

INDIVIDUAL AUTONOMY AND ITS LIMITS

Renáta Kišoňová

Department of Theory of Law and Philosophy of Law, Faculty of Law, Comenius University,
Bratislava, Šafárikovo nám 6, 810 00, Slovakia

Abstract

In the following text, we will examine the limits of an individual's autonomy in relation to their gender identity and self-determination. We will focus on the philosophical and legal aspects of the above issue. In the presented text, we will define the issue of the relationship between personal autonomy and corporeality, especially in connection with the body that we acquire at birth. Individuality is given by the face, voice, overall body and its characteristic features, gender, which can vary in various ways. It is precisely the diverse variations of gender that can cause difficulties in creating a free and authentic life in a medical, legal and social framework. In the text, we gradually define the importance of the face for our orientation in the social sphere, in communication with others. What are the limits of our freedom in relation to our body? We point out the possible limits of autonomy in specific experiences of gender and in specific gender variations.

Keywords: individual, face, body, autonomy, gender

1. INTRODUCTION

In the presented text, we will define the issue of the relationship between personal autonomy and corporeality, especially in connection with the body that we acquire at birth. Individuality is given by the face, voice, overall body and its characteristic features, gender, which can vary in various ways. It is precisely the diverse variations of gender that can cause difficulties in creating a free and authentic life in a medical, legal and social framework. Autonomy means possibility, the ability to decide for oneself, to act for oneself, independence. But how can be an individual independent when was born with a body that does not fit into “standards” and social, cultural, legal or medical norms? We will consider transgender and intersex persons and their possibilities and limits of autonomy.

2. METHODS

In the following text, we will develop the discussion primarily through a synthesizing and analytical approach, using the methods of hermeneutics, etymology, phenomenology, and existential analysis (what and how does a person who seeks their own autonomy experience?). We will also use a descriptive approach to describe individual legal documents and medical concepts.

3. THE MEANING OF THE FACE AND BODY

Jean-Claude Schmitt thinks of the human face as a process of reduction and approximation; from the body as a whole we zoom in on the bust, then isolate the head, then focus on the face, and from the face on the gaze or expression. “It is a process of approximation that reveals a multitude of specific meanings and possibilities of new interpretations.” (Schmitt 2012, p.21) The face speaks, enables and initiates conversation with others. The face serves as a method of orientation, thanks to which we can recognize gender, health, age and social status, moods. We know whether the person we are communicating with is angry, disgusted, sad or cheerful. On the one hand, the face can be interpreted as an ordinary surface, „a phenomenon in constant motion, but it is also intrinsically connected to the human body: its core and substructure is the head, the skull, for which it serves both as a receptacle for impressions and a stage for expressions.“ (Kohl 2012, p.112) It is impossible to reduce the face to a thing or an organ. Faces always represent, and therefore cannot be referred to just as an object. They always express something,

as opposed to a thing. „The face is the locus of identity par excellence. You could say: ‘I am my face.’ If I change it, I become different.“ (Cole 2012, p.83).

Faces are representative, but they are also part of our material being. We can touch them, kiss them, caress them, slap them, put makeup on them, and scar them. And while the face represents a stable piece of a person's identity, its physical appearance changes with age, depending on emotions, social context, tanning, body weight, health, and other factors. The privileged role of the face in the perception of an individual, in communication, and socialization is not so strange when we consider that it is there that the senses are concentrated. Sight, hearing, taste, and smell are all found on the face. Only touch is missing. The face also houses the vital functions of breathing and nutrition. And all the means of human expression: appearance and voice.

In the countries of the Far East, „loss of face“, that is, loss of dignity, is considered the greatest harm, worse than death. Interestingly, we do not see our own face. We expose it to others, we maintain social contact with it, although we have non-visual awareness of the face. A little more metaphorically, the eyes represent the transition from life to death. In Greek mythology, the gaze of the Gorgon was fatal and deadly (Schmitt 2012).

I will mention another apt metaphor from the world of fine art. It is the metaphor of Paul Klee, who said that the face is the flower of the human body (Klee 2015). This metaphor perfectly describes the subtlety, perfection, expression, identity, delicacy, intimacy and rarity of the human face.

