

Slovenian Experiences Concerning Religion and Biolaw

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«So, since all law is made for the sake of human beings, we should first speak about the status of persons».

(Justinian, *Digest* 1.5.2)¹

I. INTRODUCTION

The lagging of the man behind his works is according to M. Buber the peculiarity of modern crisis.² This is especially true in the area of modern (bio)technology, economy and politics. Two things became questionable during the modern crisis: the person and the truth³. The abundance of academic discussions about the relevance of human dignity in biomedicine, bioethics and biotechnology seems to fully confirm Buber's thesis⁴. The scientific progress in biomedicine and biotechnology challenges also contemporary doctrine of human rights. The biolaw stands in an unprecedented cross-fire between the lines of the rapid scientific development, of the enormous economical interest of medical (especially pharmaceutical) industry, of the proponents of ethical and/or religious values in biomedicine and biotechnology, and also of our usual way of life. Yet better, it is the biolaw that should to a great extent provide for appropriate and universally acceptable solution(s) not just to the above mentioned conflicts, but also to the most difficult questions about the human nature and dignity.

¹ "Cum ... hominum causa omne ius constitutum sit, primo de personarum statu ... dicemus".

² Buber, M. "Problem človeka" ("Das Problem des Menschen"), Društvo Apokalipsa, zbirka Aut, Ljubljana, 1999, p. 62.

³ Buber, M. "Dialogski princip" ("Das Dialogische Prinzip"), Društvo 2000, Ljubljana, 1999, p. 205.

⁴ In this regard, Baylefeld, D. and Brownsword, R.; *Human Dignity in Bioethics and Biolaw*, Oxford University Press, 2001, p.6.; Lenoir, N.; *Legal argumentation in Biolaw*, 1. International Conference on Bioethics and Biolaw, Copenhagen, 1996; Romero Casabona, C. M. (Ed.); *Biotechnology, Law and Bioethics Comparative Perspectives*, Bruylant, Bruxelles, 1999, p.37; P. Smith - II, G. *Human Rights and Biomedicine*, Kluwer Law International, The Hague, The Netherlands, 2000, p. 14; Finnis, J.; *The Priority of Persons* (URL: <http://fds.oup.com/www.oup.co.uk/pdf/0-19-826858-0.pdf>; 29. 7. 2007); Andorno, A.; *The paradoxical notion of human dignity* (URL: <http://www.revistapersona.com.ar/Persona09/9Andorno.htm>; 26. 7. 2007); Dahl Rendtorff, R.; *Basic Principles in Bioethics and Biolaw* (URL: <http://www.bu.edu/wcp/Papers/Bioe/BioeRend.htm>; 26. 7. 2007).

Also in Slovenia a biolaw was and remains a troublesome field of legal regulation. Since the Church and the religion as such were banned from the public life prior to the year 1990, the Slovenian legislation from that time was not directly affected by the religious views of the citizens. According to the Constitution of the Socialist Federative Republic of Yugoslavia (1974)⁵ and to the Constitution of the Socialist Republic of Slovenia (1974)⁶ the religion was considered to be a purely private matter and the use of religion and religious activity in the political life was strictly prohibited. Totalitarian perception of religion was replaced by the democratic and pluralistic approach with the adoption of the new Constitution in December 1991⁷. Churches and religious communities are from that time on free to say out their opinion on all public matters. The aim of this discussion is to present the influence of religious views and arguments on legal regulation in the field of bioethics and biolaw after the year 1991. The discussion only deals with selected topics of biolaw which were influenced by the arguments of the most influential religious speakers.

II. THE NATIONAL MEDICAL ETHICS COMMITTEE AND RELIGIOUS SPEAKERS

Due to the fact that a formal system for ethical review of medical research exists since the 1960s, it can be argued that a high awareness about the importance of medical ethics and bioethics has been characteristic for Slovenian medical science for more than four decades.⁸ A special body affiliated with the Medical Faculty of the University of Ljubljana was established after the adoption of the Helsinki Declaration (1964) in order to review medical research at its institutes and teaching hospitals. In 1977 it became a national committee which was a precursor of the National Medical Ethics Committee⁹.

