

CRIMINAL SANCTIONS FOR CLONING HUMAN BEINGS IN NATIONAL AND COMPARATIVE CRIMINAL LEGISLATION*

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Although for some it still belongs to the field of science fiction, cloning has long been a topic that is dealt with by experts from various scientific fields. In addition to the medical profession, this issue is dealt with by theology, as well as legal science and sociology. Some countries allow therapeutic cloning, while others have taken a more radical position on this matter. International treaties are completely reserved in relation to cloning. They do not prescribe any obligation for the Member States, and they contain exclusively recommendations, based on which individual countries decide independently on the prohibition of human cloning and the extent of that prohibition. Nevertheless, at the global level, there is a wide consensus that reproductive cloning should be prohibited due to the perils and potential for abuse, while the position regarding prohibition of therapeutic cloning depends on individual countries. Considering that criminal law protects the most important social assets, the subject of this paper is criminal sanctioning of human cloning in both national and comparative legislation.

KEY WORDS: *cloning / human beings / criminal law / national legislation / comparative legislation*

* The paper represents the result of Project 179031 financed by the Ministry of Education, Science and Technological Development of the Republic of Serbia.

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INTRODUCTION

The internationally prevailing opinion is that human cloning is contrary to nature and human dignity. Therefore, it is prohibited both at the international and national levels.

A clone is understood to mean any organ produced through asexual reproduction or an organism that is a genetically identical copy of a biological entity, and any asexual reproduction. Cloning refers to the process of multiplying all individual cells of a living organism (Antonić, 2009: 173). It can have both positive and negative consequences. Nonetheless, the prevailing opinion seems to be that human cloning should be prohibited, as it is contrary to human dignity. Religion opposes human cloning. That was the position of the Catholic Church, which is expressed in the *Evangelium Vitae* (1995) by John Paul II. According to him, “human life is sacred because from its beginning it involves the creative action of God and it remains for ever in a special relationship with the Creator, who is its sole end. God alone is the Lord of life from its beginning until its end: no one can under any circumstance claim for himself the right to directly destroy an innocent human being” (according to Šimoković, 2002: 174). In spite of this, the Catholic Church supports the use of stem cells for medical purposes, provided that they originate from the umbilical cord or placenta, as they are naturally rejected. In addition, it regards bioethics positively, as a step towards a return to the original natural state of life and humanity (Antonić, 2009: 178, Zergollern-Čupak, 2006: 110).

The first attempt to clone living beings dates back to 1963. At that time, the British scientist John Gurdon succeeded in creating a frog by taking the nucleus from the cell of a frog and implanting it into its unfertilised egg cell that had had its own nucleus destroyed by UV radiation. However, at that time, the egg cell was not able to develop beyond the stage of a toad. Subsequently, there were examples of successful cloning of animals, but not of humans. Nevertheless, according to some sources, in 2001, American scientists tried to clone a human being, but unsuccessfully. The most frequently used technique is the so-called nuclear transfer.¹

The first embryo from a female egg cell and male skin cells was originally created by the scientists from the stem cell laboratory in New York for the sole purpose of harvesting stem cells for treatment. At that time, it was announced that a human embryo was successfully created from skin cells. However, the created embryos survived only six days. The embryos and cells at that point had three DNA strands instead of two.²

Today there are different views on cloning human beings. Therapeutic cloning is prohibited by some countries, while in other countries it is allowed. Stem-cell research and creating embryos for any research are generally prohibited. It is prohibited to create embryos for any research, but it is allowed to use “surplus” embryos created through *in vitro* fertilization (IVF) for research. In addition, there is a view that creating embryos for research is allowed under strictly specified conditions. Some countries have accepted the possibility of cloning for exceptional

¹ <https://sites.google.com/site/kloniranje12345/calendar> last accessed on 15.04.2019.

² <https://sites.google.com/site/kloniranje12345/announcements> last accessed on 15.04.2019.

therapeutic and preventive purposes, as stated in their national legislation (Živković, 2016: 111).

