

Universal System Of Sex/Gender Registration

In this article the author aims at offering and informing the modern world about Universal System of Sex/Gender Registration that he has created. When introduced/applied, this system will meet the challenges of the idea of equality, which are faced globally nowadays.

The Universal System of Sex/Gender Registration (hereinafter referred to as USS/GR) is created on one hand for protecting the human rights in regards to sex and gender selection and belonging, and on the other hand for enabling the state to register sex/gender in an easy and flexible manner.

By introducing and applying the USS/GR, the modern world will be able to ensure the standard of initial equality regarding sex and gender, which has been neglected by the qualified majority of countries to date.

Key Words: sex, gender, intersex, registration, system

1. Introduction

In the modern world, the idea of equality needs a mental, social-cultural and legislative support. Each of these components is an important link of a chain that we call equality today. Equality between genders and non-discrimination in any form, at first glance, represents the basis that has been agreed by most countries so far, however, the ideas of equality often lack normative support even at the legislative level too.

I will not be speaking about the idea of equality and its components in this article, but rather I will be talking about one particular issue, which is about assigning sex to a newborn. Besides, I will refer to the issue(s) of a person's psychological belonging (identity) to sex/gender, and normative regulators linked to this issue(s).

2. Assigning Sex to a Newborn

Before raising the issue and starting the discussion, is necessary to define the meanings of terms used in this article.

Sex refers to a person's biological status and is typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female). There is a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.^{1,2}

* PhD, Professor, Ilia State University (Georgia), Masaryk University (Czech Republic), Member of the Union of Law Scientists.

¹ The Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients, adopted by the APA Council of Representatives, February 18-20, 2011. The Guidelines are available on the APA web site at <<http://www.apa.org/pi/lgbt/resources/guidelines.aspx>>, <<http://www.apa.org/pi/lgbt/resources/sexuality-definitions.pdf>>, This Guidelines for Psychological Practice with Lesbian, Gay and Bisexual Clients were adopted by the APA Council of Representatives, Feb. 18-20, 2011, and replace the original Guidelines for Psychotherapy with Lesbian, Gay and Bisexual Clients adopted by the Council, Feb. 26, 2000, and which expired at the end of 2010.

² See and compare with: *Giddens A., Sutton P.*, Sociology, 7th ed., Sociology: NY: Polity Press, 2013.

Gender refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. Behavior that is compatible with cultural expectations is referred to as gender-normative; behaviors that are viewed as incompatible with these expectations constitute gender non-conformity.³

Gender identity refers to "one's sense of oneself as male, female or transgender" (American Psychological Association, 2006). When one's gender identity and biological sex are not consistent, the individual may identify as transsexual or as a person of another transgender category (cf. Gainor, 2000).⁴

Intersex is an umbrella term used to describe a wide range of natural bodily variations. In some cases, intersex traits are visible at birth, while in others they are not apparent until puberty. Some chromosomal intersex variations may not be physically apparent at all. Intersex people are born with sex characteristics (including genitalia, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies.⁵

In the modern world, sex is assigned to a newborn child based on a so-called primary observation of genitalia. The entry about sex becomes the basis for recording a certain sex in the child's birth registration document. In case of intersex, after the primary observation (if the genitalia characteristic to both sexes are not clearly identified), and even in case of identified signs, there is no legal possibility in most countries to mark 'intersex' in the sex graph. There are exceptions only in some countries, namely:

Australia allows to record so called "third sex" in the passport for all the people, who would produce documents proving that its sex meets the definition – unidentified⁶ (it has been possible to record "third X-sex"⁷ in the birth registration document since 2003)⁸⁹ since 2011.

In Germany (being the first European state that recognized and provided legal grounds for the possibility to register the "third sex" (unidentified)) – it has been possible to record the third possible sex in the birth registration document since November 2013, which was acceptable in the cases when the newborn child's genitalia would produce ambiguous answer characteristic to both sexes, regarding the assignment of a biological sex of the newborn.¹⁰

In India, it has been possible to indicate the third gender option – Eunuch - beside male and female graphs in the passport application form since 2005.¹¹ In April 2015, the Supreme Court of India recognized

³ The Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients, adopted by the APA Council of Representatives, February 18-20, 2011, <<http://www.apa.org/pi/lgbt/resources/sexuality-definitions.pdf>>.

