OII Germany & OII Europe comment on deeply concerning German Family Court decision authorising an intervention on an intersex minor

Introduction

In a recent decision from March 6th 2024, a German Family Court from Baden-Württemberg decided on a case brought forward by the parents of an intersex minor diagnosed with a form of CAH[1], who had requested authorisation to consent to an intervention to modify the minor's sex characteristics. While Germany has a law that bans intersex genital mutilation, the law leaves entry points for misusing it and we consider this case a prime example of the materialisation of this risk.

The Court approved the request, based on the report issued by an interdisciplinary commission, which argued, among other points, that the intervention would be in the "best interest of the child", due to the child being born with a urogenital sinus[2].

The following analysis relies on the material available publicly, namely the decision of the Family Court[3] and the text of the law "*for the protection of children with variants of sex development*"(19/27929)[4], including its explanatory memorandum. We acknowledge that we did not have access to the interdisciplinary commission's statement, which may have helped to complete this analysis.

Any statement of a medical nature arising from the present case contained in the following analysis relies on input from an experienced medical professional adopting a human-rights based approach to the care of intersex persons.

The first part of the analysis focuses on presenting the provisions in the German intersex genital mutilation ban, and how they pertain to the present situation. The second part features an analysis of the Court's arguments and reasoning leading to the authorization of surgical interventions on an intersex child. As a result of this, we contend that the Court failed to implement the law correctly, by effectively authorising cosmetic interventions that go beyond what is permissible (reducing or eliminating a health risk), despite the fact that such cosmetic procedures are prohibited by the law. Particularly, we warn against the Court's overstepping of its mandate, and the risk that family courts take away intersex children's right to bodily autonomy and self-determination of their gender identity, by choosing a sex for the child in question, and using this to justify surgical interventions on the child's sex characteristics.

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[1] CAH refers to congenital adrenal hyperplasia (CAH) which is an intersex variation that affects the adrenal glands, a pair of walnut-sized organs above the kidneys. The adrenal glands produce important hormones, including cortisol, which regulates the body's response to illness or stress.

[2] Urogenital sinus refers to the urethra and vagina ending in a common excretory duct.

[3] Available here: https://www.landesrecht-bw.de/bsbw/document/NJRE001567840

[4] Available here: https://dip21.bundestag.de/dip21/btd/19/279/1927929.pdf

The procedure according to German law

On May 12th 2021, the German Federal government adopted the law "*for the protection of children with variants of sex development*" (19/27929)[5]. The law provides a legislative framework to protect intersex children from non-vital, non-emergency medical interventions on their sex characteristics.

The law, in paragraph 3, § 163e, explicitly prohibits treatments carried out solely "with the intention of bringing the child's physical appearance in line with that of the male or female sex", to which the child has not given consent.

Where interventions are not life-threatening, parents can request authorization to consent to procedures by way of Family Court approval, if the intervention is in the best interest of the child. In such instances, the parents must submit to the Court a favourable opinion of an interdisciplinary commission.

The only exception to this rule are situations where such an intervention is necessary to avert a danger to the child's life or health and cannot be postponed until consent has been given by the child. This is also the only time when a family procedure can be waived.

In the case of a Family Court procedure, the German law, as well as its explanatory memorandum (p.27) highlights explicitly that any treatment aimed solely at "sex alignment" constitutes unlawful bodily harm. Most importantly, the explanatory memorandum goes on to clarify that the Court may not grant (and should prevent) approval for interventions which have the intention of "aligning" the sex of the child, when it becomes clear that other purposes of the treatment are mainly pretexts.

While the explanatory memorandum acknowledges (p. 27) that it should be assumed that parents and medical practitioners are usually guided by their child's wellbeing before making decisions, it highlights, at the very same time, that there exists a real risk that medical interventions "anticipate the development of the child's sex/gender* and that the child will be deprived of a later, self-determined decision".

