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Genetics: Overview of Russian Criminal Law

Genetics has a long history in Russia, dating back to the beginning of 20th century. In spite of termination for years under Stalin's regime, the Russian genetics is today quite developed and internationally recognized science. However, the research in this area is dominantly theoretical and genetic technologies are regularly applied only in limited number of fields, including reproductive medicine.

Genetics and modern biotechnology are rather far ahead in its development in comparison with its legal regulation thereof. The positive (or non-criminal) legal regulation in the sphere of genetics and biotechnologies has a general character and falls short of precision and clarity necessary for legal norms. Moreover, Russia is not a party to the European Convention on bio-medicine of 1996.

The genetic experiments, for the exception of human cloning, are not regulated by law. This apply also to eugenic procedures. The temporary ban on cloning of human beings has been initially introduced in 2002 and later extended several times, lastly in 2010 - for indefinite period of time. However, the ban is not accompanied by the introduction of any legal sanctions - criminal or administrative.

In the sphere of reproductive medicine some recent changes have been made by the adoption of the federal law "On the fundamentals on health protection in the Russian Federation" in 2011. This law contains the provisions relating to the rights of men and women to use assisted reproductive technologies, based on informed consent. The law was later supplemented by the order of Ministry of Health "on the use of assisted reproductive techniques, contraindications and limitations thereof" in 2012, which limited the number of imported embryos to two and, when allowed on the health grounds, to three.

The law also prohibited the use of germ cells, organs and tissues of human embryos for "industrial" purposes. However, obtaining embryos solely for the purpose of research and experimentation, is not expressly prohibited (for the exception of cloning). The embryonic stem cell research is not prohibited and no law does regulate this issue. Moreover, the human embryo as such is still not subject of any legal protection.

It is not surprising, that current Russian criminal code of 1996, being the only formal source of criminal law, contains no special rules on the criminal liability for unlawful genetic therapy or genetic experiments, or damage as a result of genetic engineering. However, it provides for a number of general offences that can be applied in such cases. So, if as a result of illegal genetic experiments or genetic therapy the death or physical harm has occurred, the persons responsible can be charged with homicide or serious bodily harm. However, the application of the general norms requires harmful result and the causal

link between the violation and the consequences, what is difficult, if not impossible to prove.

In any event, many serious harmful acts, including illegal genetic manipulation at the molecular and cellular levels, using modified RNA and DNA to create genetically modified organisms (viruses, transgenic animals and plants, etc.), illegal creation of genetically modified organisms etc. are totally outside the reach of criminal law

In general part of the Criminal Code, some attention should be paid to the notion of "justified risk", as a circumstance excluding the criminal liability (Article 41 of the Criminal Code). Such a risk is that following "socially useful purpose", having taken all measures to prevent adverse effects. The risk (for instance of genetic experiment) can not be considered "justified", when it inevitably endanger "life of many people, environmental catastrophe or public calamity".

The obvious shortage of legal regulation and criminal law protection in the sphere of genetics has its natural consequences in the absence of any available practice. The scant Russian legal research in this area is consequently not based on reliable empirical data, but, at best, on sociological surveys, and even more often on speculative assumptions. Much of this topic is still *terra incognita*.

Russia may unfortunately serve as an example of the legal vacuum, that can have negative consequences in the future. Among them is a real danger of using Russia's rich facilities as a safe heaven for criminal activity. There is a need for Russia's adherence to international instruments in this field and implementation of the best practices in Russian law.