However, one of the main obstacles to human cloning is the inheritance of the so-called “cellular clock”.³

1. PROHIBITION OF CLONING IN INTERNATIONAL TREATIES

The prohibition of cloning was influenced not only by religious reasoning and sociological positions, but also by medical reasons. Sociologists believe that reproductive cloning would contribute to the disappearance of the family and the social relations (Héritier, 1985). In addition, cloning is unacceptable for health reasons. The nuclear transfer technology that is used in cloning living organisms is linked to high mortality rates and a high risk of miscarriage or developmental anomalies, endangering the lives of the children and the mothers (Pulman, 2007: 143-144.). In addition to reproductive cloning, therapeutic cloning and the use of embryonic stem cells have given rise to controversies. One of the issues that arise is that embryos are created only to be destroyed through the production of therapeutic material (Pulman, 2007: 140). However, stem cell cloning could have positive effects in terms of organ transplantation, medical treatment of injured neurons, and other purposes (Ayala, 2015: 8883).

Despite the above reasons, the prohibition of cloning cannot be universal and permanent. Therefore, certain is both the view that reproductive cloning should be absolutely prohibited and the view that it should not be allowed at this point (Pattinson, Caulfield, 2004: 7). The current prevailing universal opinion is that reproductive cloning is contrary to human dignity and that any behaviour contrary to the prohibition of cloning should be subject to criminal sanctions.

The prohibition of cloning at the international level comes with a certain degree of caution. Thus, Article 11 of the Universal Declaration of Human Genome and Human Rights (November 1997) expresses only the view that practices that are contrary to human dignity, such as reproductive cloning of human beings, should be prohibited, but that they should be permitted for scientific research purposes. This leaves a possibility for each country to decide whether to prohibit cloning of human beings by their national legislation.⁴ A more explicit position on the prohibition of cloning is reflected in the United Nations Declaration on Human Cloning (March 2005). It contains an invitation to all Member States to take adequate measures to prohibit cloning, including cloning for medical purposes, i.e., therapeutic cloning. According to the provisions of the Declaration, any type of human cloning is incompatible with human dignity and the protection of human life (Cameron, Henderson, 2008).

³ The cell timer considers inheritance of the cell cycle duration.

⁴ The Universal Declaration on the Human Genome and Human Rights, 11 November 1997. http://portal.unesco.org/en/ev.php-URL_ID=13177&URL_DO=DO_TOPIC&URL_SECTION=201.html. Accessed on 15.04.2018. According to article 10 of the Universal Declaration of Human Genome and Human Rights should be taken to ensure that research conducted in biology, genetics and medicine are not contrary to human rights, freedoms and human dignity. In accordance to article 11 of above mentioned Declaration, only such research can contribute to the welfare of mankind.

At the level of the European Union, the Convention for the Protection of Human Rights and Dignity of the Human Being was adopted in 1997.⁵ Its provisions prohibit also any creation of human embryos for scientific research. This is related to any form of cloning, including both embryo division and nuclear transfer. The Convention allows using human embryos for research, if the national legislation provides for their adequate protection. The 1998 Additional Protocol stipulates the prohibition of cloning. In fact, the prohibition has been extended to include any intervention seeking to create a human being genetically identical to another human being, whether living or dead.⁶

The 2000 Charter of Fundamental Rights of the European Union, in Article 3, paragraph 2, prohibits reproductive cloning. Its provisions neither permit nor explicitly prohibit the creation of human embryos for “therapeutic purposes”.⁷

In the 1998 Resolution on Human Cloning, the European Parliament has confirmed that human cloning must be prohibited. Its provisions call upon the Member States of the Council of Europe to sign and ratify the Council of Europe Convention on Human Rights and Biomedicine and the Additional Protocol on the Prohibition of the Cloning of Human Beings.⁸

The 2000 Resolution on the Prohibition of Cloning contains a position on therapeutic cloning, which has caused deep ethical dilemmas, and it specifies that it is incompatible with the position already adopted at the level of the European Union. However, none of the resolutions is legally binding.

Therefore, it has been left to the national legislations to decide whether to prohibit cloning for therapeutic purposes or not.