The procedure as carried out in the context of the case

The intersex child in question was born in 2023 and the parents decided to request an authorisation by way of Family Court approval on 1st of March 2024. The approval requirements include a statement given by an interdisciplinary commission, that the Court takes into consideration when taking its decision.

The fact that a Family Court procedure was able to be followed, shows that in the case in question, no immediate danger to the child's life or health had been identified by the treating medical professionals.

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[5] https://dip21.bundestag.de/dip21/btd/19/279/1927929.pdf

* The explanatory memorandum uses the word *Geschlechtlichkeit*, which in German refers to both sex and gender affiliation, and is linked to the sex-binary/gendered world of human experience and its specific biological, psychological and cultural conditions.

The Court affirms that there was no immediate danger to the child's life or health in their decision, stating that

> (§15)
> *the child's parents may only consent to surgical interventions on the internal or external sexual characteristics of a child who is incapable of giving consent and who has a variant of sexual development that could result in the child's physical appearance becoming male or female if the intervention cannot be postponed until the child has made a self-determined decision (Section 1631e (2) sentence 1 BGB).*
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> *If this surgical intervention is not necessary to avert a danger to the child's life or health and therefore cannot be postponed until consent has been granted, this consent requires the approval of the family court (Section 1631e (3) sentence 1 BGB).*
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> (§16)
> *These requirements are met in the present case.*

The Court decision

We believe that the German law, as well as its detailed accompanying explanatory memorandum, have not been applied correctly in the present case.

Scope of the intervention

The decision includes the approval of the following interventions:
1. treat the urogenital sinus of the child (§13)
2. separating the urethra from the vagina during the operation (§18)
3. implanting a "normally wide vaginal entrance in the perineum" (§18)
4. harmonisation of the physical appearance of the affected person with the female sex (§23)

Of these, the only one that the Court decision documents as justified by a possible medical risk, is the surgical intervention on the urogenital sinus (point 1 and 2, see above):

> (§4)
> *Due to the lack of separation of the urinary and reproductive tracts, the vagina and uterus are filled with urine as they are directly connected to the bladder. This is associated with an increased risk of urinary tract infections, which, in combination with the existing adrenal insufficiency, can lead to a life-threatening crisis (so-called Addisonian crisis).*
>
> *and*

> *(§9)*
> *The interdisciplinary commission recommends that the surgical procedure to separate the urethra and vagina be performed on the patient "to prevent complications from endangering the child's welfare if this is not done".*
>
> *and*
>
> *(§22)*
> *The court also agrees with the convincing opinion of the interdisciplinary commission, according to which the operation is medically necessary in early childhood in order to prevent harm to the child. If the operation were not performed, there would be an increased risk that the affected person would suffer malformation-related problems such as frequent urogenital infections, ascending cystitis and nephritis with pendulum urine with congestion in the vagina.*

The rationale of the other interventions (point 3 and 4, see above), however, is not based on a medical risk but clearly on societal, i.e. heteronormative assumptions about the priorities of the future adult and on the societal norms which place the appearance of a child's genitalia above their right to bodily integrity. These very norms result in framing the body of an intersex child as being disordered, including in medical classifications which pathologise intersex variations. These classifications lead to gross human rights violations, which has lead the Council of Europe Commissioner for Human Rights to recommend reviewing medical classifications which pathologise variations of sex characteristics, with a view to eliminate obstacles to the effective enjoyment, by intersex persons, of human rights, including the right to the highest attainable standard of health[6].

> (§3)
> *She has classic adrenogenital syndrome (CAH) with salt wasting of the 21-hydroxylase deficiency type. Due to this disorder, the female body of the affected person already produced an increased amount of sex hormones (so-called androgens) prenatally, which correspond in their effect to the male sex hormone testosterone. This caused a disruption in the separation of the urinary and sexual tracts, which led to the affected woman being born with a so-called "urogenital sinus". This means that her urethra and vagina end in a common excretory duct. This is located at the tip of the clitoris,* ***which is significantly enlarged and has a penis-like structure****.*
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> (§5)
> *In addition, the patient may* ***not be able to have sexual intercourse*** *due to the current lack of vaginal access.*
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> (§6)