⁴ Ibid.

⁵ United Nations; Office of the High Commissioner for Human Rights, 2015. Free & Equal Campaign Fact Sheet: Intersex. Citation made from: <https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf>.

⁶ "Getting a passport made easier for sex and gender diverse people". The Hon Kevin Rudd MP. 14 September 2011, <http://foreignminister.gov.au/releases/2011/kr_mr_110914b.html>.

⁷ ambiguous genitalia - indeterminate (unspecified, characteristic to both sexes) genitalia

⁸ Newsletter of the Sociology of Sexualities Section of the American Sociological Association, American Sociological Association Sexualities News, Volume 6, Issue 1, Summer 2003 <http://www.asanet.org/sectionsex/documents/SUM-MER03sexnews.pdf> Retrieved 10 November 2015, also, in addition: Ten years of 'X' passports, and no protection from discrimination, Organisation Intersex International (OII) Australia, 19 January 2013 <<http://oii.org.au/21597/>>, [10.11.2015].

⁹ The word 'indeterminate' is used for referring to the X sex.

¹⁰ "Third sex option on birth certificates". DW.DE. <<http://www.dw.com/en/third-sex-option-on-birth-certificates/a-17193869>>, [10.11.2015].

¹¹ There were three options for sex in the application: (M, F, and E (for male, female, and eunuch, respectively)) Third sex' finds a place on Indian passport forms, The Telegraph, March 10, 2005 <http://www.telegraphindia.com/1050310/asp/nation/story_4474399.asp>, [10.11.2015].

“third sex” as a sex, which is neither female nor male.^{12, 13, 14}

In Nepal (2007), the Supreme Court made a decision obligating the authorities to harmonize the legislative environment with the situation where we may have people of another sex other than male and female. A third possible sex graph (category) was added to the ID cards the same year.^{15,16}

In New Zealand (2012), it is possible to mark the third X gender in passports, where X determines “indeterminate” sex.¹⁷ Statistics Service of New Zealand presented a new classification of sex in 2015. The sex classifier includes three possible ones: male, female and diverse. The diverse sex classifier can include the following subcategories: gender diverse not further defined, transgender male to female, transgender female to male, and gender diverse not elsewhere classified.¹⁸

The EU states, namely: Austria, Belgium, Bulgaria, France, Luxemburg, Slovakia, Cyprus, Denmark, Greece, Hungary, Ireland, Italy, Malta, Portugal, Romania, Slovenia, Spain and the UK make it possible to register a newborn child little later after birth. During this time there is an additional medical inspection carried out for determining the sex of the newborn child.¹⁹

Some countries of the European Union allow registration of so called neutral sex in birth registration documents (as “unknown sex” in Great Britain). There is no sex classifier in birth registration documents in Latvia at all, but there is a definition of an “uncertain sex”, and it is recorded in the medical document, which is filed after the baby is born.²⁰

As for the Netherlands, if the infant’s sex is unspecified, it is indicated in the birth registration document that the infant’s sex is indeterminate. A new birth registration document will be issued after three months and the old one becomes void. There is the child’s sex indicated in this new document in case if it has been determined during this time as the result of medical examination. However, if the sex is still undetermined, then the document will indicate again – the sex is indeterminate. It is assumed that the intersex person will decide its own gender itself in the future. It will be able to request making respective changes in the birth registration document.²¹

¹² “Transgenders are the ‘Third Gender’, Rules Supreme Court”. NDTV. April 15, 2014. <<http://www.ndtv.com/india-news/transgenders-are-the-third-gender-rules-supreme-court-557439>>, Retrieved 10 November, 2015.

¹³ See <<http://supremecourtsofindia.nic.in/outtoday/wc40012.pdf> Retrieved 10 November 2015>.