The face opens the initial discourse, the first word of which is duty. According to Emmanuel Lévinas, the face is the most exposed, the most vulnerable and the most expressive aspect of the presence of the other, of the individual (Levinas 1979).

In Anglo-American society, the phrase „saving face“ refers to the process by which a person maintains the impression that he or she has not lost respect. People imagine faces on objects that do not have faces in the strict sense of the word. For example, whenever we see a circle, two dots, and a line, our brain immediately converts them into an image of a face. Gilles Deleuze and Félix Guattari have expressed the meaning of the human face in the following way: “The face forms the wall that the signifier needs to reflect off of, it establishes the wall of the signifier, the frame or the screen. The face deepens the hole that subjectivization needs to penetrate, it forms the black hole of subjectivity as consciousness or passion, as a camera...” (Deleuze, Guattari 2010). The face signifies the most intimate presence of the other, who exposes himself or herself to us through it, opens himself or herself up to us. We see human faces everywhere: we perceive them, for example, on the front of a car, or even such a simple object as an electrical plug also reminds us of a face (a circle, two lines for the eyes, and a hole for the mouth), etc. (McCloud, 1993).

Similar considerations about the meaning of the face and its expressions emerged with the introduction of physiognomy, in which the interest in human faces is the center of investigation. The term physiognomy comes from the Greek word *physis*, which we translate as "nature", and the word *gnome*, which can be translated as "knowledge", that is, together "knowledge of nature". It is the practice of judging the character or personality of a person from their external appearance, especially the face. There are many stereotypes and prejudices in physiognomic observations, some of which are associated with ancient philosophers. For example, Plato in the dialogue *Phaedrus* considered two parts of the human soul and metaphorically identified them with two horses, one good and the other bad. A good horse is perfect, with a white with fur and black eyes. The bad one is clumsy and asymmetrical, with bloodshot eyes. These physical characteristics also reflect their qualities; a good horse is excellent and a bad horse is incompetent. Plato admitted some physiognomic statements or, more precisely, assumptions. For example, Tomáš Víték states that these were: the influence of the environment and climate on character and appearance, the affinity of human character with the animal in relation to reincarnation (in the above-mentioned dialogue *Phaedrus*) and the negative effect of the body on the soul and behavior of a person (Víték 2013). According to Aristotle, the human body is created without extremes; the best is the harmonious organization of all parts. As Zuzana Zelinová states, the Aristotelian tradition knows the so-called physiognomy, i.e. the art of reading human character based on appearance or bodily manifestations (Zelinová, 2021). In ancient physiognomy, a courageous man was characterized by hard

hair, a straight body type, and large, strong bones and ribs. The eyes are bright, not too closed and not dry. The forehead is flat and not too large, neither wrinkled nor smooth. On the other hand, a coward has soft hair, a wrinkled body, a pale face, and weak eyes that often blink. He has long arms and short legs, and his facial expression radiates shyness and inconstancy. Among the authors who focused on physiognomy in later antiquity were the Greek philosopher Poseidonius of Apamea (135–50 BC) and the Greek historian Strabo. Physiognomy was very popular among scientists and physicians, especially in the eighteenth century. The Genevan naturalist Charles Bonnet (1720–1793) was highly influential in the study of facial expressions with his work *Palingénésie Philosophique*.