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[6] Council of Europe, Commissioner for Human Rights Issue Paper, Human Rights of Intersex People, 2015, Available at: https://rm.coe.int/16806da5d4

> *The affected person* ***is female****. Her internal female reproductive organs are inconspicuous. Her chromosome set is female and she has ovaries and a uterus.*

> (§18)
> *The surgical procedure results in an* ***alignment of the physical appearance of the affected person with the female sex****, as the urethra is separated from the vagina during the operation and a* ***normally wide vaginal entrance is implanted in the perineum****.*

> (§23)
> *In the opinion of the court, t****he harmonisation of the physical appearance of the affected person with the female sex is also in the best interests of the affected person****. Her internal sexual organs are inconspicuously female. She has a normal female chromosome set (46.xx) as well as ovaries and a uterus.*

Nevertheless the Court does not seem to understand some of the more intrinsic details of its own explanations and claims that

> (§24)
> *The alignment is by no means merely cosmetically indicated, but is necessary for purely medical reasons.*

We consider the following elements of the decision to be contradictory to the spirit and the letter of the law, entitled "for the protection of children with variants of sex development" (19/27929)

- The Court refers to the intersex child, who is one year of age, as having a "female body". However, the court decision itself clearly highlights that the child has a variation of sex characteristics and that the court does consider the child's body not female enough and in need of being surgically aligned. Referring to the child's body as female is hence both untrue and tendentious.
- The Court assumes that the future adult with a variation of sex characteristics will want to engage in heteronormative penetrative sexual intercourse - based on what the Court considers to be the "true" sex of the person.
- The Court states (hereby supposedly following the medical statement of the interdisciplinary commission) that the right place for a "female" vaginal opening is in the perineum and that therefore part of the procedure will be to create a new entry in the perineum (§18); it also states that the clitoral organ in question is "significantly enlarged" and has a "penis-like structure"; both of which do not align with what the Court and medical professionals seem to deem appropriate in terms of form and size for the organ of a person that has been assigned as being of the "female sex" (§3).
- It is also to be noted that the child's genitals are referred to as both a "clitoris" and a "penis-like structure". Since clitoris and penis are terms that are used in conjunction with dichotomous sex/gender, the Court makes a tendentious argument. Given the fact

that in Germany, four different gender marker options exist, it is also tendentious to assume that the child will identify within the male/female binary.

The Court seems not to take into consideration the fact that the child in question has been born with these physical features and that they do not – in and of its own – carry any risk to the person's health. It also does not seem to take into consideration or seems not to have been informed about the potential risks of doing more than the absolute necessary to reduce or eliminate the risk of urinary tract infections; the decision does not include any reflection about the health risks related to transplanting the vaginal canal and the creation of a new opening for it. Furthermore, the Court seems to have completely neglected any inquiry into the potential consequences of the surgery, particularly in relation to the maintenance of the "normally wide vaginal opening", through the performance of dilations. The creation of a vaginal opening often results in manual maintenance of the opening in the form of penetrative dilation by either the person themself, the physician or parent(s), and can require additional "corrective" interventions. Testimonies of intersex survivors have described the dilations that they had to experience to maintain the form of the vagina after the vaginoplasty as a form of rape[7].

Considering the general perspective and rationale of the decision, we are, in addition, very concerned that that the approved *alignment* of the "physical appearance [...] with the female sex" will now, in addition to the creation of a "normally wide vaginal opening", open the legal possibility to change the "penis-like" structure by means of reducing its size in the course of the medical procedure via a relocation and recession of the "clitoris".

Both of these interventions do not necessarily reduce the risk of urinary infections but, instead, create additional new health risks for the child and for the future adult. Both require significantly more interventions – including very complex surgical interventions – than merely just the separation of the vaginal canal and the urethra. These interventions create additional health risks for the child, while at the same time not addressing the risk of the urogenital sinus, but going much further beyond it.