2. PROHIBITION OF CLONING IN NATIONAL LEGISLATION

Some authors rightly argue that cloning is problematic from the aspect of human dignity. As a reason for that, they argue that the genetic material is as alive as a human being, and that any manipulation with it can also be considered a manipulation of a human life (Antonić, 2009: 179). The same position on cloning is expressed in the provisions of the Serbian Constitution. Article 24, paragraph 3, as part of the proclamation of the right to life, prohibits also human cloning. The prohibition of cloning is also one of the ethical principles of the medical profession. Thus, Article 37 of the Code of Professional Ethics of the Serbian Medical Chamber prohibits cloning, i.e., any creation of genetically identical persons, which is proclaimed as a behaviour that is contrary to ethics and respect for human dignity.⁹ In accordance with the provisions of the Code,

⁵ The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine. The Convention was opened for signature in 1997, in Oviedo, Spain. Therefore it is known as „The Oviedo Convention“.

⁶ The Protocol on the Prohibition on cloning Human Beings.

⁷ The Charter of Fundamental Rights of the European Union, „Official Journal of the European Communities“ C 364/2000. Accessed on http://www.europarl.europa.eu/charter/pdf/text_en.pdf 15.04.2019.

⁸ See <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B5-2000-0710&language=EN> Accessed on 15.04.2019.

⁹ According to the Code of Professional Ethics of the Medical Chamber of Serbia („Official Gazette of the Republic of Serbia“, No 121/2007), all experiments aimed to create genetically identical human

any violation of the prohibition of cloning is a violation of professional duty and is therefore subject to the establishment of disciplinary responsibility.¹⁰

The Republic of Serbia has still to pass a separate legislation prohibiting cloning. Article 24 of the Serbian Constitution does not stipulate explicitly that the prohibition of cloning relates only to reproductive cloning, i.e., that cloning is allowed for therapeutic purposes. As a result, the above provision may be interpreted as the prohibition of any form of cloning. Therefore, the question might arise whether this means that our Constitution also does not allow explicitly any research in terms of cloning embryos to harvest stem cells.

In the Serbian Criminal Code, the prohibition of cloning is prescribed in the group of crimes against human health, even if, considering its predominant object of protection, it would be more logical that it is prescribed in the group of crimes against life and body.¹¹ Article 252 of the Criminal Code prescribes the crime of unlawful conduct of medical experiments and drug testing. The same Article, in paragraph 2, stipulates that any person who performs human cloning or experiments to that purpose is to be punished by imprisonment for a term of three months to five years. Given this formulation, it appears that the criminal law does not make the distinction between reproductive cloning and therapeutic cloning. It appears that the latter form of cloning could also be considered prohibited from the criminal law aspect.

3. PROHIBITION OF CLONING IN COMPARATIVE LEGISLATION

The views on cloning are largely influenced by cultural and religious traditions. Therefore, in some countries, cloning is allowed for therapeutic purposes, but with controlled practice. This is the case, for example, in Great Britain, Sweden and Israel. Asian countries, allow cloning for research and experiments. A successful example of that practice is the study conducted in South Korea by a team of biologists at the Seoul National University who used the nuclear transfer method to clone thirty embryos, which served to create a stem cell line (Pulman, 2007: 40).

3.1. Prohibition of Cloning in Croatian Criminal Legislation

The prohibition of cloning in the Republic of Croatia is not a constitutional category, unlike in the Republic of Serbia. In addition, there are differences in the field of criminal law. The Croatian Criminal Code, in Article 108, stipulates cloning and human genome modification as a separate crime in the group of crimes against humanity and human dignity.¹² The criminal act exists if a person undertakes any action seeking to create a human being with the same nuclear gene set as another

beings, with the same genetic system with other dead or a live human beings are prohibited.

¹⁰ Art. 2. of the Code of Professional Ethics of the Medical Chamber of Serbia.

¹¹ Krivični zakonik, „Službeni glasnik RS“, broj 85/2005, 88/2005-ispr., 107/2005-ispr. 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 i 94/2016.

