BELGIAN ADVISORY COMMITTEE ON
Bioethics

Opinion no. 70 of 8 May 2017 on the ethical aspects of nonmedical circumcision

CONTENTS

I. REQUEST FOR AN OPINION

The Committee was asked for advice in a letter (in French) from Dr. Georges Bauherz, chair of the medical ethics committee of the IRIS South Hospitals (HIS), dated 23 January 2014:

"The Ethics Committee of HIS has discussed the hospital practice of circumcision.
I hereby send you a number of remarks from the minutes of our meeting of 07/01/2014:
'It is a surgical procedure, relatively benign but irreversible, conducted for a nonmedical purpose. The term sexual mutilation is implied, but we are unable to come to an agreement on whether this term is adequate. Certain characteristics of the procedure differ in different religions. In Judaism, circumcision is essential, compulsory, and carried out on the 8th day of life. In Islam, circumcision is not compulsory and is carried out later. Circumcision is also carried out in non-religious population groups, either for hygienic purposes (in the US and Europe), or in the framework of public health (the prevention of the spread of AIDS).
Resistance is starting to grow against this practice in the Jewish and Muslim communities.
Is it right to authorise this form of mutilation in Belgium? There is need for a debate, and not just within our ethics committee.'
Following the meeting, we learned that this issue has been under discussion in Parliament since 2008.
A second aspect is the hospital practice of circumcision. The INAMI (Institut national d'assurance maladie-invalidité, the national institute for sickness and disability insurance; in Dutch the RIZIV) and care facilities are driven by the desire to provide as high a level of medical safety as possible. It must be noted that we are ignorant of the figures regarding complications as a result of circumcisions carried out by hospital doctors, general practitioners and ritual circumcisers.
This is due to the existence of two different INAMI-codes, one for phimosis and the other for circumcision. From an ethical position, however, and bearing in mind the reality, we wonder if it is right to endorse this 'mutilation' by allowing it to be carried out in a hospital. The question can be extended to other risky ritual practices (piercings, tattoos). Some wish to prohibit the nonmedical practice of these procedures.
The financial advantages are not negligible.
More than 25,000 circumcisions take place in hospitals in Belgium each year. This number is increasing, though only as a result of the rising number of births. The cost is relatively high for the INAMI and the parents.
We pose the following question to the Committee: ***Is male circumcision permissible while female circumcision is forbidden?****"*

The Committee decided to rephrase the question as follows:

- Is it ethically acceptable to perform a circumcision if there are no medical indications?
- Is it ethically acceptable for a doctor to perform a circumcision in a hospital if there are no medical indications?
- Is it ethically acceptable that the costs of this procedure be borne by social security?
- Is it ethically acceptable to make a distinction between male and female circumcision?

II. PREAMBLE

The Committee is well aware of the particularly sensitive nature of the questions it has received, due to the essentially religious or cultural nature of circumcision, which many inhabitants of our country are attached to. It does however emphasise that the simple fact of posing an ethical question, even when this question is closely related to religious rules or cultural habits, should not, in a pluralistic and tolerant society such as ours, be understood as an attack on this religion or culture or on the freedom of religion and freedom of expression. The aim of the Committee is to offer answers to the questions it receives from competent individuals and institutions, however difficult these questions may be. The Committee carries out its mission as best it can, in the most objective way possible, which means, in this case, giving expression to the various opinions of its members with respect for the various beliefs present in our society.

III. DEFINITIONS AND THE STATE OF THE ART[1]

A. DEFINITION AND RESEARCH DOMAIN

The word circumcision comes from the Latin word *circumcisio* (to cut around). A (male) circumcision refers to the practice whereby a circular, partial or full removal of the foreskin is carried out on a man. .[2]
When such a removal is conducted for medical reasons, the intervention is called a

[1] S. Richard, « *Recherche documentaire sur les implications éthiques de la circoncision* » (2015), literature study conducted at the request of the Committee. This literature study can be consulted as a working document (cf. the last page of this opinion).

[2] *P-J Delage, Journal international de bioéthique et d'éthique des sciences, 2015, vol. 26, special number, p. 64.*

'posthectomy'.[3]
The Committee has absolutely no ethical problem with this procedure if it is conducted for medical reasons (e.g. due to the occurrence of phimosis,[4] the most common medical reason) by a doctor.
The questions presented to the Committee concern only situations in which circumcision is conducted outside of a therapeutic medical context, either by a doctor or someone else. The Committee will therefore only focus on these situations in the present opinion.

B. MALE AND FEMALE CIRCUMCISION

Although the question asked of the Committee relates to circumcision as defined in the previous section, some clarification is necessary regarding the meaning of the word 'circumcision' for the various cultures which practise it.
Male circumcision can be carried out in different ways. Four types can be distinguished[5]:
"First type: consists of the partial or complete cutting away of the skin protruding in front of the glans (the foreskin).
Second type: the way in which circumcision is practised in the Jewish religion. The circumciser pulls at the skin of the penis and cuts away that part that protrudes in front of the glans. He then pulls the skin backwards and cuts away the part of the skin (the lining of the foreskin) that remains between the initial cut and the glans. This action is called 'periah' in Hebrew and is intended to leave the glans uncovered.
Third type: consists of the complete skinning of the penis skin and sometimes the scrotum skin and the skin of the pubic bone. This method of circumcision, called 'salkh' in Arabic, used to be practised (and is probably still practised) by tribes in the south of the Arabic peninsula and by some tribes in black Africa.
Fourth type: consists of splitting the urethra, thus creating an opening that resembles a female vagina. This type of circumcision, also called '(penile) subincision', might still be conducted by Aboriginals in Australia."