Johann Kaspar Lavater (1741–1801) was a Swiss physiognomist who introduced the idea that physiognomy concerns specific character traits rather than general types. His *Physiognomische Fragmente zur Beförderung der Menschenkenntnis und Menschenliebe*, 4 vols. (1775–78; *Essays on Physiognomy*, 1789–1798), established a reputation throughout Europe. Using a vast array of illustrations, many of which are portraits, Lavater demonstrated the subtle differences in the angles of the nose, the size of the forehead, and the shapes of the mouth that can express specific personality attributes. According to Shearer West, Lavater's work „...also "it prompted a popular fashion for the silhouette portrait, which reduced the individual form to a black outline of profile." (West 2004) Lavater assumed that this abstract view of the face could reveal aspects of a person's character at its most basic. He developed a highly specialized concept of "likeness," not only emphasizing the same permanent features that interested other interpreters of classical beauty. His "likeness" also "...devalued the mouth and jaw—the basic animal features—and even the eye, which had been especially prized since ancient times as the window to the soul. In this, Lavater's physiognomic system underpinned most painted portraits of the 18th century." (Gage 1997) In his work *The Expression of Emotions in Man and Animals*, Darwin considered specific expressive emotional means on the face that serve to express a particular feeling, mood, emotion and empathy (Darwin 2020). For example, in sadness, the most noticeable consequence of the contraction of the "muscles of sorrow" is the peculiar lines that form on the forehead. Darwin observes that "...when a person raises his eyebrows by contracting the entire frontalis muscle, transverse wrinkles extend across the entire width of the forehead. But in this case only the median fascia contracts, and the transverse lines form only across the middle of the forehead. The skin above the outer parts of both eyebrows is simultaneously stretched downwards and smoothed by the contraction of the external circular muscles." (Darwin 2020, p.143). Later, Darwin adds to this description the view of the perceivers of a photograph depicting the forehead of a girl with a sad expression, and "...of fifteen persons to whom the original photograph was shown without any indication of what was intended by its being presented to them, fourteen immediately replied 'desperate grief', 'unbearable suffering', 'melancholy', and the like." (Darwin 2020, p.144) Darwin's reasoning is interesting in this regard, that although the expression of sadness is immediately recognized by every perceiver as an expression of grief or anxiety, "... yet not one person in a thousand who has never studied the problem is able to say exactly what change takes place in the face of the sufferer." (Darwin 2020, p.145).

This would imply that we empathize with faces, or rather their expressions, without a deeper degree of reflection and self-awareness. This has, of course, mainly an evolutionary explanation. Our ancestors communicated the toxicity of the environment, fear quickly and effectively through facial expressions from a predator, pride from a successful hunt, and the like.

4. MEANING OF THE FACE AND THE BODY IN RECENT LAW DISCOURSE

Regarding meaning of the face, body, identity of individual's body identity, the Danish government intends to crack down harder on the creation and distribution of deepfakes generated by artificial intelligence by amending copyright law to ensure that everyone has the right to their own body, facial features and voice. Danish government announced in June 2025 that it will strengthen protection against digital imitations of human body identity with a law. It will be the first of its kind in Europe.

After securing broad cross-party agreement, the Ministry of Culture plans to submit a proposal to change the current law for consultation and then submit an amendment in the autumn 2025. It will define a

deepfake as a highly realistic digital representation of a person, including their appearance and voice. Danish Culture Minister expects the Act would send a clear message that everyone has the right to how they look and sound. He told the Guardian: "In the bill, we agree and send a clear message that everyone has the right to their own body, their own voice and their own facial features, which is clearly not how the current law protects people from generative AI." He added: "Human beings can be pushed through a digital photocopier and misused for all sorts of purposes, and I am not willing to accept that." <https://www.theguardian.com/technology/2025/jun/27/deepfakes-denmark-copyright-law-artificial-intelligence>

The move, which reportedly has the support of nine out of ten MPs, comes amid rapidly developing artificial intelligence technology that has made it easier than ever to create a convincing fake image, video or audio to mimic the features of another person.

5. THE "OTHER" BODIES

We come to a discrepancy between the self-identification of a person on the one hand and a truncated degree of social freedom on the other. Although, as current neurobiological and neuropsychological research shows, we are limited by the physical constitution with which we are born. For example, even based on neuroimaging studies, it can be said that the brains of trans men and trans women differ from the brains of natal men and women. The importance of the perception of physicality as a significant part of a person's identity is confirmed, for example, by research by the interdisciplinary team around Jisko Ristori, Alessandri Fisher and others (Fisher et al. 2020). It showed that transgender people are more sensitive to gender differences in individual facial features when perceiving faces. The research was conducted with forty participants, of whom twenty were cisgender (ten women and ten men) and twenty were diagnosed as transgender (ten trans women and ten trans men). The participants were shown a face on a monitor (fifty percent female, fifty percent male), which had its hair part hidden, so that the research participants perceived only the landscape of the eyes, nose and mouth. They saw the face for three seconds and then had to evaluate whether it was a male or female face. Trans people reported significantly higher levels of body anxiety compared to cisgender groups, trans women reported significantly higher scores on compulsive self-monitoring and significantly higher distress towards sexually dimorphic facial features (i.e. forehead, eyebrows, nose, mouth, chin, moustache, beard). (Ristori, Fisher et al. 2020) The aforementioned research has shown that gender dysphoria is associated with specific patterns of brain activation during gender-based facial discrimination. Notably, the precuneus appears to play a key role in the perception of facial gender identity in transgender groups but not in cisgender groups. (Fisher et al. 2020) So-called transgender people cannot identify with the role they were given at birth and if they want to be outwardly who they feel they are, they must go through a transition. Transition is a social, medical, legal and consequently existential process of change. Also, in view of the current legal regulation, transition is a very complicated and psychologically demanding situation (both for the person concerned and for the person transgender person, both for the family and the environment), as evidenced by the increased rate of suicidality among transgender people.