¹² Kazneni zakon Republike Hrvatske, „Narodne novine“, broj 125/2011, 144/2012, 56/2015, 61/2015, 101/2017 i 118/2018.

human being, whether living or dead. The sanction prescribed for perpetrators of this crime is imprisonment for a term of one to ten years. The criminal act exists also if a person undertakes any action seeking to modify human genome and the procedure is not conducted for preventive, diagnostic or therapeutic purposes, or if it is performed for the above purposes, but it seeks to modify the patient's offspring's genome. The perpetrators of this crime are to be punished by imprisonment for a term of six months to five years.

In conclusion, the Croatian criminal legislation does not sanction human genome modification for preventive, diagnostic or therapeutic purposes, but only under the condition that it does not seek to modify the patient's offspring's genome. Such a legislative approach is justified from the ethical aspect. Consequently, research seeking to improve stem-cell treatment is not called into question, and sanctions are stipulated, for example, for modifications of future offspring's genetic material. Thus, Croatia has adopted a limited prohibition of human cloning. It applies only to reproductive cloning, while human genome modification is allowed for therapeutic purposes.

3.2. Prohibition of Human Cloning in Slovenian Criminal Legislation

In the Republic of Slovenia, similarly as in Croatia, the prohibition of cloning is not a constitutional category, but any act contrary to that prohibition constitutes a crime under the provisions of the Slovenian criminal legislation.

The crime of the creation of human beings is prescribed in the group of crimes against humanity, in Article 114 of the Slovenian Criminal Code.¹³ The specificity of this solution in relation to that adopted in the Serbian Criminal Code is also reflected in prescribing this crime in the above group of crimes.

The criminal act exists if a person creates or participates in the creation of a human being, or attempts to cross human beings with other species, contrary to the prohibitions specified in both the national and the international law. Imprisonment for a term of five to fifteen years is prescribed for the perpetrators.

The criminal act exists even if a person creates a human being genetically identical to another human being, whether living or dead. In addition, any creation of human embryos for research, industrial or commercial purposes, and any exchange of vital human organs or body parts that is prohibited under the legislation and international regulations also constitute this crime. For the above activities, the law prescribes imprisonment for a term of ten to fifteen years. The current Slovenian criminal legislation has also adopted a limited prohibition of human cloning. Therefore, any genetic research for the purposes of genetic-based prediction of disease or detection of a specific disease genome, genetic predisposition or sensitivity to specific diseases is also considered actionable if such research is not carried out exclusively for therapeutic or medical research purposes. The criminal act exists also if a person has provided any genetic counselling contrary to the legislation on conducting national research in the field of biology and medicine or the international regulations. In such cases, the perpetrator could be punished by a

¹³ Kaznenski zakonik, „Uradni list RS“, broj 50-2012-prečišćen tekst, 6/2016, 54/2012, 38/2016 i 27/2017.

fine or imprisonment for up to three years. The same sanction is prescribed also for a person who, in the course of research of a human embryo, endangers the integrity or life of the human embryo.

The same Article stipulating this crime provides also for the sanction for the aider, who finances, makes available facilities, utilities or other resources necessary for the creation of or crossing of human beings - imprisonment for a term from three to ten years.

3.3. Prohibition of Cloning in Montenegrin Criminal Legislation

In Montenegro, as in the Republic of Serbia, the prohibition of cloning is a constitutional category. The Montenegrin Constitution, in Article 27, in the part pertaining to personal rights and freedoms – a special Chapter devoted to biomedicine, guarantees the right of the man and the dignity of a human being with regard to the application of biology and medicine.¹⁴ The same Article prohibits any intervention seeking to create a human being that is genetically identical to another human being, whether alive or dead. In addition, it is prohibited to perform medical or other tests on human beings.

Similarly as in the Republic of Serbia, the Montenegrin criminal legislation stipulates the prohibition of human cloning. It is stipulated in the group of crimes against human health, in Article 291, and it is also covered by the legal description of the crime of unlawful conduct of medical experiments and drug testing. In accordance with the above provision, a person performing any intervention seeking to create a human being genetically identical to another human being or performing experiments for that purpose is to be punished by imprisonment for a term of three months to five years.

