

Problems of Determining the Status of the Embryo as an Object of Civil Law

Babajanova Dinara Islamovna,

Doctor of Philosophy in Law (PhD) at Tashkent State University of Law

E-mail: bdinka1985@mail.ru



Abstract

This article provides a comprehensive analysis of the challenges and ethical considerations involved in determining the legal status of the embryo as an object of civil law. The author explores the varying legal approaches taken by different countries, highlighting the complexities and controversies surrounding the issue. The article also delves into the ethical implications of defining the legal status of the embryo, particularly in relation to reproductive rights and the moral status of human life. Overall, the article offers valuable insights into a complex and sensitive topic that requires careful consideration and reflection from both legal and ethical perspectives.

Keywords: Embryo, civil law, legal status, ethical considerations, object, determination, in vitro fertilisation.

Introduction

An embryo (Greek embryo - embryo) is understood as a living organism in the early stages of development [1]. However, it should be noted that according to biology and embryology, the human embryo goes through three stages of intrauterine development: preembryonic (fetus from formation to 14 days), which is a set of cells; the embryo itself (fetus up to 8 weeks); fetus (fetus from 8 weeks before delivery) [2]. Thus, we are faced with a separate being (5-9 months old), which, depending on the stage of development, is considered part of human tissue (the initial period of embryogenesis) and is able to live without the mother's body. In the law, the human embryo is understood as an organism from the moment of fertilization to birth [3].

There are two main approaches to the problem of the legal status of an embryo:

1. An embryo is a subject of law, a full participant in legal relations, equated to an individual. It is not about recognizing the embryo as a subject of law, but about the need to protect it as the beginning of human life.
2. The embryo is an object of law:
 - a) the material leading to the emergence of legal relations of a proprietary nature;
 - b) a part of the mother's body equated to human organs and tissues [4].

To date, three theories (or approaches) have been formed on this issue, and it is advisable to dwell on them in more detail: absolutism, liberal and moderate. Proponents of absolute positivity consider a fertilized ovary or embryo to be a person with special value and the right to life. Therefore, it is forbidden to carry out any actions that prevent or stop its development. If some natural processes prevent this, they are resisted, as if they are fighting diseases that threaten human

life. Therefore, it should be the responsibility of the State to ensure the development of human life and its absolute protection at any stage.

"A man who is expected to be a man is already a man," Tertullian wrote at the end of the 2nd and 3rd centuries [5].

Ernst Hunt, an American doctor, writes about this: "A fertilized ovary is not just a cell mass with its own characteristics. At this stage, it does not look like flower buds, but even an embryo of a human animal. This is the life of a holistic person who has the same life as a newborn, a child, a teenager and a mature person [6]. Indeed, all rights that apply to a person should apply to himself. Many scientists who adhere to this point of view, arguing that the embryo is an absolute value, give the following arguments: "from the moment of conception, the human embryo has a certain program of life and development, an internal dynamism determined and controlled by the genome, this dynamism undergoes a gradual upward development towards the formation of a large human being. It exists as an independent organism, that is, an organized biological entity is self-governing in the implementation of its genetic program" [7].

But we must not forget that there are two more theories: the second point of view is liberal, which says that it is impossible to identify an embryo as a person at any stage of development. This means that it has practically no value, so the embryo does not need any special protection and has no right to life. A representative of this trend, M. Tuli, argues that "an organism has the right to life if it realizes itself as a developing subject, if it realizes that it has life experience and other mental abilities" [8]. Other scientists who put forward a similar theory say that it is impossible to equate parent cells with the biological potential of independent (i.e., born) people who are aware of themselves as human beings. There are few supporters of liberal positivism, since this theory is very controversial, and with the development of science and technology, its conclusions are increasingly being questioned. But it is important to know that his followers believe that the embryo does not have a value worthy of state protection, and propose to decide the fate of the fetus first to the mother, and then to the state-owner.

Proponents of moderate positivism believe that the fertilized ovary is gradually becoming human and that the embryo is important, but has no absolute value. Within the framework of this position, some authors believe that the embryo has the right to life after reaching a certain level of development, others – after achieving viability. However, there is no consensus.