In relation to the social and existential freedom of the individual, it is good to realize that the binary classifications of sex and gender that are in our societies everywhere and influence the way we understand and organize the world around us and ourselves, determining the free self-identification of the individual. To what extent are persons referred to as trans gender, intersex or nonbinary persons in current human rights discourse autonomous?

One of the first questions new or future parents are asked is the gender of their child. Gender will become one of the defining characteristics by which their child will be identified and by those around them.

Intersex people, i.e. people with variations of sexual characteristics, are and have always been part of society. Their gender cannot be clearly determined biologically and medically. Their physical characteristics of the genitals do not correspond to the usual idea of male or female gender, so these people become a challenge not only for medical or biological discourse but also for legal and especially human rights discourse. As Lenka Dufalová mentioned, „the term intersex should not be confused with the term transsexuality“ (Dufalová 2024, p. 48). The term intersex has been adopted, for example, in

German legislation, which regulates the rights of intersex children in the Act on the Protection of Children with Gender Variations. In medical terminology, this phenomenon is usually referred to as disorders of sexual development. For many people with variations of sexual characteristics, this term is rather stigmatizing and they distance themselves from it. They propose replacing the term disorder with the term difference or divergence. On 14.2. 2019, the European Parliament adopted a resolution on the rights of intersex people. In it, it called on EU member states to ensure the depathologisation of intersex people.

According to UN statistics, approximately 0.05-1.7% of children are born whose sexual characteristics do not completely correspond to typically male or typically female sexual characteristics (Fafejta et al. 2023). Sometimes this situation does not even allow for immediate determination of biological sex based on external sexual characteristics. It is important to mention that intersex people are not defined by sexual orientation or partner preference, but by sex characteristics, that is, biologically. Almost 80% of intersex people do not have health complications due to their gender. Some of them discover their intersexuality accidentally while dealing with another health problem, dealing with fertility, or looking in their medical record where they find a record of "corrective surgery." Nevertheless, it is still common medical practice that if a baby is born with genitals that are not entirely biologically male or female, they are subjected to cosmetic surgery at an early age, the aim of which is to change the appearance of the external genitalia (so-called "normalization operations"). Sterilization or forced hormone therapy is also performed on intersex people. In addition, pregnancies with intersex fetuses are often terminated simply because of their sex variation. The UN clearly rejects such procedures performed on intersex people without their consent and calls them a form of torture. These procedures can cause loss of sexual sensitivity, nerve damage, pain, incontinence or psychological problems such as depression (Fafejta et al. 2023).

