JOURNAL OF MODERN SCIENCE

4/64/2025

www.jomswsge.com

DOI: 10.13166/jms/214310

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AUTONOMY AND GENDER

Abstract

The purpose of the presented text is to evaluate the human rights, ethical and medical discourse in connection with the autonomy of the person, especially in relation to intersex persons. We will deal with individual human rights documents that declare the freedom of the person and the dignity of each individual, although the everyday reality of intersex persons is often different. We will use descriptive, analytical, synthetic and hermeneutic methods when interpreting individual documents. The main thesis of the presented reflection is that intersex persons do not experience autonomy and freedom comparable to the „normal" population, since autonomy and freedom also presuppose the possibility of dealing with their body autonomously, and intersex persons often do not have this possibility. On the contrary, often without their own consent (whether in very early childhood or later in puberty), their bodies are treated in an undignified manner, they undergo surgical procedures that mutilate their bodies, cause inflammation, incontinence, infertility, intimate numbness, and the like. Result of the text is pointing out the inadequacy of current legal protection for these people, although individual human rights documents prohibit torture and interference with the physical integrity or dignity and freedom of a person.

Keywords: *autonomy, gender, intersexuality, human rights, liberty, body*

Introduction

In the presented text, we will deal with the relationship between the autonomy of an individual and his or her body in a human rights, ethical and medical context. Our reflection will primarily concern intersex persons, whose autonomy is determined more than the personal, physical and social autonomy of the general population. We will first outline how we understand the concepts of autonomy and intersexuality. We will then review the basic international legal documents that deal with human dignity, freedom and integrity and look at how contemporary medicine approaches intersex persons. Research methods: We will use descriptive, analytical, synthetic and hermeneutic methods when interpreting individual documents. The article has an interdisciplinary character, it is based on the interpretation of a specific human rights problem (the issue of intersex persons and their autonomy) in the context of medicine and ethics.When describing a given condition from a medical point of view and when describing health indications, we primarily use the descriptive method. When interpreting human rights documents and case law, we use the analysis method, and when drawing conclusions, the analytical method is also present. Interpretation of human rights, sociological and philosophical and legal texts is possible with the use of the hermeneutic method. We will also use etymological method when reaching the meaning of the terminology (autonomy, gender, intersexuality). In confirming our main thesis that people with sexual variations do not experience autonomy like „the general population", we will also use the comparative method. Etymologically, the term autonomy originated from the Greek autonomía, which can be translated as political independence, self-reliance, composed of the Greek auto and nomos, which means law. Around the 18th century, the term autonomy began to be used in the sense of independence and self-government[1]. Intersexuality, in terms of definition, intersex has been described by the UN Office for the Commissioner of Human Rights as an: „umbrella term used to describe a wide range of innate bodily variations in sex characteristics. Intersex people are born with sex characteristics that do not fit typical definitions for male or female bodies, including sexual anatomy, reproductive organs, hormonal patterns, and/or chromosome patterns"[2]. As Mestre states, „when addressing the violence committed against intersex people, it is essential to differentiate the concepts of sexual orientation, gender identity, and sex characteristics to distinguish their fight for the respect of their rights from other population groups that may have also suffered discrimination within these terms"[3]. According to Erdősová et al., „biological sex is an umbrella term that includes chromosomal, gonadal, hormonal, and phenotypic sex, and each of these categories usually points toward the binary designation of a male or female. However, there are individuals in whom congenital conditions cause atypical development in either chromosomes, gonads, or sex anatomy, referred to as DSD or intersex individuals"[4].

PERCEPTION OF AUTONOMY IN HUMAN RIGHTS DISCOURSE

When we look at the Universal Declaration of Human Rights, Article 3 guarantees everyone life, liberty and security of person, while Article 2 emphasizes that „Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status“[5]. Also in Article 1 of Charter of fundamental rights of the European Union is stated that human dignity is inviolable and must be respected[6]. This article is further developed in the text of Article 3 of the same document from 2000, which explicitly states: „1. Everyone has the right to respect for his or her physical and mental integrity. 2. In the field of medicine and biology, the following must be respected in particular: (a) the free and informed consent of the person concerned in accordance with procedures established by law…[7]. Čipková emphasizes, that „the institute of informed consent assumes that the way medical personnel act will not be exclusively paternalistic, but will take into account the autonomy of the patient's will and moral choice“[8]. And then, Article 4 declares reflecting on previous articles prohibition of torture and inhuman treatment[9]. When it comes to human rights of specific group of people, intersexual persons, situation is often ambiguous (medically and in terms of human rights) and in several known cases, torture, inhuman treatment, and trampling on human dignity have occurred and are occurring. As Meteňkanyč states correctly *many societies that continue to insist on a predominantly binary understanding of society and law expose much of the trans and intersex community to the difficult choice of which legal sex/gender to "legally identify* with“[10].

