

NEWS

Germany is first European country to recognise third sex on birth certificates

Ned Stafford

Hamburg

Germany is to become the first nation in Europe to legally recognise intersex babies, allowing parents to leave the male and female designation of sex on birth certificates blank for babies whose sex is not clear.

The new law allowing the intersex designation was approved by the German government in May, but has only recently been publicly announced, according to a news article in the daily *Sueddeutsche Zeitung*.¹ The change affects only birth certificates and not sex designations on other legal registries and documents such as passports. On birth certificates, the designation can later be changed to male or female, or can be left blank indefinitely.

Germany's action comes after Australia approved a new sex discrimination law in June that contains legal guidelines on sexual orientation, gender identity, and intersex status.² Unlike Germany's law, which leaves the designation blank, Australia's law allows an X to be used to designate an intersex person.

The German Ethics Council, which advises the government on controversial scientific and medical issues, issued a detailed "opinion" in early 2012 strongly supporting the rights of intersex people to be recognised and to be protected from discrimination.³

The Ethics Council recommendations go far beyond the new German birth certificate law, with the council advocating the option not to designate sex on all other official registries and documents in Germany. The council also suggested that legislators debating a new law should consider "whether it is still necessary for a person's sex to be registered at all."

S Faisal Ahmed, child health consultant in paediatric endocrinology at the University of Glasgow, who has written a review of the difficult clinical and ethical issues that can result from an uncertain sex at birth, told the *BMJ* that he saw

Germany's new law as an "interesting development," but was not sure how it would be applied in practice.⁴

"This law may be more important for older children and young adults who are unclear about their sex, but I am not sure what bearing it has on newborn infants with atypical genitalia," said Ahmed, who in the past has written about intersex issues.

He said that, from a medical point of view, atypical genitalia in some newborn infants were a sign of an underlying medical problem, such as adrenal insufficiency, which needed investigation and treatment. Those babies, he added, would still need to be evaluated and investigated, and the family would need to be supported.

"Whilst it would be useful to depathologise the infant with atypical genitalia through this law, the concern would be if the pendulum swung too far to the other side and such infants presented later with medical problems which could have been prevented at an earlier stage," he said.

From a policy perspective, the German law will likely have an impact throughout Europe. "It will give these issues a higher profile, which is important," Ahmed said.

1 Heribert Prantl. Geschlechter im deutschen Recht Männlich, weiblich, unbestimmt. www.sueddeutsche.de/leben/geschlechter-im-deutschen-recht-maennlich-weiblich-unbestimmt-1.1747380#.

2 Parliament of Australia. Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013. Jun 2013. www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=f5026.

3 German Ethics Council: Intersex people should be recognized, supported and protected from discrimination [press release]. 23 Feb 2012. www.ethikrat.org/press/press-releases/2012/press-release-01-2012?set_language=en.

4 Ahmed SF, Morrison S, Hughes IA. Intersex and gender assignment: the third way? <http://adc.bmj.com/content/89/9/847.full>.

Cite this as: *BMJ* 2013;347:f5249

© BMJ Publishing Group Ltd 2013