A specialist in paediatrics with extensive knowledge on children born with variations of sex characteristics[8], said, in reaction to the judgement:

> *"There are no studies that could show us the risk of urinary tract infection in these cases.* ***Is it lower or higher than normal? Nobody knows****. But if the child does get lower urinary tract infection (cystitis, infection of the urinary bladder) it can be managed by dosing up the hydrocortisone and giving per oral antibiotics. This does not lead to 'life-threatening Addisonian crisis'. If the infection would be higher (pyelonephritis, infection of the kidneys/s) the baby needs higher doses of hydrocortisone, and they should be taken to [the] paediatric ward for intravenous antibiotics. Also, this does not lead to 'life-threatening Addisonian crisis.' The court tries to exaggerate the possible problems that may arise even though there is no certainty if any will arise."*

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[7] Surya Monro, Daniela Crocetti, Tracey Yeadon-Lee, Fae Garland and Mitch Travis, *Intersex, Variations of Sex Characteristics, and DSD: The Need for Change*. Research Report. University of Huddersfield (2017), p. 9 & 18, available at: https://pure.hud.ac.uk/en/publications/intersex-variations-of-sex-characteristics-and-dsd-the-need-for-c

[8] Email received by OII Europe from XY, on 4 June 2024. The paediatrician wishes to remain anonymous.

Bearing all the above-mentioned points and the paediatrician's comments in mind, we argue that the following elements constitute a clear violation of the law:

- The Court uses improper language when addressing this child that could lead to misconceptions about the child's gender. The Court chooses to refer to the child as female to justify the "feminising" interventions recommended. **It thereby perpetuates the idea that this intersex child is a "flawed" female who needs to be "fixed".** The Court bases the parts of its decision which concern the cosmetic procedures on the *assumed* future gender identity (§6) as well as the *assumed* sexual preferences (§5) of the future intersex adult based on a heteronormative understanding of both.[9] [10]

- **The Court fails to take into account the child's right to bodily integrity.**

- **The Court approves measures that go beyond reducing or eliminating the possible risk of urinary tract infections** caused by the urogenital sinus by directly (*creation of a "normally wide vaginal opening" and a "normal entry located at the perineum*) and indirectly (*potential reduction of an "enlarged" clitoris*) **approving interventions that do not address the actual health risks** at hand, hence failing to comply with the limits set by the German law.

A balanced problematization of the real and serious risks presented by refraining from performing any intervention is not sufficiently explored. Instead, it can be deduced that the interdisciplinary commission puts forward speculative argumentation, while potentially not having included sufficient justification in their report as to support the argument that such an intervention may be vitally necessary, despite not being necessary enough to intervene right after birth, in which case a court authorisation is not legally required. Alternatively, in paragraph 9, we see that they propose such an intervention "*to prevent complications from endangering the child's welfare if this is not done*".

Provisions set out by the law to ensure that the Court procedure is in line with the best interest of the child

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[9] Angela Kolbe, a legal scholar, argued that determining the future gender identity of an intersex child is impossible, in reference to a similar case, where a Munich Regional Court determined the sex and gender of a child as female based on certain sex characteristics (chromosomes and gonads), despite the external genitalia not pointing to this category, and despite the child's gender identity (the Court used the term "social and psychological sex") having not yet developed. See: Angela Kolbe, *Intersexualität, Zweigeschlechtlichkeit und Verfassungsrecht: Eine interdisziplinäre Untersuchung*, Nomos, 2010.

[10] Stephani Lohmann, mother of a child with genital differences connected to Congenital Adrenal Hyperplasia, in an interview with InterACT, stressed the danger of "feminising" the body of an intersex child through surgery: *"Asking questions is hard. But the decisions that you're making for your child surgically are forever. People can always choose surgery for themselves later on, but you can never get back what has been removed, so it's very important to be thoughtful about that. In our case, our child ended up growing up to express a male gender identity. 5-15% of all kids born with genital differences connected to Congenital Adrenal Hyperplasia end up not being female. And even for those who do grow up to have a female gender identity, how can we be certain they might not want to grow up with their original bodies, or decide based on how they feel later?"*

The court decision refers to the "best interest of the child" as its baseline for the decision taken and argues that the intervention is medically necessary in early childhood in order to "prevent harm" to the child.