6. THE LIMITS OF AUTONOMY AND LIBERTY REGARDING HUMAN BODY

Being someone, being an individual presupposes „owning“ one's body, its individual parts, face, voice, body, including how the „owner“ feels and experiences them. For example, a patient suffering from prosopagnosia, a disorder of the ability to recognize faces, including one's own, declares when looking at oneself, „this is not me.“ Oliver Sacks describes such a case from his long-standing neuropsychological practice: „Dr. P. was a respected musician, known for many years as a concert singer and then as a teacher at a music academy. And it was there that the first strange problems began to manifest themselves in his relationship with students. Sometimes a student would introduce himself and Dr. P. would not recognize him, or more precisely, his face. At the moment when the student spoke he recognized him by his voice. Such cases multiplied, causing confusion, fear – and sometimes comical. Not only did Dr. P. increasingly fail to recognize faces, but he saw faces when there were none: he jovially patted hydrants and parking meters on the street with his head, thinking they were children. He spoke amiably to the decorative knobs on the furniture and was stunned when they did not respond.“ (Sacks 2017, p.23) Although Sacks's patient suffered from prosopagnosia, he could perceive music with admirable sensitivity and expertise; he did not have a sense of the body, but the music of the body. He transformed his dysfunction in recognizing faces into a stronger sensitivity in perceiving and interpreting surrounding sounds, so that he was able to perceive people based on how they moved. It remains questionable to what extent Dr. P experienced his own identity, given the inability to recognize his own face and the faces of those closest to him. (Sacks 2017) As Sacks states elsewhere, (Sacks 2017, p.17) a popular neurobiological concept is deficit. It indicates a deterioration or lack of neurological function. Loss of speech, language, memory, loss of vision, identity and other deficiencies of specific functions and abilities. At this point I come to the problematization of gender identity and the problematization of self-identification. To what extent do we identify with our gender indeterminately.

„Normalization“ surgeries and forced „reparative therapies“ performed on intersex people without their consent grossly violate several human rights of intersex people, including the rights of intersex children. For this reason, it is inhumane to perform such procedures in cases where it is not medically necessary. Every intersex person should be able to decide in adulthood whether and what aesthetic procedures they

want to undergo. It is important that intersex people have the same access to healthcare, jobs, opportunities, and any other aspect of life as everyone else.

7. THE “OTHER” BODIES AND RECENT LAW DISCOURSE

Let's look at how the law deals with intersex people recently.

In legal documents, recommendations, reports, etc., we mainly encounter the term intersex, unlike medical documents, where it still mainly features DSD, disorder of Development. It should also be noted that the topic of intersexuality is a marginal topic both among the medical and legal communities.

The dialogue between intersex people and international institutions was opened by the International Intersex Forum in 2011. In 2013, the Malta Declaration was adopted, which includes the demands of the intersex community. The central demand is depathologisation, i.e. the elimination of automatic diagnosis and the implementation of involuntary normalization procedures. Another demand is the regulation of prenatal diagnosis and the prevention of selective abortions of fetuses that could be born as intersex children. The Malta Declaration calls for an end to involuntary sterilization of intersex people and aims to improve health care.

In 2014, the UN High Commissioner for Human Rights, Navi Pillay, condemned irreversible and involuntary medical interventions on intersex people that are not necessary. In 2014-2016, the UN issued several documents addressing the situation of intersex people and in 2016 launched a major UN campaign to raise awareness about intersex people. In 2014, the Council of Europe issued an interpretative opinion on the rights of intersex people entitled *boy or a girl or a person*, and in 2017, the Parliamentary Assembly of the Council of Europe adopted a resolution on the promotion of human rights and the elimination of discrimination against intersex people, which summarises the human rights obligations of states towards intersex people. The recommendations of the resolution mainly concern the end of all normalising interventions that are not strictly necessary, the guarantee of necessary healthcare, and protection against discrimination. In 2019, the European Parliament adopted European Parliament resolution on the rights of intersex people. Meteňkanyč and Sabján criticize in their current research „(from both an internal and external legal perspective) the Court's reticence regarding the use of the term gender/gender identity (or more explicitly, regarding the relationship between the above-mentioned terms), the failure to discuss some problematic aspects of the ECtHR's decision-making practice (the issue of the right to gender self-determination, acceptance of a pathologizing approach, the absence of an assessment of a possible violation of the prohibition of discrimination).“ (Sabján, Meteňkanyč 2024, p.258).