The National Medical Ethics Committee

The National Medical Ethics Committee (hereinafter: the NMEC)¹⁰ is not the only scientific institution dealing with the issues of bioethics and biotechnology in Slovenia, but it is the most important one¹¹. According to the art. 60 of the Health Services Act (1992) the NMEC has the authority to review most of the biomedical research on human subjects.¹² As a consultative body it was also involved in the drafting of statutes on organ

⁵ See Art. 174 of the Constitution of the Socialist Federative Republic of Yugoslavia (1974).

⁶ See Art. 299 of the Constitution of the Socialist Republic of Slovenia (1974).

⁷ Official Gazette RS, No. 33/91-I, 42/97, 66/2000 and 24/03 (Ustava Republike Slovenije).

⁸ See Trontelj, J. *Research Ethics Committees in Slovenia*; (URL: <http://www.mf.uni-lj.si/kme-nmec/>).

⁹ Trontelj, J., Žakelj, T. *Needs and Demands Analysis for a database on ethics in medicine and biotechnology in Slovenia & Survey on survey on information infrastructure* (URL: http://www.shf.ac.uk/eurethnet/Needsdemands_SLOVENIA.pdf).

¹⁰ Trontelj, J. *Research Ethics Committees in Slovenia*; (URL: <http://www.mf.uni-lj.si/kme-nmec/>).

¹¹ More about the role of various ethics committees Slovenia in Trontelj, J. *Research Ethics Committees in Slovenia*; (URL: <http://www.mf.uni-lj.si/kme-nmec/>).

¹² More detailed about the powers of the NMEC in Trontelj, J. & Korošec, D. *National Regulation on Ethics and Research in Slovenia*, European Commission (URL: <http://ec.europa.eu/research/science->

transplantation, on medically assisted procreation and on gene technology. One of the most known activities of the NMEC was the publishing of several position papers: on euthanasia, on alternative medicine, on the right of Jehovah's witnesses to refuse blood transfusion on behalf of their children, on Oviedo Convention and its Protocols, on compulsory immunization, on therapeutic cloning, on the right to palliative care, on ethical aspects of human genetics etc¹³.

Religious Speakers

Common religious speakers, which have a relevant influence on public debate and on legislative deliberations, are the representatives of churches and religious communities registered in Slovenia. In 2005 the Government's Office for Religious Communities invited the acting president of the NMEC professor Jože Trontelj to be the lecturer at the 37.th symposium of the representatives of churches and religious communities devoted to the bioethical problems of the modern biomedicine. Almost all of them showed great interest on the topic. However, churches and religious communities are differently involved in the debates about bioethics, biomedicine and biotechnology. The biggest and permanent influence on the public debates have had the Commission Justice and Peace (hereinafter: the CJP) of the Slovene Bishop Conference of the Roman Catholic Church. The Roman Catholic Church in principle favours the operation of bioethical committees¹⁴ and the CJP issued many statements about bioethical aspects of modern medicine and biotechnology.

III. CONSCIENCE OBJECTION AND ABORTION

From a historical perspective the issues of the conscience objection and of the abortion raised the first and severe controversies that were also related to the problems of effective protection of human rights and their interpretation in Slovenia. The *Health Measures in Exercising Freedom of Choice in Childbearing Act* in 1977 legalized abortion in Slovenia and is still in force¹⁵. In 1986 and in 1987, when the process of democratization started, the CJP issued two statements with the demand for the protection of the right to conscience objection. Medical workers of Catholic belief should not be forced to conduct

society/pdf/sl_eng_lr.pdf); Trontelj, J. *Research Ethics Committees in Slovenia*; (URL: <http://www.mf.uni-lj.si/kme-nmec/>).

¹³ Trontelj, J., Žakelj, T. *Needs and Demands Analysis for a database on ethics in medicine and biotechnology in Slovenia & Survey on survey on information infrastructure* (URL: http://www.shcf.ac.uk/eurethnet/Needsdemands_SLOVENIA.pdf).