The Constitution and the Criminal Code of Montenegro, as well as the Constitution and the Criminal Code of Serbia, do not contain a provision allowing human genome modifications for therapeutic purposes.

3.4. Criminal Sanctions for Cloning in Italian Legislation

The prohibition of cloning in Italy is prescribed by the Act on Medically Assisted Reproduction.¹⁵ Article 12 of the above Act stipulates the prohibition of creating a human being genetically identical to another human being, whether living or dead. The same provision stipulates that a person who acts contrary to the prohibition of cloning is to be punished by imprisonment for a term of ten to twenty years, and a fine in the amount of EUR 50,000 to 150,000. In addition, the Act prescribes the pronouncement of the mandatory safety measure of the prohibition to perform the

¹⁴ Ustav Crne Gore, „Službeni list Crne Gore“, broj 1/2007 i 38/2013-Amandmani I-XVI.

¹⁵ Legge 19 febbraio 2004, n. 40, Norme in materia di procreazione medicamente assistita, „Gazzetta Ufficiale, n. 45 del 24 febbraio 2004. DECRETO 28 dicembre 2016, n. 265.

Regolamento recante norme in materia di manifestazione della volontà di accedere alle tecniche di procreazione medicalmente assistita, in attuazione dell'articolo 6, comma 3, della legge 19 febbraio 2004, n. 40. (17G00024) (GU Serie Generale n.40 del 17-02-2017).

professional activity. The Article stipulating the prohibition of cloning does not state explicitly that it does not apply to therapeutic cloning. However, in relation to the Croatian, Slovenian, Montenegrin and Serbian legislations, the Italian legislation is specific. The same regulation stipulates both the prohibition of cloning and the criminal sanctions for the violations of this prohibition.

3.5. Criminal Sanctions for Cloning in German Legislation

Germany was one of the first countries that stipulated criminal sanctions for cloning human beings.

Article 6 of the German Embryo Protection Act prescribes the sanction of imprisonment for a term of up to five years and a fine for any person who creates a human embryo with the same genetic information contained by another embryo, foetus or another human being, whether living or dead. The same sanction is to be imposed on any person who harvests embryos from a woman's body. Article 6 stipulates the sanction for an attempt to commit this crime. Although the Act does not specifically prohibit therapeutic cloning, it can be concluded that the provision of Article 6 refers also to cloning for therapeutic purposes.¹⁶

3.6. Criminal Sanctions for Cloning in French Legislation

In France, the sanction for cloning is stipulated in the group of crimes against human health, a Chapter specifying crimes against biomedical ethics.¹⁷ Imprisonment for a term of ten years and a fine in the amount of EUR 150,000 is to be imposed on any person who separates cells in order to cause the birth of a child genetically identical to another human being, whether living or dead. Any person who is abetting another person to commit this crime by giving gifts, promises, threats, giving orders or by abuse of power or using power otherwise, seeking to cause the birth of a child that is genetically identical to another person, whether living or dead is to be punished by imprisonment for a term of three years and a fine in the amount of EUR 45,000. The same sanction is stipulated for any person advertising or marketing reproductive cloning services. Considering that France does not make an exception from sanctioning for therapeutic cloning, it can be concluded that, under the French criminal law, cloning for any purpose is actionable.

¹⁶ Act on the Protection of Embryos of 13 December 1990, Bundesgesetzblatt 1990 Part pp. 2746-2748, amended by Article 1 of the Act of 21 November 2011 (Bundesgesetzblatt 2011 Part I p. 2228).

¹⁷ The text in the French language with the latest changes from 2016 is available at: <https://www.legislationline.org/documents/section/criminal-codes/country/30/France/show>

3.7. Criminal Sanctions for Cloning in Norwegian Legislation

In Norway, the prohibition of cloning is stipulated by the 2005 Act relating to the application of biotechnology in human medicine.¹⁸ The above Act, in Section 3-1, prohibits any use of human embryos for research. This prohibition applies also to any use of fertilized egg cells, cells derived from fertilized egg cells, or human embryos for research. In accordance with the provisions of Section 3-2, it is prohibited to create human embryos by cloning, including:

- the prohibition of any creation of human embryos by cloning;
- the prohibition of conducting any medical research on cells derived from human embryos by cloning;
- the prohibition of any creation of embryos by cloning by using the technology of transferring human genetic material into an animal egg cell.