Research, however, has proven that such "normalising surgery", which does not limit their scope to only addressing the actual health risk at hand, have lifelong consequences, including loss of sexual sensitivity, poor sexual function, sexual pain, and infertility[11] and carry strong mental health risks and a strong potential for psychological distress[12] if carried out without the mature intersex person's prior, free and fully-informed consent. Such decisions taken by third parties for the intersex person do also not account for the intersex person's own desires, and they preempt the individual's right to express their own preferences for how they might want to be treated or how they may want to live in the world[13].

Refraining from performing extensive irreversible (and potentially risky and complicated) vaginal opening surgery in childhood would leave more options for later life, and may also offer much better results, if wished for by the intersex adult, than if the intervention was performed as a child.

Assuming or postulating that intersex minors' own interests would necessarily be aligned with or even potentially somewhat compatible with the interests of medical practitioners or their parents, effectively denies them their humanity, their right to self-determination and their right to bodily autonomy and integrity.

Taking into account that

- the child in such cases as the present one, is not at a stage of maturity where they could express their own wishes and their consent, and
- the influence that the interdisciplinary commission executes, when submitting their report to the Family Court

The law provides clear guidances on the role of the commission:

- The law (p.29) clearly states that the interdisciplinary commission must include in its opinion "all effects that the planned intervention may have, what not carrying out the intervention would entail, as well as alternative interventions and treatments". The effects of the planned intervention include the extent of the change to the child's body and the question of future reversibility, but also whether it will require multiple and long-term follow up treatment. All of these criteria need to be taken into consideration when making a decision which aims to protect the best interest of the child.

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[11] Köhler, B., et al. (2012). *Satisfaction with Genital Surgery and Sexual Life of Adults with XY Disorders of Sex Development: Results from the German Clinical Evaluation Study*. Journal of Clinical Endocrinology & Metabolism,97(2), 577–588. Available from: https://doi.org/10.1210/jc.2011-1441. See also Nidal, S., et al. B. (2020). *Sexual function and voiding status following one stage feminizing genitoplasty*. Journal of pediatric urology, 16(1), e91–e97. https://doi.org/10.1016/j.jpurol.2019.11.017

[12] Karkazis, K. (2008). *Fixing Sex: Intersex, Medical Authority, and Lived Experience*. Duke University Press. Available from: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2694968/

[13] Ussher, J.M., et. al. (2024). *I've had constant fears that I'll get cancer": the construction and experience of medical intervention on intersex bodies to reduce cancer risk.* International Journal of Qualitative Studies on Health and Wellbeing. Volume 19. Available from: https://doi.org/10.1080/17482631.2024.2356924

- Importantly, the law explains that a proper risk assessment includes the assessment of risks linked to the procedure from the perspective of other specialist disciplines. When assessing whether surgery can be avoided, psychosocial alternatives such as “information on gender diversity, parental empowerment programs and other socio-political offerings, for example in educational institutions, must also be taken into account” (p.32).
- The commission’s assessment must also consider whether the procedure is prohibited under paragraph 1 of the law (p. 32). The prohibition from paragraph 1 covers all treatments with the only aim of bringing the child’s physical appearance in line with that of the male or female sex.

The guidelines included in the law clearly outline these elements, which are outlined in order to ensure the “safeguarding” role of the joint commission and court procedure.

Inadequate implementation of procedural safeguards

The commission is required to assess whether the parents and the child have been “adequately advised on how to deal with variations of sex characteristics, and to take this into account in its vote” (p.30). This provision is a safeguard against parents that would ask for interventions based solely on medicalised information, unaware of non-pathologizing options. Part of the commission’s role is to expand the parent’s perspective, as clearly shown when the law adds that, “in the course of the commission procedure, it may also become clear to the parents that the proposed treatment would be the worse option for the child, leading the parents to reject the procedure”.