¹⁴ See para. 8 of the *Carta Degli Opeartori Sanitari*, Pontificio consiglio della pastorale per gli operatori sanitari, Città del Vaticano, 1995.

¹⁵ Official Gazette SRS, No. 11/1977, 42/1986, Official Gazette RS, No. 29/1995, 70/2000) (Zakon o zdravstvenih ukrepih pri uresničevanju pravice do svobodnega odločanja o rojstvu otrok).

abortions, because this means the killing of an unborn human being¹⁶. In the time of the preparatory work on the draft of the Constitution of the Republic of Slovenia in 1991 the CJP in two statements on the one hand stressed that the right to abortion cannot be one of the constitutional rights, but it also declared that the constitution should not prohibit the abortion on the other hand. According to the CJP the abortion is an evil act and the unborn human being should be protected also against the arbitrariness of the parents¹⁷. A few days before the enactment of the new Constitution the CJP criticized the draft Constitution prepared by the Constitutional Commission and stressed that the proposal gives the parents unlimited freedom to decide about the birth of their children, including the right to deny them living, which “is a great shame”. This was also contrary to the constitutional provision, which guarantees the inviolability of the human life (Art. 17)¹⁸. After the adoption of the Constitution the CJP condemned the provision of the Art. 55 of the Constitution¹⁹ as a shameful spot on the Constitution²⁰. In the case no. U-I-209/97 (November 1997) the Constitutional Court rejected the petition of the Civil Society for Democracy and a State Governed by the Rule of Law and the Society for the Democracy of Media filed for review of the constitutionality of the General Act on the Termination of Pregnancy, and the Act on Health Measures Taken for the Realization of the Right to the Freedom of Choice in Childbearing. The Court stressed that they do not have standing (legal interest), because the statutes that they challenged do not regulate the position of the associations of citizens. Thus, the Constitutional Court still did not decide on abortion in respect to the inviolability of the human life as enshrined in the art. 17 of the Constitution. Because the Constitution introduced the right to conscientious objection (art. 46 of the Constitution), which determines that the «conscientious objection shall be permissible in cases provided by law where this does not limit the rights and freedoms of others» and also the art. 49 of the General Practitioners Act (1999), conscience objection of a doctor or other health worker became unproblematic. The CJP recently published a new statement calling the Slovenian members of the Amnesty International organization not to support the right to abortion at the Amnesty International meeting in Mexico (in August 2007)²¹. The opinion of the NMEC on abortion is based upon the relevant provisions of the Slovene Code on Medical Deontology, which rejects the abortion as a family planning

¹⁶ The Statement “On the objection of conscience” of the CJP (1986) and the Statement “On the objection of conscience and on Nova revija” of the CJP (1987).

¹⁷ The Statement “On the supposed constitutional right to abort” of the CJP (1991).

¹⁸ The Statement “We do not agree to the constitutional motion regarding abortion” of the CJP (1991).

¹⁹ The Article 55 of the Constitution (Freedom of Choice in Childbearing): “(1) Everyone shall be free to decide whether to bear children.

(2) The state shall guarantee the opportunities for exercising this freedom and shall create such conditions as will enable parents to decide to bear children”.

²⁰ The Statement “A declaration at the occasion of the murder of I. Kramberger and about abortion” of the CJP (1992).

²¹ The Statement “The Call to the Slovene members of the Amnesty International” of the CJP (2007).

method in the case of social insecurity and considers the abortion as evil²². The abortion remains a highly disputed subject in the Slovene society. A new *Abortion Act* should be prepared in order to replace the outdated *Health Measures in Exercising Freedom of Choice in Childbearing Act* and during the preparatory work on the draft bill we can expect a new wave of public debates about the appropriate legal regulation of abortion.