For the purposes of the law, cloning is understood to mean the use of technology to create genetically identical copies. Therefore, Section 3-3 of the Act expressly prohibits the use of any technologies seeking to create genetically identical copies. Any person who acts contrary to the provisions of the Act is to be punished by imprisonment for a term of three months. In addition to the person committing the crime, his/her accomplice shall also be imposed the same sanction.

CONCLUSION

With the development of new technology and medicine, some things that were previously in the domain of science fiction have now become available. One of them is the cloning of human beings. The first attempt at human cloning was recorded in the 1960s. Although it was unsuccessful, given the knowledge and technology at the time, it is considered to have been a great achievement and a great surprise for the scientific community. More than thirty years after that, sheep Dolly was created and lived to be the ripe old age of seven, albeit shorter than the average age for her species.

Although one can occasionally see in the media that a human clone has been successfully created, the information always turns out to be completely false. Only attempts to create human beings have been recorded in science. However, it appears that science has yet to find the technology that would be suitable for this type of cloning. Even if the technology was advanced, the creation of human clones would still not be possible if one refers to reproductive cloning.

At the global level, there is a general consensus that reproductive cloning should be prohibited. The reasons for this view are manifold. If it were to be accepted, it would cause both the disappearance of traditional families and the disturbance of close family relations. In addition, surely a more prevalent reason is the probability of children born with developmental anomalies. The nuclear transfer technology that is currently applied in human cloning could cause high mortality and

¹⁸ Act of 5 December 2003 No. 100 relating to the application of biotechnology in human medicine.

miscarriage rates. The creation of genetically identical human beings reduces genetic diversity and results in the so-called “cellular clock“ inherited. In case reproductive cloning was allowed, reproduction could be commercialized, and this could eventually lead to the creation of a large number of clones, including even clones of people who caused a great damage to humanity in the past, e.g. Adolph Hitler.

At the international level, there are no legal documents that contain an obligation to prescribe the prohibition of cloning at the national level. They contain only recommendations for the Member States, i.e., they express a general position, without stipulating an obligation. Consequently, the matter of cloning itself appears to have been treated with great caution. This only serves to confirm the views of those who believe that it cannot be prohibited forever, and the global position regarding cloning can be expected to change in the future.

Unlike cloning of human beings for reproductive purposes, there is no general consensus regarding cloning for therapeutic purposes. Some countries allow it under their national legislation. This is the case, for example, in some Asian countries, where such research has been greatly advanced. However, in addition to the prohibition under separate laws on biogenetics or the highest-level state legal acts, reproductive cloning is subject to criminal sanctions. Some countries stipulate criminal sanctions under the secondary criminal regulations, while others stipulate this issue under the primary criminal legislation.

The Croatian Criminal Code stipulates the prohibition of human cloning for reproductive purposes, but it permits it for preventive, diagnostic or therapeutic purposes. However, in view of possible abuses, any person who clones human beings for this purpose is subject to criminal responsibility, if the cloning is performed seeking to modify the patient’s offspring’s genome.

Slovenia also stipulates a criminal sanction for cloning human beings, unless it involves genetic research for exclusively therapeutic or medical research purposes. This type of research must be carried out in accordance with the regulations governing the conduct of research in the field of biology and medicine both at the national and international level.

In Montenegro, and in the Republic of Serbia, the prohibition of human cloning is a constitutional category. Human cloning is a crime, and it appears that the legislator did not exclude the application of the criminal sanction for the creation of a human genome for therapeutic purposes. Therefore, it can be interpreted that the national legislation does not allow such practice.