¹⁴ The court recognized the transgender people as the persons of third sex and made a very important definition: „Recognition of transgenders as a third gender is not a social or medical issue but a human rights issue”. The court said that transgender people have the right for selfidentification and to request that the possibility for self-identification be secured.

¹⁵ Knight K. (24 April 2012). “Nepal’s Third Gender and the Recognition of Gender Identity”. <http://www.huffingtonpost.com/kyle-knight/nepal-third-gender_b_1447982.html>, Huffington Post. Retrieved 10 November 2015. Compare: Dwyer Arce. “Nepal’s Third Gender and the Recognition of Gender Identity”; Jurist.org <<http://jurist.org/hotline/2012/04/bochenek-knight-gender.php>>, [10.11.2015].

¹⁶ Nepal was the first country to conduct population census in 2011, where the people were able to register as male, female or persons of other sex.

¹⁷ “Transgender applicants - New Zealand Passports (passports.govt.nz)”. <https://www.passports.govt.nz/Transgender-applicants> Retrieved 10 November 2015.

¹⁸ “Classifications and standards – Gender identity”. Statistics New Zealand. <<http://www.stats.govt.nz/methods/classifications-and-standards/classification-related-stats-standards/gender-identity.aspx> >, Retrieved 10 November 2015.

¹⁹ European Union Agency for Fundamental Rights “The fundamental rights situation of intersex people” 04.2015, <<http://fra.europa.eu/sites/default/files/fra-2015-focus-04-intersex.pdf>>, Retrieved 10 November 2015; compare: Agius S., Tobler C. (eds.), European Commission 2012, Trans and intersex people: Discrimination on the grounds of sex, gender identity and gender expression, Report by the European Network of Legal Experts in the nondiscrimination field, Brussels.

²⁰ Latvia 2012, Law on the Registration of the Civil Status Acts (Civilstāvokļa aktu reģistrācijas likums), 29 November 2012, Latvian Herald (Latvijas Vēstnesis) 197,4800, 14 December 2012, available at: Latvia, Cabinet of Ministers (Ministru kabineta) 2006, Regulations №265 On the record-keeping procedures for medical documents (Noteikumi Nr. 265 “Medicīnisko dokumentu lietošanas kārtība”), 4 April 2006, 39. pielikums, Latvian Herald

²¹ In accordance with the Article 1:24 of the Dutch Civil Code. Dutch Civil Code <<http://www.dutchcivillaw.com/legislation/dcctitle044.htm>>.

It is impossible to find reliable statistics on intersex persons, as far as even today the qualified majority of countries of the world do not register such people for medical purposes or in birth certificates²². According to the generalized statistical data in various countries of the world, the ratio of intersex infants is 1:1000²³-2000²⁴ among the newborn children. According to the opinion of various experts, the percentage of intersex people is 0,05% - 1,7%.²⁵ This rate is quite high which means that it is necessary to create respective legal mechanisms immediately to protect the rights of intersex persons.

In the countries where it is not possible to mark a person's biological sex in birth registration documents, the intersex persons are deprived of an opportunity to select and/or express their belonging to a certain gender, as far as somebody has already done it for them (a medical facility, a parent, a civil registry). Virtually, the existing legislative model makes the person undergo a surgery if this person considers that the record in the document is not consistent with its biological and/or assigned sex (gender), because such surgery is the only way to obtain the medical documentation based on which the respective public registry can change the person's sex.

3. Transgender and Normative Regulation

It is possible to say directly that the people do not choose their initial biological sex and we have it since birth, but it does not mean that everybody will have a mandatory belonging to this sex. Every person should have equal rights for and be able to express the belonging to a certain sex, regardless the initial condition that exists in regards to the biological sex.

What is a legal purpose of registering people according to various sex? Legislation of majority of countries of the present-day world try to reinforce the idea of gender equality in their constitutions or other (derived) normative acts, by ensuring the enjoyment of equal rights. The state needs to disintegrate people based on sex for collecting the demographic data, statistics, or conducting investigation measures as effectively as possible. Otherwise, registration of sexes is related to the provisions in the hypotheses of certain legislative norms (e.g. mandatory military service, mothers, pregnancy, etc.);

In the modern world, the majority of countries pursue mandatory registration of a legal fact of the person's birth/death, which is reinforced by the legislation of these countries.