Thus, some authors adhere to the position that the embryo deserves absolute protection after the fourteenth day of development, since by this time cell layers are forming, representing a membrane, a material that does not participate in the further construction of the embryo. Other scientists suggest considering the formation of the nervous system in the fourth to sixth weeks of pregnancy as a criterion for identifying the embryo as a person and level of development. K. Grobstein suggests that the ability of the embryo to respond to discomfort or pain manifested in the fetus at the age of six to eight weeks is formed and determined due to this feature. M.D. Bales believes that a fully formed embryo has the right to life as a result of nerve impulses in the brain that occur from the twenty-eighth to thirty-second a week of pregnancy [9].

There is also an approach according to which the lower boundary between the fetus and the person should be considered the thirtieth week of development, indicating the ability of the fetus to process perceived emotions.

In America, IVF is regulated by federal law, and the Davis and Davis cases [10] in Tennessee showed that there is no clarity about the legal status of a frozen embryo. The case was the result of the Davis couple's divorce proceedings. The issue under consideration, somewhat simpler, was related to the placement of seven frozen embryos in a cryogenic warehouse. After several unsuccessful IVF procedures, cryopreservation techniques were applied, and two embryos were unsuccessfully implanted by Miss Davis. The remaining seven were left for cryogenic storage for future implantation. During the procedure, the couple was informed that the shelf life of the frozen embryos would be two years and that the remaining seven embryos could be transferred to another couple. At that time, they did not make any decisions and did not sign any contracts with the clinic. In the subsequent divorce proceedings, Ms. Davis demanded that frozen embryos be implanted into her own uterus in order to become pregnant after the divorce. Mr. Davis objected and stated that he would leave the embryos in a frozen state until he decides whether he wants to be a father without marriage or not. This "custody" battle has raised the question of whether pre-embryos should be treated as individuals or as property. In making the decision, the Tennessee Supreme Court appealed to the position of the American Society of Reproduction. Three main moral positions have emerged in the debate on the status of the pre-embryo.

1. The idea of an embryo as a subject after fertilization requires that it be granted human rights. This position implies an obligation to provide the possibility of implantation and, as a rule, prohibits any actions that may damage the preembryonic organ before carrying out or are not directly therapeutic, such as freezing and some studies on the preembryonic organ (position 1).

2. Preembryonic tissue has the same status as any other human tissue. With the consent of those who are authorized to make a decision on preembryony, no restrictions should be imposed on actions with preembryos (position 2).

3. The third point of view, the most common, occupies an intermediate position between the other two. Preembryonic tissue deserves more respect than human tissue, but not to the extent that it is shown to real people. Preembryonic tissue deserves more appreciation than other human tissues because of its ability to be human and its symbolic significance to many people. However, it is impossible to consider him as a person, since he has not yet developed personal qualities, has not manifested himself as an evolutionary personality and may never realize his biological potential (position 3).

The case of Davis v. Davis [11] (Davis 1) was the first to address a specific issue. The Davis 1 case was considered twice more, in the form of Davis v. Davis [12] (Davis 2) and Davis v. Davis [13] (Davis 3). In these cases, each judge approached the issue in his own way. If you look at the essence, the provisions of the unlawful death clause prohibit the unlawful death of any person [14]. Therefore, it is necessary to clarify the differences between people and property.

Having received a medical certificate stating that the cells of human embryos are unique and consist of specialized and differentiated cells of the "highest degree of differentiation", the court returned to the question of whether the embryos are human. They came to the conclusion that this is indeed the case, and they certainly are not property. As a result, a person's life begins from the moment the embryo appears. However, it is necessary to establish the legal status of such embryos, and to this end, the court concluded that public order does not impede the continuous development of common law. Thus, the court ruled that the children were in the best interests in vitro, that they could be presented with an implant to ensure they had a chance to be born alive, and that

implantation would be their only hope of survival. It is also in the best interests of the children if Miss Davis is given the opportunity to put them through implantation.

The Court clearly defined position No. 1 as the solution to the problem. In fact, the court concluded that there was no distinction between preembryos and embryos, and medical evidence was used to suggest that human life begins at the moment of conception. Therefore, the objects are not preembryonic children, but children born in a test tube. Referring to the doctrine of *Parens patriae*, these children cannot be excluded, but their birth is in the best interests of the children. No government policy prevents the development of common law in this regard. It is assumed that concepts such as "children", "people" and "persons" are terms widely used in terminology. In fact, these are unscientific terms that complicate the explanation of the embryo's condition.