Perception of biological norms in medicine

For a more accurate idea, we will also provide statistics, how many people are intersex. „The United Nations estimate that 0.05%–1.7% of the population have variable sex characteristics“[11].

We will first list several specific medical diagnoses of various forms of sexual characteristic variations (these are the most commonly diagnosed and known variations as of 2025). The potential to have somatic intersex variations exists in all humans' prenatal development in the first weeks[12]. Intersex variations are atypical sex characteristics, these sex characteristics potentially include our chromosomes, genes, external genitalia, internal reproductive organs, hormones, or secondary characteristics, for example body hair[13]. According to Jones, „in the last decade, people with intersex variations have been increasingly referred to as part of an umbrella group, rather than seen only as those with a specific variation such as congenital adrenal hyperplasia or androgen insensitivity syndromes and this group has been incorrectly named hermaphroditic, intersex, as having disorders or differentiation of sex development, or otherwise“[14].

One of the diagnosis of intersex variations is CAIS, testicular feminization syndrome or complete androgen resistance syndrome. A child who is XY, i.e. chromosomally male, is born with external female genitalia, undescended testicles, no uterus, and often a relatively short vagina due to the body's insensitivity to androgen. A similar case is the syndrome of incomplete testicular feminization, where there is partial masculinization of the organs. As Fafejta et al. state, in these cases the person is usually assigned the female gender and also appears in the feminine gender[15].

Another diagnosis is so-called congenital adrenal hyperplasia, in which a person who is chromosomally XX, a woman, is born with masculinized genitalia due to excessive androgen production. Congenital adrenal hyperplasia is an autosomal recessive disease characterized by a deficiency of one of the steroidogenic enzymes. The incidence of the disease is 1:10,000–16,000[16]. If CAH is diagnosed after birth, vaginoplasty is commonly performed within the first year of life[17]. As Ságová et al. noticed, in the non-classical form of CAH women present with hirsutism with excessive acne, menstrual problems, and fertility disorders in untreated patients, while in men it can be an asymptomatic disease with an unclear impact on fertility[18]. In addition to the two above-mentioned diagnoses, there is also a specific case of so-called chimerism. This is a case where a person's body is made up of two embryos, XY and XX, which originally shared the uterus and later fused in the prenatal period. This diagnosis is named after Chimera. In ancient Greek myths, it meant a monster with body parts of a lion, dragon, snake and goat. In the real world, it is a genetic mutation, when there are two cell populations in one body. It does not matter whether this case occurs in a human or an animal. What is important is that the two cell populations are different, each comes from a different individual, they can differ genetically or even in sex. Chimerism therefore essentially violates the basic rule that the body of animals develops from a single cell. Such a situation occurred in the USA in 2002. It was widely publicized and even went to court due to ignorance. American Lydia Farchild was pregnant with her third child. However, during the divorce, she divorced her then husband. In order to support her children, Lydia asked the authorities to receive alimony. Therefore, the couple's DNA was taken. However, the test results revealed a shocking finding that Lydia was not the mother of her children. Doctors initially assumed that the cause was an anomaly during a blood transfusion or organ transplant. However, Lydia was never subjected to these procedures. The unfortunate situation was saved by a lawyer who submitted an article to the court dealing with chimerism. After a series of tests, it was found that hair samples from the head and pubic area contain different genetic material. The DNA of Lydia's children also matched only the DNA of their grandmother. Later, it was discovered that as an embryo, Mrs. Farchild had swallowed her twin and thus acquired a double cellular basis[19]. Basically, a diagnosis similar to chimerism is the so-called mosaicism. Cells of both sexes are present in a person's body, and as a result of a somatic mutation, faulty divisions of the nucleus occurred in the early stages of embryo development. A relatively common phenomenon is the so-called genital malformation, which involves various forms of genitalia and is not considered normal by medicine. For example, a boy who is born without a penis and suffers from hypospadias, i.e. his urethra opens on the side of the penis so that after birth it is not obvious by visual inspection whether it is a poorly developed penis or clitoris. It can even be a girl with a so-called phallic clitoris[20].