IV. INFERTILITY TREATMENT, BIOMEDICALLY–ASSISTED PROCREATION ACT

The *Infertility Treatment and Procedures of Biomedically–Assisted Procreation Act*²³ (2000) was heavily criticized by the CJP, which stressed that there are severe ethical obstacles in relation to the artificial insemination because of the tendency to reduce the human person to the nameless biological mass. The CJP in particular refused the methods of heterologic artificial insemination²⁴. In April 2001 the National Assembly enacted changes to the *Infertility Treatment and Procedures of Biomedically–Assisted Procreation Act* which intended to open the possibility for the artificial insemination treatment also to single fertile women. Not just the CJP, also the NMEC was against the proposed change of the bill. Finally, the bill was a subject of a subsequent national referendum and a vast majority of voters (72.3%) did not support the proposed changes of the bill²⁵.

V. EUTHANASIA AND THE END-OF-LIFE ISSUES

The NMEC as well as the CJP fully decline the legalization of euthanasia. In April 1997 the NMEC adopted a position about the care for the dying patients and about euthanasia. The NMEC stressed that euthanasia is (and should remain) prohibited by law as well as by the Code of Medical Deontology even in the cases of dying patients. Their situation should be addressed with the appropriate palliative care²⁶. In 2001 the CJP also issued a statement devoted to euthanasia and claimed that the prohibition of killing other human being is a fundamental and universal moral demand. Euthanasia is ethically unacceptable and would produce a severe pressure on (dying) patients. It is also contrary to the Art. 17 of the Constitution which determines that: «human life is inviola-

²² See Chapter 5 (particularly the art. 38) of the Slovene Code on Medical Deontology.

²³ Official Gazette RS, No. 70/2000 (Zakon o zdravljenju neplodnosti in postopkih oploditve z biomedicinsko pomočjo).

²⁴ The Statement “On the Artificial Insemination” of the CJP (2000).

²⁵ See more detailed about the ethical objections to the Infertility Treatment and Procedures of Biomedically–Assisted Procreation Act in Balažic, J.; *Predlog Zakona o zdravljenju neplodnosti in postopkih oploditve z biomedicinsko pomočjo – etični dvomi in Medicinska etika* (Balažic, J. and Kornhauser, P. ed.), Inštitut za sodno medicino, Medicinska fakulteta –Univerza v Ljubljani, Ljubljana, 2003 pp. 51-55.

²⁶ The position of the NMEC about the care for the dying patients and about euthanasia (April 1997) (URL: <http://www.mf.uni-lj.si/isis/isis97-6/html/trontelj18.html>).

ble»²⁷. A more explicit incrimination of euthanasia should be made in the Penal Code of Slovenia. It should be stressed that the draft Patient's Rights Act enshrines the right to a palliative care²⁸.

VI. BIOMEDICAL RESEARCH

Since December 1999 the Council of Europe's Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (hereinafter: the Oviedo Convention) has been in force in Slovenia and it is directly applicable in the Slovenian law. Slovenia also ratified its Protocols related to the prohibition of cloning human beings, to the transplantation of organs and tissues of human origin and to the biomedical research.

Despite the fact that Slovenia still does not have a special statute regulating the biomedical research on human subjects, a general legal framework exists together with some important statutory provisions. The *Health Services Act* in the Art. 47 demands that every medical treatment must be covered by an informed consent of the patient or, in case of a child or incompetent adult, the patient's parents or guardians. The *Penal Code* incriminates every negligent medical practice or intentional malpractice resulting in the serious damage to person's health. The *Infertility Treatment and Procedures of Biomedically-Assisted Procreation Act* in the Art. 38 provides that "scientific research ... on early embryos, created for the purposes of biomedically assisted fertilisation is allowed exclusively for the purposes of protecting and improving human health" and "only when the research cannot be performed with comparable effectiveness on animal embryos or by other methods..."²⁹. According to the draft *Patient's Rights Act* biomedical research can only be conducted on the basis of the full respect of the conditions for a valid informed consent of the patient³⁰.

