



Presidenza del Consiglio dei Ministri

NATIONAL BIOETHICS COMMITTEE

OPINION ON THE 'CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND BIOMEDICINE' (COUNCIL OF EUROPE) AND ON THE PRELIMINARY DRAFT OF THE UNIVERSAL DECLARATION ON THE HUMAN GENOME AND HUMAN RIGHTS (UNESCO)

(21st February 1997)

abstract

The NCB jointly examines these two International documents although it applies to each different bioethical evaluations. This opinion is accompanied by attachments which contain both the official texts of the two international acts and the declaration adopted by the NCB in 1995 in view of the imminent adoption of the text of the Oviedo Convention by the Committee of Ministers of the Council of Europe, with the proposal addressed to the Italian government to formulate a reservation as regards the application of Art. 9 defending freedom of conscience and the professional responsibility of medical doctors as guaranteed by our law.

The NCB has a positive evaluation, overall, of the principles and the instruments for the protection of human rights contained in the Oviedo Convention, in conformity with its nature of being a 'framework-convention'. It believes that the technique of referring back to national law, in specific situations, allows the fostering of a process involving the progressive harmonisation of the various European legislations. In its contents the NCB recognises the importance attributed to the principle of the incumbent nature of information and consent as a justifying basis for the practice of medicine and the connected right of the person to revoke his or her consent to a medical intervention when he or she believes this advisable, as well as the specific protection envisaged for those who are not able to express their consent autonomously (minors and the mentally ill). In addition, the NCB believes that the insertion of a safeguarding regulation designed to privilege the wider regulations for protection already provided for by national law, or whose introduction in the future into national law is intended, is particularly advisable.

Some perplexities emerged from the point of view of a form of bioethics that is authentically sensitive to the values of the human person. This applies because of the lack of clarification of the persistent ambiguities regarding the concept of the human being and the concept of the person (Art. 1), as well as the questions and issues concerning the protection to be accorded to embryos, and, lastly, the 'silence' on the extension to be proposed in national legislation to the regulation of the techniques of assisted procreation. In addition, the NCB points out that multiple questions with an ethical and legal impact have remained 'open' in the text of the Convention, such as, for example, those connected with in vitro research on embryos, where the Convention confines itself to prohibiting the production of embryos for research purposes, or the question of the legal value of living wills.

The bioethical evaluations expressed by the NCB on the preliminary draft of the Universal Declaration on the Human Genome and Human Rights take for granted, in part, the limitations that are derived from the non-definitive character of the text subjected to examination. In general terms, the NCB holds positive the fact that an organisation with a universal calling such as UNESCO upholds principles in a new field related to the protection of human rights, promoting the protection of human dignity, freedom of research and solidarity between men in this specific context. Some members of the NCB showed that they were critical of the implementation through rapid and binding rules and regulations of such principles in domestic

law, equally rejecting the pragmatic approach of certain European States which are inclined towards only the adoption of minimal rules and regulations involving protection.

The relevant economic implications connected with the development of genetics and its applications were also the subject of evaluation by the NCB. In the same perspective, the NCB stressed the ambiguity of the phrase 'shared heritage of humanity' inasmuch as the consequences of patents on genetic material and the need to protect the human genome in the interest of future generations were both emphasised. From the point of view of general observations, in addition, two other bioethical observations emerged. The first relates to the ambiguous terminology used by the Declaration which in referring to the rights of 'every man' seems to neglect to extend equal protection to prenatal life. The second emphasises the vague character of the principle of the prevalence of the protection of each individual subject over research. The NCB would have wished that it had been made clear that 'the applications of genetic research must avoid all eugenic practices that are contrary to the dignity or the freedom of the human person'. In line with its general observations, the NCB formulates precise observations, and proposals seeking improvement, as regards individual provisions of the draft of the Declaration which is still at the approval stage.