Turner syndrome (TS) is a congenital disease affecting females characterized by the partial or complete absence of the X chromosome. TS is one of the most common sex chromosome abnormalities, with a worldwide incidence of 1:2,500. Phenotypically, TS presents with a wide spectrum of clinical features. The dominant feature in childhood is short stature. Other features include gonadal dysgenesis leading to infertility, remnants of fetal lymphedema such as skin duplication on the sides of the neck (pterygium colli), low hairline, broad chest with distant nipples, and postnatal lymphedema on the dorsum of the hands and soles of the feet. Other features include visual impairment, hearing impairment, skeletal malformations, renal and cardiovascular defects, and autoimmune diseases. Mental retardation is usually not present in TS[21]. As Berková, Berka et al. mentioned, „despite their disabilities, women with Turner syndrome are full-fledged, economically productive members of society. Medical care for girls with TS is provided in specialized pediatric clinics, but after reaching adulthood, these patients must be transferred to specialized outpatient clinics for adults for further monitoring“[22]. The approach of these clinics seems to take into account the specificities of patients, including from a human rights perspective; currently cooperate with existing organizations. For example, in the Czech Republic there is Turnerklub, founded in 2013 and currently brings together about 30 families. The goal of Turnerklub is to organize weekend educational and relaxing family stays. Some of their goals and activities are the exchange of experiences between parents, lectures by experts on strengthening the self-confidence of children with TS, and cooperation with professional medical institutions and pedagogical and psychological counseling centers. The Club of Girls and Women with TS is a non-profit organization founded in 1989 by Mrs. Alena Kosinová and Rudolf Kosina. They try to provide important information, organize meetings and various cultural events. Mutual help allows you to get enough information and share personal experiences.

AUTONOMY OF INTERSEX PERSONS IN MEDICINE DISCOURSE

Intersex people face a wide range of social injustice, the inability to live freely and authentically based on their difference, including infanticide[23]. Intersex people also deal with abortions due to chromosomal abnormality. Structural inequalities also manifest in the form of surgical and related procedures performed on infants and children, which are commonly reported to have poor and/or harmful outcomes[24], see also researches[25]. It can lead to „unacceptable levels of physical and psychological trauma for patients“[26].

Human autonomy, dignity and bodily integrity are, as we have stated, a fundamental part of basic human rights and are also mentioned as such in key legal documents. Article 4, recital 1 of the European Sports Charter of 25 September 1992 introduced the principle that any form of discrimination in sport is prohibited, including discrimination on the grounds of gender, sexual orientation, skin colour, language, religion, political views, nationality, or membership in associations of national minorities. (Sitek, 2021, 218) Being a person, being „someone“ presupposes having one's own body, its individual parts, including how the owner of the body feels and experiences them. As Palazzani states, „the body is the matter determined by a form; one has the body, but at the same time one is the body“[27]. For example, we report the case of a woman born in 1960 with a combination of Turner syndrome mosaicism 45, X (27)/46, XX (73) and 21-hydroxylase deficiency. After delivery, the patient was incorrectly assigned male sex based on intersex. At the age of 6, the presence of the uterus and ovaries was confirmed laparoscopically. Subsequently, clitoroplasty with vaginoplasty was performed. Based on the above, a matrix sex change was performed. Echocardiographic examination did not show any significant pathological findings. Axillary and pubic hair had been present in the patient since the age of 10. The onset of virilization during puberty did not fit the picture of Turner syndrome. At the age of 14, she had primary amenorrhea, hirsutism (increased hair on the face, chin, back, and limbs), and persistent low height with a body height of 130 cm and a weight of 37 kg. The patient lacked the typical female fat layer distribution, with more pronounced musculature dominating.

The patient reached a height of 138 cm and a body weight of 41 kg in adulthood. At the age of 42, the patient underwent a hysterectomy for uterine myomatosus. At the age of 47, osteoporosis was verified by densitometry, and therefore, antiresorptive therapy was added to her previous treatment[28]. Her body clearly does not fit biological norms. Category-biology norms make it easy to sort persons into gender categories (man, woman), which can be used to regulate their behavior[29]. Briggs and George mentioned examples as „women ovulate", „men do not hav breasts", „women do not have beards", or „women have serum testosterone level below 5nmol/L", „men are taller and more muscular than women" and so on[30].

