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e) Genital mutilation, so called cutting of girls/women and circumcision (foreskin cutting in boys/juveniles)

Where such interventions in the genital area have no medical indication (as in cases of phimosis in boys), they pose a two-fold problem with regard to consent. Firstly, the guardians are generally entitled to allow consensual interventions of the integrity of those entrusted to their care (paternal consent, deduced from parental right to educate and determine in accordance with the child's best interests: Art 6 § 2 of the Basic Law). This ranges from ear hole piercing to tattooing to corrective surgery (e.g. in protruding ears) or similar. It also applies to the considerable freedom and health loss in children by ambitious parents in the fields of music, sports and other types of exercise/training, which are often quoted in the deplorable circumcision debate (especially in preparation for high performance sports, much is already undertaken during infancy, which phenotypically falls easily under the objective and subjective category of bodily injury; just think of the exercises in preparation for gymnastic/acrobatic abilities.) Whether the children later thank their parents for it (à la Boris Becker) or curse them for it, is inconsequential before the background of the ideology of parental right granted by the Basic Law (Art. 6 § 1 of the Basic Law), according to which the parents ostensibly know best what avails their offspring. However, this decision-making power is not granted entirely unrestricted. Therefore, parents who believe that they themselves would better prepare their children for the needs of life may not exempt their children from compulsory school attendance. Also, despite parental consent, not every physical integrity intervention can be "justified" as legally relevant. In extreme cases in this regard consensus can be reached, even if it is argumentatively not easily accommodated within the muddled standard. The problem lies in the middle range – and in the gray zone between it and the extremes. Even though this is a common problem of the law, and especially of criminal law application, the complete insufficiency of the protective measure becomes apparent, solely by means of the "violation of moral principles" proviso which is built into § 228 STGB to safeguard from nonsensical integrity interventions. - As a conclusion, it should nevertheless be noted that, in any case massive, integrity interventions, for which there is not a clear medical diagnosis and which are not reversible, or not reversible without considerable effort, cannot be legitimized by the simple consent of the parent or guardian.

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In addition to this already muddy layer of distinction, another one of an obscure nature exists in cases of religiously motivated circumcision under Article 4, paragraph 2 of the Basic Law (freedom of religion). It is guaranteed without reservation so that religiously motivated decisions are apparently possible at any time without the State's interference. Thus, the parents are not only free to determine the religion of their child, but to educate the child according to their rites and commandments. The fact that fundamental rights, which are guaranteed without proviso, are nevertheless subject to the restriction presented by the protection of other fundamental rights – although no longer in dispute in the matter – is only controversial with regard to its scope, by which a wide playing field opens up for the representatives of public law – and particularly for the Federal Constitutional Court – to showcase to the astonished public the multi-layered lack of principle of their highly treasured proportionality maxim.

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If religious self-determination were as central an aspect with primacy over all else as media representatives – and especially representatives of religious communities – are claiming it to be, it would bring the discussion immediately to an end. Then there would of course be no reason to deny devout Muslim families or followers of animist African religions the right to circumcise girls. Statistically, this phenomenon is more common worldwide than many Protestant church branches have members. If religions or their exegetes command such action, then the old primacy of God's will would actually come into its own, or at least the bible aphorism "Give to Caesar what is Caesar's and to God what is God's" (NT Mk 12, 17) would command some attention. Luckily, most religious leaders who hypostatize circumcision of boys as divine imperative do not go that far! Therefore, divine imperatives of various constitutional dignity seem to exist. Here arise suddenly the following rather profane material and quantitative aspects. Circumcision of female genitalia (clitoral resection among other forms) is claimed to be a much more severe intervention than the circumcision of the foreskins of male members of the human species! Why – in the face of God's commands(!) – should a little bit more pain, longer term effects, or even the irreversibility of such procedures suddenly play a role? Having said that, there are constellations imaginable in which even the most cunning religious legal scholar would find no argumentative leg to stand on. If a religion stipulates, as it was

custom in some Indian states, that the widow of a deceased man should be burned in the course of the burial ritual, the reference to freedom (or exercise) of religion, granted without reservation, would appear rather vapid. After all, does nothing else therefore remain to be done than to look at the severity of the intervention, its long-term effects and its irreversibility? Some circumcision proponents will then point out that the procedure would serve hygiene and, furthermore, that there are more than three billion circumcised males in the world. The hygiene argument, in light of the availability of condoms that are safer and more hygienic, is nothing more than a folkloric anachronism. The argument of the large number of circumcised males, on the other hand, is far less impressive than it may sound to many. As R. Merkel exposed and proved during his testimony before the German Ethics Council, there are again and again cases of bleeding, mutilations and – if only rare – death. It appears to be more than questionable whether the right to religious heteronomy towards one's own child can go so far as to expose the child to the undeniable risk of long term damage in order to initiate him into one's own religious community. The vehemence with which the majority of the media and political rulers cozied up to circumcision proponents stands in diametric opposition to the grandiose defense of the child's right to not only a violence-free, but also pain- and anxiety-free education. The fact that circumcision is, especially without anesthesia, but even after the anesthetic effect fades, a painful experience is only doubted among those who consider circumcision a religious necessity. Yet, according to eyewitness accounts by relatives, the fact that during some circumcision rituals the victim's first inebriety is inflicted, shows that Rosa Luxemburg's aphorism "Freedom is always the freedom of the dissenters" –and be they only potential – has not yet arrived in today's world.

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Therefore, the minimal consensus to which the German Ethics Council agreed remains far from an adequate solution of the problem. In short, and as a matter of fact, non-medically indicated circumcision constitutes an unjustifiable bodily injury.