The decision of the Court does not reference any requirement of the interdisciplinary commission to provide proof that this has happened and does not address this point in its decision.

The Court also refrained from holding a personal hearing and obtaining a personal impression of the person concerned:

> (§27)
> *This is based on section 159 (2) sentence 1 no. 2. The person concerned has not yet reached the age of one at the time of the decision and is therefore obviously not in a position to express her inclinations and will (see Veit in BeckOK-BGB, as at: 01.01.2023, section 1631e para. 62).*

However, the Court does not seem to consider this fact as an aggravating factor that requires even more cautiousness in regards to ensuring the respect of the future mature child and adult’s will and wishes about any autonomous decisions that they might want to take about their body, thereby upholding their bodily integrity.

It also fails to include other possible safeguarding measures that are to its discretion:

> (§11)

> *A personal hearing of the parties involved was not held. A statement from the youth welfare office was not obtained. A guardian ad litem was not appointed.*

Already in 2021, OII Germany and OII Europe[14] expressed their strong concerns about the fact that the composition of the interdisciplinary committee as set out in the law would pose a threat to safeguarding the best interest of the child. Both organisations underlined that there would be a lack of full protection against possible conflicts of interest, seeing as the medical professional treating the child forms part of the interdisciplinary commission. The law also allows for two other medical professionals from the same healthcare facility to form part of the commission, **thereby further exacerbating the risk of possible bias.**

Having this in mind, in the case at hand,additional safeguards present in the law regarding the composition of the commission were not followed:

> (§8)
> *Enclosed with the application was the opinion of an interdisciplinary commission within the meaning of Section 1631e (4) BGB dated 19.01.2024. This commission comprises Prof. Dr. C. (specialist in paediatrics and adolescent medicine), Prof. Dr. F. (specialist in paediatric surgery and treating the affected person), K. (qualified pedagogue, family psychosomatics), Dr. U. (specialist in paediatric and adolescent medicine, family psychosomatics), Dr. I. (specialist in gynaecology) and Prof. Dr. J. (specialist in paediatric and adolescent medicine, Master of Medical Ethics and certified Academy of Ethics in Medicine).*

The explanatory memorandum of the law significantly develops the content of the articles on the composition of the interdisciplinary commission, with the aim of outlining what its role, responsibilities, and working methods should be. The diversity of the profiles required (medical professionals but also professionals in psychology, child and adolescent psychotherapy and psychiatry, as well as ethics) should lead to an enriched discussion on the required intervention(s), each professional bringing their own perspective to the discussion in order to make the best decision possible, in the best interest of the child and in the aim of preserving the child's right to bodily autonomy. The explanatory memorandum expressly states (p. 31) that a "perspective that differs from the medical one" enriches the discussion and at the same time draws attention to the fact "that there may also be cases in which a different approach to the child's physical condition - its acceptance - would avoid the difficulties that the planned intervention is intended to prevent or eliminate" .
The rationale for this composition is to ensure that the opinion is based not only on medical expertise but also on ethical and psychological considerations through inclusion of a diverse range of experts who can act as an independent safeguard against a purely medical perspective.

And yet, even when the law requires the presence of "one person with a professional qualification in psychology, child and youth psychotherapy or child and youth psychiatry", data

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[14] See OII Germany statement, 3 November 2020 Available here: https://oiigermany.org/wp-content/uploads/2020/11/Stellungnahme-OII-Germany-Nov-2020_.pdf
See OII Europe statement, 30 March 2021, Available here: https://www.oiieurope.org/a-good-first-step-germany-adopts-law-banning-igm/

suggests that, even when psychologists are actively included within multidisciplinary teams, the parameters of that inclusion are often strictly defined and constrained by medical professionals, who remain uninformed about their role and expertise and who proceed as though all possible medical procedures must be exhausted before psychological input is considered[15]. The pathologization of variations of sex characteristics as a medical problem by multidisciplinary teams is likely to steer parents and intersex persons themselves smoothly towards medical paths and away from psychosocial understandings.