AUTONOMY OF INTERSEX PERSON IN RECENT COURT DECISIONS

Let's mention a relatively recent decision by the European Court of Human Rights, from 2023. The complaint was filed by a person who was assigned male gender at birth in 1951 but identifies as intersex, which he defines as a combination of male and female primary and secondary sexual characteristics. However, he uses the masculine gender in the complaint, and the Court refers to him as such in the judgment. The applicant submitted medical certificates according to which he was diagnosed as intersex shortly after birth. He stated that, as his ovaries and testicles had not developed, his body had never produced sex hormones and therefore he had not gone through puberty or had undergone masculinization or feminization of appearance. In public, he was generally perceived as a woman in his youth, but his documents stated that he was male. At the age of 40, he was prescribed testosterone-based treatment, which resulted in his beard growing and his voice deepening, but his external genitalia retained an ambiguous appearance. The complainant further added that on a psychological level he never perceived himself as a man or a woman, but as an intersex person, and that is how he is accepted by those around him[31]. At the age of 63, the applicant brought proceedings at national level seeking to have the indication of male gender on his birth certificate replaced by a gender indication of *neutral* or *intersex*. The first-instance court granted his request, but the appeal and the court of appeal reached the opposite conclusion, pointing out in particular that the French legal order is based on the gender binary and does not allow for the official recognition of genders other than male and female. The court first stated that the case concerns a key aspect of personal identity, and thus also private life, as the applicant fights against the contradiction between his biological and legal sex. This represents an argument in favor of only a limited state space for discretion. On the other hand, according to the Court, this is a controversial social issue. In this context, the Court conducted a comparative study focusing on 37 member States of the Council of Europe excluding France. It showed that in 31 of these States it is not possible to indicate a gender other than male or female on birth certificates and other official documents. Only Germany, Austria, the Netherlands, Malta, Iceland and, to some extent, Armenia currently allow this procedure; several other States are currently considering this option. According to the Court, there is therefore no European consensus on the matter. The Court further pointed out that public interests are at stake, in particular the interest in preserving the principle of inalienability of personal status and ensuring the consistency and reliability of civil status records, and more generally the need for legal certainty. In the light of the above, the Court concluded that there had been no violation of Article 8 of the Convention. The Court concluded that the State had a wider margin of appreciation in the circumstances of the case[32]. At this point, we agree with the opinion of Judge Šimáčková, who emphasizes that when assessing the case at hand, one cannot ignore the specific situation of the person concerned. The complainant was born with a body that is neither female nor male, but rather resembles a man, and so the state subjected him to treatment and legally declared him a man. Therefore, in order for the complainant to comply with the requirements of the law, he had to adapt his body (even if it brings him suffering) and his soul (even if it makes him feel humiliated). In Judge Šimáčková's opinion, this is such a serious interference that it constitutes a violation of the complainant's right to respect for his private life. The judge further recalls in this context that there are many examples in history of recognition of the rights, needs and identity of intersex persons, whether it is the figure of Hermaphroditus in Greek mythology or the work of the French philosopher Michel Foucault from the 20th century. It states that if intersexuality were recognized as an official gender variant, it would protect intersex people from the practices to which they are exposed now, when they have been subjected to operations and medication since childhood, which have no real benefit for their lives, they can be assessed as ill-treatment and are carried out only as a result of the legal order being based on the principle of gender binarity. In conclusion, Judge Šimáčková states that, in her opinion, the case at hand should have been assessed at the level of negative obligations of the state, which would have meant a narrower margin of appreciation for the state.

Conclusions

We have shown in the text what problem intersex people face regarding their physicality, health, social life, and reproduction. We have also pointed out the inadequacy of current legal protection for these people, although individual human rights documents prohibit torture and interference with the physical integrity or dignity and freedom of a person.

Intersex rights movements and a range of international organizations and supranational legal bodies, for example The United Nations, the Council of Europe, and the Yogyakarta Principles + 10[33] condemn cosmetic medical procedures on intersex minors and the routine termination of intersex fetuses on the grounds of medical „abnormality“ as Holmes states[34]. Intersex activists and advocates promote the human rights of intersex people, including the right to freedom from discrimination; the right to protection from torture and other cruel, inhuman or degrading treatment; and the right to health. In this context, the legislation of Malta, which was adopted in 2015, should be mentioned as exemplary and worthy of imitation. In 2015, the Law on the Recognition and Registration of a Person’s Gender and on the Regulation of the Effects of Such a Change, as well as on the Recognition and Protection of a Person’s Sexual Characteristics, entered into force. The Law is based on the fundamental right to bodily integrity and physical autonomy of all persons, the right to respect for their gender identity and the freedom of personal development in accordance with gender identity and equal treatment.

The law prohibits gender normalization surgeries, doctors are not allowed to perform gender reassignment or genital surgery on minors, and procedures or treatment may be delayed until the person gives consent. In rare cases, it may be done with the consent of an interdisciplinary team and the minor's parents. Although Malta (and, for example, Greece, where a law passed in 2022 prohibits medical interventions, including hormone therapy and surgical procedures, aimed at changing the sex characteristics of intersex minors under the age of fifteen without their free and informed consent) offer prospects for improving the situation for intersex activists, the road to recognition of intersex rights is still long. The intersex community continues to be troubled by the lack of data on the extent of rights violations, the absence of legislative interventions at EU level, and the low number of countries where protective measures have already been adopted[35].

THIS WORK WAS SUPPORTED BY THE SLOVAK RESEARCH AND DEVELOPMENT AGENCY UNDER THE CONTRACT NO APVV-23-025 WITH TITLE: „SELF-DETERMINATION FOR INTERSEX, TRANSGENDER AND NON-BINARY PEOPLE".

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