

Genetics.
***General overview of Hungarian criminal law and related issues on the
punishability of incest***

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ABSTRACT

The first part of this talk presents an outline of the legal provisions aiming at the protection of the genetic identity of the individual by means of criminal law in Hungary. Relevant provisions date back to 1998 when statutory offences for the protection of genetic identity were introduced in the Criminal Code for the first time. That is, a criminalization of human genetic manipulations had not existed before 1998. The Hungarian Criminal Code includes a separate Chapter under the title "Criminal offences against the order of medical procedures and research" (Chapter XVI). The statutory offences relevant to genetic identity are as follows:

- Manipulative procedure on human genome (Art. 168 CC);
- Illicit use of human gametes (Art. 169. CC);
- Altering the gender of an unborn child (Art. 170 CC);
- Violation of the rules of experimental research on gametes and embryos (Art. 172 CC);
- Creating genetically identical human individuals (Art. 174 CC);
- Illicit use of human body (Art. 175 CC).

Naturally, each of these statutory offences is laid down in a framework definition in the Criminal Code, which refers back to detailed special legal norms on procedures on human gametes, embryos and genome. These legal provisions are included in a separate Chapter of the Act CLIV of 1997 on the health care system (Chapter IX) and in a Decree on medically assisted special procreation procedures, the disposal and the cryopreservation of gametes and embryos (Decree of the Ministry of Welfare 30/1998). In case procedures on human genome are carried out in accordance with the provisions of these statutory norms, they do not constitute any criminal offence, since these rules are regarded as explicit grounds of justification precluding the punishability of such procedures. On the basis of these legal provisions, the first part of this talk sheds light on *the scope of criminalization and on the requirements and conditions of human genetic procedures in Hungary*.

The second part of the presentation addresses *special aspects of the punishability of incest* and reviews the question of whether or not the genetic health of progeny can be accepted as a legally protected interest in criminal law. In a number of countries (such as Hungary, Germany, Poland, Romania, Chile), it is deemed as a common reasoning that the criminalization of incest is necessary for the protection of genetic health of progeny. Not only materials of codification or explanatory notes of the legislature refer to this argument but it has surprisingly been accepted even in constitutional court decisions (e.g. 1999 in Hungary, 2008 in Germany). The review does not primarily concentrate on the medical issues and doubts regarding the increased risk of genetically indicated diseases among descendants that have been born in an incestuous relationship. Taking the increased risk as a basis, the main focus of the talk will be directed on a question of mere legal nature: can the criminalization of incest be regarded as legitimate means or, on the contrary, as unacceptable discrimination from the point of view of genetic health?

It has to be kept in mind that genetic health is usually not referred to as an exclusive reasoning for criminalization but as a ground in combination with other aspects (e.g. the protection of the family, protection of youth, protection of morals). This talk however comes to the conclusion that the protection of genetic health of progeny cannot be accepted as a legally protected interest in the system of criminal law since it can be relieved of its discriminatory nature under no circumstances.