In the present case, the interdisciplinary commission's composition did not foster such an exchange of different perspectives, as it was made up exclusively of medical professionals. Four members of the commission are medical professionals holding different specialties in paediatrics and obstetrics, the fifth has a degree in ethics of medicine, while also specialising in paediatrics, and the sixth specialises in family psychosomatics. **No member of the commission could have upheld a non-medicalised perspective, as they all come from the medical sector.**

Moreover, contrary to what the law recommends, **no peer counsellor was involved.** The law went into a great level of detail, explaining why the presence of a peer counsellor was important, while not making it mandatory and leaving this possibility to the parents of the child with a variation of sex characteristics. The role of the peer counsellor, as explained in the law (p.30 and p.32), is to share their own experience of living with a variation of sex characteristics. The presence of the peer counsellor is a safeguard to ensure that decisions are not made solely by experts among themselves, as clearly stated in the law (p.32), which goes on to explain that, while various medical, psychological, psychiatric and social education specialists can make assessments, they lack the understanding of the impact that treatment, including surgical interventions, to which they have not consented, have on children. "[It] often remains hidden from them what the decision can trigger in the person affected, who has to live with the decision. This perspective is therefore of particular importance" (p.33).

The Court's decision seems in its main parts to follow quite closely the medical opinion put forward by the interdisciplinary commission. The Court's assessment, however, and supposedly the assessment of the interdisciplinary commission, does not follow the requirements set out by the law for ensuring an unbiased assessment of the case. In addition, the legal assessment seems to have been manifestly skipped.

The present case shows that the lack of expertise on intersex issues and health issues related to intersex bodies, which is fully understandable but not acceptable, carries high risks if the approach taken, such as in the present case, is nearly not as cautious as what is legally required, and obvious contradictions are not identified by the judges during the court procedure.

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[15] Lih-Mei Liao & Katrina Roen (2019): *The role of psychologists in multidisciplinary teams for intersex/diverse sex development: interviews with British and Swedish clinical specialists*, Psychology & Sexuality. Available from: https://doi.org/10.1080/19419899.2019.1689158

Importantly, the Court should, in its approach, take into account the weight of the medical information received by the parents, as well as the lack of support and time given to them to make an informed decision in the best interest of their child.

Therefore, the lack of awareness on the side of the Court of the hierarchical structures and power dynamics at play during the procedure are even more alarming and deplorable, especially as the law provides strong recommendations on how to further mitigate them.

Conclusion

As presented in this document, the judgement from March 6th 2024 handed out by a German Family Court (*Amtsgericht*) from Mannheim appears to violate the law “for the protection of children with variants of sex development” (19/27929).

The Court, effectively authorises cosmetic interventions that go beyond reducing or eliminating a health risk, despite the fact that such cosmetic procedures are prohibited by the law. Furthermore, it justifies these interventions based on a statement about the child’s sex, and makes assumptions about the gender identity of the child, based on some of the child’s sex characteristics. This line of action is extremely dangerous, as it effectively sets a precedent allowing German family courts to decide the sex and gender of children, following the opinion of a medically dominated interdisciplinary commission. The Court has overstepped its mandate, which is to assess the legality of the intervention asked for. It is not the Court’s role to assign a sex to the child.

The decision also effectively and very worryingly illustrates the ways in which the pathologization and medicalisation of innate variations of sex characteristics, as well as the power and authority held by medical professionals continue to influence court decisions.

We express our concern that there is a real risk that the present judgement, which fails to follow the interpretation of the law as set out in its explanatory memorandum, sets a new precedent and will be used by other courts. This judgement, which contradicts both the spirit and the letter of the German law banning intersex genital mutilation, paves the way for its circumvention.

This judgement, which clearly reveals some of the loopholes in the present law, should inform the upcoming future revision in order to make sure that its provisions are respected in full, and that the rights of intersex children to self-determination and bodily integrity are upheld.

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