8. CONCLUSION

The resolution condemns the medicalization and pathologization of intersex people, normalizing surgeries, and also calls for the adoption of flexible and accessible procedures for registration and gender reassignment. In conclusion, I would like to state that we still face a medical, terminological, and of course legal and human rights challenge. Doctors see the term intersex as problematic; "intersex" does not exist biologically. Doctors often do not distinguish between sex and gender in practice, so they cannot imagine a situation where a child displays signs of both sexes on a biological level but is a boy or a girl on a gender level. Returning to my initial thought, as autonomous as intersex people are, it seems that they are determined rather than autonomous when it comes to the physical, physiological, and biological dimensions of personality. Many children under the age of two undergo procedures that they learn about during puberty or even accidentally from medical records in adulthood. Many of them lose intimate sensitivity, fertility, suffer from incontinence, physical pain, or trauma, depression, anxiety leading to suicidal tendencies. These are all obstacles to autonomy. As Ľubomír Batka mentioned: „Freedom is often limited by expectations of obedience, which leads to ambivalence, especially when obedience is enforced by fear or sanctions.“ (Batka 2024, p.16) Or, as John Stuart Mill put it in the nineteenth century: „In questions which regard only himself, the independence of the individual is absolute. He is the sovereign ruler over himself, over his body and mind.“ (Mill 1995, p.22).

ACKNOWLEDGMENTS

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.

REFERENCES

- Batka, Ľ 2024, Ambivalencie slobody a povinnosti v kresťanskom náboženstve. In *Historia et theoria iuris*, vol. 16, n.3.p.4-16.
- Cole, J, 2012, Facial Function Revealed through Loss. In *En Face. Seven Essays on the Human Face*. (special issue of *Kritische Berichte*, nr. 1,2012) Marburg : Jonas, p.83 – 95.
- Darwin, Ch 2020, *Výraz emocií u člověka a zvířat*. Praha : Portál.
- Delleuze, G – Guattari, F 2010, *Tisíc plošin*. Praha : Herrman a synové.
- Delleuze, G, Guattari, F 2010, *Tisíc plošin*. Praha : Herrman a synové.
- Dufalová, L 2024, Medzinárodnoprávne postavenie intersex osôb. In: Bratislavské právnické fórum, 2024, Vplyv nadnárodných súdnych orgánov na národné súkromné právo, p. 47-57
- Fafejta M et al. 2023, *Trampoty s pohlavím*, Wolters Kluwer.
- Fisher, A et al. 2020, Neural Correlates of Gender Face Perception in Transgender People. In *Journal of Clinical Medicine*, vol. 9, n. 6, p. 1731.
- Gage, J 1997, Photographic likeness. In WOODAL, J. (ed.). *Portraiture. Facing the Subject*. Manchester University Press.
- Klee, P 2015, *Delphi Collected Works of Paul Klee*. Delphi Classics.
- Kohl, J 2012, *En Face. Seven Essays on the Human Face*. (special issue of *Kritische Berichte*, nr. 1,2012) Marburg : Jonas.
- Levinas, E 1979, *Totality and Infinity: An Essay on Exteriority*. B. m. : Springer Science & Business Media.
- McCloud, S 1993, *Jak rozumět komiksu*. Brno : BB/art.
- Meteňkanyč, O.M, Sabján, N. 2024, The recent transgender court decision in Czechia: two steps forward, one step back (A commentary on case Pl. ÚS 52/23)
- Mill, J.S 1995, *O slobode*. Bratislava: Iris.
- Sabján, N., Meteňkanyč, O. M 2024, The Recent Transgender Court Decision in Czechia: Two Steps Forward, One Step Back (A Commentary on Case Pl. ÚS 52/23). *Bratislava Law Review* 8(2) 243-264. <https://doi.org/10.46282/blr.2024.8.2.946>.
- Sacks, O 2013, *Muž, ktorý si mýlil manželku s klobúkom*. Bratislava, INAQUE.
- Schmitt, J-C 2012, *For a History of a Face: Physiognomy, Pathognomy, Theory of Expression*. In KOHL, Jeanette (ed.). *En Face. Seven Essays on the Human Face*. (special issue of *Kritische Berichte*, nr. 1, 2012) Marburg : Jonas, p. 7 – 21.
- Vítek, T 2013, *Věštení v antickém Řecku*. Praha : Hermann & Synové.
- West, S 2004, *Portraiture*. Oxford : Oxford University Press.
- Zelinová, Z 2021, *Umenie čítať ľudský charakter v sókratovskej filozofii*. In: *Ostium*, vol. 17, 2021, n.1.
- Bryant, M. (2025, June 27). Denmark to tackle deepfakes by giving people copyright to their own features. *The Guardian*. <https://www.theguardian.com/technology/2025/jun/27/deepfakes-denmark-copyright-law-artificial-intelligence>