For the full transposition of the Oviedo Convention into Slovenian Law it will be of essential importance that a draft *Biomedical Research Act* will be prepared, presented to the public and sent to the National Assembly as soon as possible. The Legislator will also have to insert additional provisions in the *Penal Code* in regard to bioethical issues such as explicit incrimination of cloning³¹, of creation of human embryos for research purposes etc³².

²⁷ The Statement "On Euthanasia" of the CJP (2001).

²⁸ The Art. 40 of the draft Patient's Rights Act.

²⁹ See more detailed in Trontelj, J. & Korošec, D. *National Regulation on Ethics and Research in Slovenia*, European Commission (URL: http://ec.europa.eu/research/science-society/pdf/sl_eng_lr.pdf); Trontelj, J. *Research Ethics Committees in Slovenia*; (URL: <http://www.mf.uni-lj.si/kme-nmec/>).

³⁰ The Art. 26 of the draft Patient's Rights Act.

³¹ The representatives of the Raelian religion have a contrary position on this subject, because it is a part of their belief that human beings were created via cloning.

³² See Bošnjak, M.; *Razvoj sodobne biomedicine in kazensko pravo (The Development of Modern Biomedicine and the Criminal Law)*, Scientia Iustitia, Cankarjeva založba, Ljubljana, 2004, p. 131.

VII. PARTICULAR RELIGIOUS ISSUES RELATED TO STEM-CELL RESEARCH, GENETICS AND CLONING

A draft *Bill on The use of Gene Technology* was prepared in 1997 and discussed in the Parliament during the year 2000, but was not accepted by the Parliament. During that time the NMEC made some important remarks to the draft in regard to the need to have an informed consent of a person involved in the genetic research and/or opting for genetic screening, to the freedom of a person's decision to have the treatment in connection to the demand to have obligatory counselling, to protection of privacy (the prohibition to review the genetic data to insurance companies) and to the rights of other persons to know etc³³.

The CJP in 2002 published a translation of a book with the title "Gentechnik und Ethik" (first published by the Swiss CJP) on the ethical questions on genetic engineering with the intention to inform the public about the ethical dilemmas which are involved in the use of modern biotechnology in relation to microorganisms, plants and animals. In the additional text to the translated text a member of the Slovene CJP presented the challenges of the application of biotechnology on human genome³⁴.

In 2006 the CJP criticized the support of the Slovene Government for the stem-cell research within the scope of the Seventh European Union Research Framework Programme. The CJP has raised three demands: 1. that the Government is obliged to protect human life from its conception on the national and on the European level; 2. that the Government will not finance and support any scientific research which is based on the destruction of human embryos; and 3. that the Slovene representatives in the European Parliament should oppose to the decision of the Council of Ministers³⁵. It should also be noted that the CJP protested because of the Government's misinterpretation of the NMEC's declinatory opinion about the stem-cell research into affirmative opinion. The NMEC *inter alia* stated that "the superfluous embryos originating from the procedures of the artificial insemination with biomedical help are not ethically neutral source ..." and was against the research on stem-cells.

The Oviedo Convention prohibited the cloning of human beings. The NMEC and the CJP strongly support this prohibition which has to be sanctioned by the Penal Code and regulated also in other statutes. A new *Law on protection of human rights with regard to genetics* should be prepared.

³³ See more in Trontelj, J.; *Nekatere etične dileme sodobne medicine (Some ethical dilemmas of the modern medicine)* in *Pravo in medicina (Law and Medicine)* (eds. Ada Polajnar - Pavčnik, Dragica Wedam Lukić), Cankarjeva založba (in the collection *Pravna obzorja*), Ljubljana, 1998, p. 404.

³⁴ Štuhec, I.; "Genetic Engineering and the Dismantled Human Being" in "Etična vprašanja genskega inženiringa", Družina, Ljubljana, 2002, pp. 55-70.

³⁵ The Statement "Human life is not a dispensable research material" of the CJP (2006).