At what extent it should be mandatory to indicate the infant's sex in the birth registration document? What advantages/disadvantages does it have? It is possible to say that the modern world is set up on the basis of division by sex. Access to spaces or things is provided to the contemporary people according to their division by sex, and most part of the existing items are conditionally classified: majority of names, toys, clothes, accessories; team membership at kindergartens/schools/universities; activities, holidays; changing rooms, restrooms, shower rooms, etc. Besides, this is the case from the legal standpoint of rights/obligations: right to marriage, mandatory military service, work duration, pension age, etc.

If there were no sex registration in the modern world, on one hand, we would possibly get a legal and social (and practical) chaos. In the environment of current legal regulation, however, we get unequal hu-

²² For Example: GeoStat data of 2012-2015, population of Georgia, <http://www.geostat.ge/cms/site_images/_files/georgian/genderuli%20statistika.pdf>.

²³ Am. J. Hum. Biol. 12: 151-166, 2000 ©2000 Wiley-Liss, Inc, <[http://onlinelibrary.wiley.com/doi/10.1002/\(SICI\)1520-6300\(200003/04\)12:2%3C151::AID-AJHB1%3E3.0.CO;2-F/pdf](http://onlinelibrary.wiley.com/doi/10.1002/(SICI)1520-6300(200003/04)12:2%3C151::AID-AJHB1%3E3.0.CO;2-F/pdf)>.

²⁴ Blackless, Melanie, Anthony Charuvastra, Amanda Derryck, Anne Fausto-Sterling, Karl Lauzanne, and Ellen Lee. 2000. How sexually dimorphic are we? Review and synthesis. American Journal of Human Biology 12:151-166., Citation made from:< <http://www.isna.org/faq/frequency>>.

²⁵ United Nations, Office of the High Commissioner for Human Rights 2015, Free & Equal Campaign Fact Sheet, Intersex, Citation made from: <https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf>.

man rights in regards to the biological sex registration, also in regards to the expression of psychological belonging to sex (from the legal standpoint – also in the light of sex registration).²⁶

It is necessary to create a universal legal mechanism that on one hand secures human rights in the part of choosing/belonging to sex and gender, and on the other hand provides a simple and flexible mechanism of sex/gender registration by the state.

4. Universal System of Sex/Gender Registration

By introducing/applying the USS/GR, the contemporary world will be able to ensure the initial equality standard in the part of sex and gender, which has been neglected so far. The system is universal as far as it provides equal opportunity for assigning a biological sex (female/male/other) to a newborn, also for selecting a gender when becoming an adult, and registering the selected one.

The system is based on the principle of unified registration/expression of biological and chosen sex/gender. For example, presently these are the types of models in various countries:

- Male/Female (in most countries);
- Male/Female/X²⁷ (in some countries);²⁸
- There is no sex indicated in the birth registration document.

It is possible to say that the modern world is not familiar with registration of a person's psychological belonging to a certain gender in the registration or other identification documents. Information/data about sex can be changed only based on relevant medical documentation and not based on the person's application, which would be grounded on this person's perception of its sexual identity.

As I have mentioned above, the USS/GR is constructed on common expression of sex/gender, where three options are given as an initial biological sex – Male/Female/X. It is interesting how it is possible to reduce the selective gender to several basic options, for example: Male/Female/X/A²⁹ or B³⁰. When speaking about the selective gender, it is important that the selective basic element be universal, which means that the person will have an opportunity to select the mental gender belonging that meets this person's mental identity, and not to be forced to select it only because there is no other option offered to it. Currently, the broadest options of gender belonging in material or electronic registration systems are offered by the social network platform Facebook. The platform has offered 71 gender options to its UK users³¹. Various registration electronic platforms are offering the increasing number of options to the users in regards to selecting their gender belonging, which makes it clear that the gender itself does not fall within the number of categories, which can be included in the list with mathematical precision; which would be sustainable for decades. Time-related, cultural, social and mental changes are directly linked to gender understanding and gender diversity. Hence abovementioned, it is impossible to elaborate a numerous clausus of optional genders, as far as the existing list requires constant verification/adjustment over time, and the USS/GR system should not be in need of the latter.

