersection of all those who concern themselves with the human destiny subject to the pressures of science*”.