VIII. PATIENT'S RIGHTS ACT - THE PROBLEMS OF REFUSING THE MEDICAL TREATMENT BECAUSE OF RELIGIOUS REASONS *DE LEGE FERENDA*

The NMEC in 1996 submitted an opinion about the right of parents belonging to Jehovah's witnesses to decide over the blood transfusion for their children³⁶. In the opinion of the NMEC such a decision has to be respected. There are no doubts in the case of adult patients, but in the case of children the NMEC held that the parent's right is not absolute. The best interest of the child should be considered as well, especially in the case of the urgent medical treatment. The NMEC also left open the possibility that there may be some special situations in which the compulsory medical treatment can be applied³⁷.

In June 2007 the Government drafted a new Patient's Rights Act. The respect for the patient's religious belief is one of the main principles of the Act, which will introduce a list of fourteen rights of a patient and strengthens the patient's autonomy. It is the patient's fundamental right to freely decide about the medical treatment. The Patient's Rights Act consequently includes the right to refuse medical treatment. It determines that the refusal of medical treatment, which is because of religious reasons, cultural tradition or other personal reasons unacceptable to the patient, has to be respected³⁸. However, the Patient's Rights Act intends to allow the medical treatment in emergency cases, when a child's life is at stake or there is an urgent need to avert a serious medical harm to the child even without the parent's consent to the treatment³⁹.

The Art 25 of the Religious Freedom Act (2007) provides that the persons in hospitals and social welfare institutions performing institutional care shall have the right to a regular individual and collective religious spiritual care. Hospitals or institutions performing institutional care have to provide the premises and technical conditions for religious spiritual care.

IX. CONCLUSIONS

The religious views and arguments in general played a major role in the public debate about the legal regulation in the fields of biomedicine and biotechnology. In respect to issues of euthanasia, cloning, biomedical research, artificial insemination of single women the appeals of the religious speakers, particularly of the CJP, were respected to a great extent. However, in the issues of abortion, infertility treatment (procedures of biomedically-assisted procreation) and stem-cell research the religious speakers were

³⁶ Trontelj, J.; *Nekatere etične dileme sodobne medicine (Some ethical dilemmas of the modern medicine)* in *Pravo in medicina (Law and Medicine)* (eds. Ada Polajnar - Pavčnik, Dragica Wedam Lukić), Cankarjeva založba (in the collection *Pravna obzorja*), Ljubljana, 1998, p. 397.

³⁷ *Ibidem*, p. 397.

³⁸ See the para. 7 of the art. 30 of the draft Patient's Rights Act.

³⁹ See the art. 36 of the draft Patient's Rights Act.

much less successful. The issue of bioterrorism fails to be adequately addressed in Slovenia⁴⁰. For religious speakers bioterrorism and alternative medicine seems not to be relevant topics⁴¹.

Various religious speakers need to become even more involved in the public dialogue about bio-issues. The Slovenian experiences with the religious views in relation to bioethics and biolaw indicate that the discussion about bioethics, biotechnology and biolaw is still in its early stage of development. There is almost no relevant jurisprudence in this area. Thus, the Slovenian biolaw is evolving rather slowly. The current state of affairs clearly calls for a more comprehensive biolaw and the introduction of many new statutes, i.e: the *Abortion Act*, the *Biomedical Research Act*, the *Patient Rights Act*, the *Law on protection of human rights with regard to genetics* and a revision of the *Penal Code* in regard to bioethical issues such as explicit incrimination of euthanasia, unlawful stem-cells research, cloning etc. Religious views and arguments should play a noticeable role in the future debate about the course of development of the Slovenian biolaw in order to provide for a constructive and wide agreement within the Slovenian society on these troublesome topics.

⁴⁰ See Stantič-Pavlinič, M.; *Bioterrorism and Public Health – Preparedness for Immediate Action*, *Zdrav Var* 2006; 45: 107-111.

⁴¹ The position of the NMEC, presented in 2004, supported the intention to draft a bill on alternative medicine. After consulting the NMEC, which has the authority to inspect the matters related to traditional or alternative medicine, the Government in 2007 presented a draft of the *Alternative Medicine Act*. It seems that religious arguments did not play a major role in the debate about this particular piece of legislation, which has not been adopted yet.