In Italy and in Germany, criminal sanctions for acting contrary to the prohibition of human cloning are stipulated by the secondary criminal legislation. The Italian legislator stipulates both the prohibition and the sanction under the Act on Medically Assisted Reproduction, and the German legislator stipulates it under the Embryo Protection Act. However, neither legislator exempts therapeutic cloning from sanctioning, nor it is assumed that that procedure is not permitted under the national legislation.

The French Criminal Code stipulates a special group of crimes against biomedical ethics. The criminal sanction for cloning human beings is prescribed within that crime group. However, the Code does not provide for exemption of therapeutic cloning from the application of criminal sanctions, and therefore it

can be considered that this form of cloning is not allowed under the French legislation.

In Norway, the criminal sanction for cloning human beings is also stipulated under the secondary criminal legislation - the Act relating to the application of biotechnology in human medicine. Similarly as the legislation of most countries, the Norwegian legislation does not provide for an exception of human cloning for therapeutic purposes from the application of criminal sanctions.

The prohibition of human cloning is a constitutional category in the Republic of Serbia. The provision does not stipulate that cloning is allowed for therapeutic purposes, and it can be concluded that this type of cloning is also prohibited under the national legislation. The criminal sanction for human cloning is prescribed under the Criminal Code, within the group of crimes against human health. However, the criminal legislation does not provide for an exception from sanctioning for human cloning for therapeutic purposes. In conclusion, the Serbian legislator has adopted the absolute prohibition of human cloning.

Considering the above, it can be concluded that a large number of countries have adopted the absolute prohibition of cloning of human beings. Nevertheless, it seems that, despite the view that the creation of embryos that would serve for therapeutic purposes only is not justified, a more prevalent interest would be the wellbeing of humanity and the treatment of malignant and other severe diseases. However, it appears that the Republic of Serbia has taken the position expressed in the legislation of many countries, which implies the absolute prohibition on human cloning. The authors are of the opinion that the national legislation should nevertheless allow cloning for therapeutic purposes, but only under controlled conditions. This certainly requires both the advancement of technology in the field of biogenetics and the change of collective awareness, as well as the revision of the national legislation. There should be a separate legislation at the national level regulating research in the field of biogenetics. It should prescribe both the supervision of the application of the measures prescribed by law and the criminal sanctions for acting contrary to its provisions.

The cloning of human beings for reproductive purposes should not be decriminalised, and it appears that that will not be decriminalised in the near future. It is contrary to human dignity and the prevailing theological and sociological views. In addition, cloning for reproductive purposes is unacceptable from a medical point of view, and it would do more harm than good to the humanity.

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SANKCIONISANJE KLONIRANJA LJUDSKIH BIĆA U NACIONALNOM I UPOREDNOM KRIVIČNOM ZAKONODAVSTVU

Iako za neke skoro da spada u domen naučne fantastike, kloniranje je već odavno tema kojom se bave stručnjaci iz različitih naučnih oblasti. Osim medicinske struke, tom temom se bavi i teologija, kao i pravna nauka i sociologija. Međunarodni dokumenti sadrže isključivo preporuke na osnovu kojih zemlje donose samostalno odluku u kojoj meri će zabraniti kloniranje ljudskih bića. Međutim, na globalnom nivou postoji opšti konsenzus da je kloniranje u reproduktivne svrhe zbog mogućih zloupotreba zabranjeno, dok stav u pogledu zabrane kloniranja u terapeutske svrhe, zavisi od zemlje do zemlje. Naučna istraživanja ne bi smela da se ograničavaju, ali s druge strane ona ne bi smela da ugrožavaju ljudsko dostojanstvo. Osnov krivičnog sankcionisanja kloniranja ljudskih bića je upravo zaštita ljudskog dostojanstva. Predmet analize u ovom radu jeste krivičnopravno sankcionisanje kloniranja ljudskih bića kako u nacionalnom, tako i u uporednom zakonodavstvu. Cilj te analize jeste ukazivanje na potrebu preispitivanja opravdanosti inkriminacije kloniranja ljudskih bića u terapeutske svrhe.

KLJUČNE REČI: kloniranje ljudskih bića / krivično pravo / nacionalno zakonodavstvo / uporedno zakonodavstvo