²⁶ *Tumanishvili G. G.*, Acta Universitatis Brunensis Iuridica Vol. 547, DNY PRÁVA 2015 - Days of Law 2015, Conference materials, Brno., 2016., Topical Issues on Equality before the Law for Intersex and Transgender Persons, 132-144.

²⁷ The word 'indeterminate' is used for referring to the X sex; for the sake of building of model, the term "X-sex" also implies 'other' sex/gender and the term 'Intersex' as well.

²⁸ We have spoken about these countries above.

²⁹ Non-Gendered, Agender (a person who identifies as agender is one that identifies as neither male nor female).

³⁰ Bigender, gender identity that falls under the non-binary umbrella. Generally means identify as two genders, could identify as both at the same time.

³¹ The Telegraph "Facebook's 71 gender options come to UK users", <<http://www.telegraph.co.uk/technology/facebook/10930654/Facebooks-71-gender-options-come-to-UK-users.html>>.

Therefore, we are dealing with this situation: it is possible to assign one of the biological sexes to a person at birth – Male/Female/X. However, on attaining adulthood, a person should be able to state its psychological belonging to a certain gender when issuing an ID document. How is it possible?

First and foremost, a binary registration module should be created in the part of assigning a biological sex, which means that the sex will be expressed in a binary mode when a person reaches the age of majority (in the ID cards and passports, also in other documentations where the biological sex is indicated). Namely, if the person's biological sex was determined at birth as male, and if this person has not changed the biological sex after reaching the age of majority or later, then there will be 'Male/Male' (M/M) indicated in the ID documentation, or, in the identical case of female sex – 'Female/Female' (F/F). If the infant's sex is indeterminate at the moment of sex registration, then it is recorded as X-sex (X/X), and if the sex is specified, then either X/M, or X/F. These combinations are universal in regards to biological sex.

In order to let the USS/GR system function in regards to sex/gender expression/registration, it is necessary to add a component, which is not subjected to the marginal, readily available and closed list, namely, to the numerus clausus principle. Otherwise, the system would not be perfect, which I have already discussed above.

Therefore, the USS/GR consists of the following three key components:

First – biological sex at birth;

Second – biological sex existing/changed at reaching the age of majority

Third – a person's psychological belonging to gender.

For example, if the person's biological sex at birth is male, and the gender of psychological belonging remains male at the age of majority, then (M³²) is recorded in the birth certificate, and (M/M/____³³) or (M/M/Agender) in the ID card. If this person changes the biological sex and becomes biologically female, then the record will be changed and replaced by (M/F/____) or (M/F/Agender). If the change is about the person's mental belonging to its gender, then the third component will be affected by the change. As we see, according to the USS/GR, the first component (biological sex at birth) is always unchanged; the second component is changed either after the sex reassignment surgery, and/or when the biological sex is determined in case of intersex persons; and the third component can be open, or the person's psychological belonging to gender can be indicated therein. It is possible to offer a gender list to the person. Such an offer should only be used for informing the person about gender options provided in the list. This may help the person to correctly select the gender for which the person would like to state/express/register its belonging.

5. Conclusion

As you see, the USS/GR system that I am offering can be used in every possible variation of sex/gender. Besides, the field of its application is not limited to any country. Most importantly, the system ensures realization of human right in regards to the selection, belonging to, registration and expression of sex and gender. The system also ensures that the state interest is secured/represented in regards to registration of sexes, and facilitates making changes related to sex and gender in the person's identification documents. It is important that the system has been created proportionate to the human and state interests, which I hope will serve as a basis for its introduction and implementation.

³² Male.

³³ It is possible to leave the component of psychological belonging to gender open, or not to have any record at all in the ID documentation. If this component is not visible, the implication is that it is open, and in this example the 'M/M/____' is the same as 'M/M'.