In *Davis 2*, the Tennessee Court of Appeals considered the case based on the following medical opinion. There are significant scientific differences between an unfertilized ovary and an embryo in the uterus. The size of the fertilized egg in question ranges from 4 to 8. Genetically, each cell is the same. About three days after fertilization, the *tukhumhujai* begin to separate into the outer layer, which becomes the placenta, and the inner layer, which becomes the embryo. This "blastocyst" can stick to the wall of the uterus, and this is a sign of pregnancy. As soon as the connection takes place, the inner membrane layer changes shape, forming an "axis" along which the main organs and structures of the body differ. It should be remembered that when these ovaries are fertilized by mechanical manipulation, their development is limited to the 8-cell stage. This compound lacks the development of the nervous system, circulatory system or pulmonary system, and thus the development of the embryo can be postponed indefinitely by cryopreservation or freezing at this stage. When using IVF, the embryo is transferred to the uterus after about forty-eight to seventy-two hours, when it reaches the stage of four, six or eight cells. Also at this stage, the embryo is cryopreserved for further use.

The court began analyzing the laws of the state of Tennessee and concluded that as embryos develop, they require more attention than normal human cells because of the growing potential for life. However, they do not have the legal status of born persons even after their birth. Thus, the court postponed the decision that Mr. and Mrs. Davis "jointly controlled the fertilized ovary, having equal voting rights at their disposal. It seems that the court of appeal made this decision in position 2, even considering the embryos as property.

This conclusion was also upheld by the Tennessee Supreme Court in *Davis 3*, relying on *York v. Jones* to give the impression that Davis calculated the interests of the spouses' embryos at the second level in case 2.

Neither the *Davis 3* case nor the *Parrillo* case relate to a legal entity or entity. More actively used terms refer to the concepts of "person" or "property-milk". The *Davis 3* case concludes that embryos are on a continuum between human and property, while the *Parrillo* case reports that eggs are simply such embryos that are not property. The use of IVF techniques raises sensitive ethical and legal issues in dynamic and constantly evolving societies.

It should be noted that in the European context, there is no consensus on the issue under discussion, especially in the case of donation of other embryos that are not intended for implantation. According to Robbie Robinson, some European countries support a free approach, and seventeen of the forty EU member states allow research on human embryonic cell lines. Although there are no regulations in other States, the implementation of relevant practices is not prohibited. Some

States, including Latvia, Croatia, Malta and Andorra, have legislation explicitly prohibiting any research on embryonic cells. However, for example, in Germany, Austria, Slovakia and Italy, research is allowed under strict conditions under which the purpose of the study requires protecting the health of the embryo.

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Despite the fact that the embryo is conceived artificially and it gets rid of the mother's body, the argument is put forward that this is in the legal subjectivity of the parents. This conclusion is similar to the statement about the bioethical nature of the child-parent relationship, and it cannot be denied that the legal subjectivity of the child (especially at an early age) is directly related to the subjectivity of the parent. The Jackal's position confirms the conclusion that we are talking about a subject of law who does not have the ability to address himself personally. He cannot personally take any legal action, since the law cannot be an obstacle to his psychological state; his psychological state is not recognized from the legal side. The only way for a child to participate in a legal relationship is for his parents to sue for him and on his behalf. It can be said that the psychological will of the parent is recognized from the legal side as the will of the child, and it is considered that the child acted lawfully [15].

Therefore, it can be concluded that embryos are not subjects of law sui iuris, but this does not mean that they are objects of law; the bioethical nature of the relationship between parents and children simply means that embryos are included in the legal subjectivity of their parents as a product of a biological process.

We refer to the regulatory legal acts that determine the legal status of the embryo.

There is another point of view in science: an embryo is a part of the mother's body, a human organ. This is confirmed by the practice of the European Court of Human Rights. So, Bruggemann and Scheuten are against it. In the case of Germany, using the example of Germany, the court ruled: "the life of an embryo is inextricably linked with the life of a pregnant woman, and it is impossible to distinguish it from her." The legislation of many countries is also moving in this direction: an unborn child or a human embryo is not a human being from a legal point of view.

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