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3 Ibidem footnote 2.

4 Phimosis is a congenital, spontaneous or post-infectious narrowing (stenosis) of the foreskin, thereby preventing retraction of the foreskin over the glans (Garnier en Delamare, *Dictionnaire des termes techniques en médecin*e, ed. Maloine n.v., Parijs). Treatment for this condition usually consists in regularly, manually and progressively retracting the foreskin from the glans. If this however does not improve the narrowing, the only resort is a surgical resection (circumcision, called a posthectomy if conducted for this particular condition.

5 S.A. Aldeeb Abu Salieh, lecture at the « Facoltà di Giurisprudenza, dipartimento di storia e teoria del diritto, Università di Roma Tor Vergata » (8 March 2001), and at the « Università degli studi di Bologna » (9 March 2001), author of « *Circoncision masculine – circoncision féminine: débat religieux, médical, social et juridique* », foreword by L. Weil-Curiel. L'Harmattan, coll. Sexualité humaine, 2001, also cited by P.-J. Delage in his abovementioned article (cf. footnotes 2 and 3).

In the context of circumcision understood as the resection of the foreskin, which is how circumcision is mostly understood in this country, the Committee wishes to address another issue which at first glance appears to be unrelated, namely circumcision involving female genital organs. Many people are convinced that male circumcision is always benign, never or almost never leading to incapacitation or complications, while female circumcision is always severe or very serious, should be considered as 'mutilation', is very incapacitating and results in very serious complications. When considered in this way, it would make no sense to compare the two. The Committee does not dare to make any comparison; it simply wishes to note something which was unexpected for many of its members: the experts who the Committee consulted[6] pointed out that circumcision, from an anatomical and medical point of view, and probably from an anthropological point of view too, is not restricted to the foreskin: anatomically viewed, the foreskin is the same as a woman's clitoral hood and the labia minora; the removal of either of these constitutes a 'circumcision'.

Some members of the Committee are of the opinion that there is a second reason to consider circumcision involving female genital organs when discussing male circumcision in this opinion: because, as we will see in the legal considerations below, Belgian law treats these two interventions differently. Female circumcision thus needs to be briefly discussed.

In communities in which similar interventions are carried out on women, the women themselves refer to these interventions as a tradition, ritual or practice, or as male/female circumcision – words that (usually) never or rarely give offence[7], without ever using the word 'excision' and even less the word 'mutilation'.

The choice of words is important when approaching this sensitive topic. Professionals and associations that fight against the mutilation of women take care to communicate with these women in a way that they can understand and accept. They avoid speaking about mutilation,[8] even if the World Health Organisation (WHO) qualifies every intervention of any kind involving female genital organs, carried out for nonmedical reasons, as sexual mutilation. [9]

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6 Cf. the list of experts at the end of this opinion.

7 P.J. Delage, Journal international de bioéthique et d'éthique des sciences, 2015, vol.26, special number, chapter 4. Circoncision et excision: vers un non-droit de la bioéthique, p. 67.

8 In Dutch: FOD Volksgezondheid, Veiligheid van de voedselketen en Leefmilieu, Vrouwelijke genitale verminking: Handleiding voor de betrokken beroepssectoren, 2011, p. 73.

In French: SPF SANTÉ PUBLIQUE, SÉCURITÉ DE LA CHAÎNE ALIMENTAIRE ET ENVIRONNEMENT, *Mutilations génitales féminines. Guide à l'usage des professions concernées*, 2011, p. 73.

9 World Health Organisation fact sheet number 241, updated February 2017, cf. http://www.who.int/mediacentre/factsheets/fs241/en/

There are thus different forms of female circumcision, commonly called excision, [10] which affect the physical integrity to varying degrees:
First form: symbolic or quasi-symbolic circumcision, consisting of a prick with a needle in the clitoris in order to cause one drop of blood to flow;
Second form: the minimal circumcision, also called the *sunna* circumcision, in which the clitoral hood is cut away;
Third form: an extensive circumcision, with the more or less complete removal of the clitoris and the labia minora;
Fourth form: the so-called pharaonic circumcision or infibulation, in which, after an extensive circumcision, the vaginal opening is almost completely closed by sewing the labia majora shut.

C. CIRCUMCISION IN TIME AND SPACE

According to the information given to the Committee by the experts consulted[11] and according to the literature, male circumcision appears to have been practised from very early in human history. The practice of circumcision can be found amongst many populations and on many continents. This applies to the Aboriginals of Australia, certain parts of India and Indonesia, many African tribes, and the native peoples of North and South America. [12].

Circumcision can be found in the Egypt of the pharaohs, around 2300 to 2200 BCE, in images on the walls of temples and hieroglyphics; an expert who testified for the Committee explained that circumcision in the Ancient World was practiced by all peoples of the Middle East except for the Philistines, the 'people of the sea' or, in other words, foreigners. The Greeks and the Romans considered circumcision to be a form of mutilation. It occupies a place of importance in Judaism, as can be read in their holy scriptures,[13] representing as it does the sign of the covenant between God and the people of Israel, between God and every Jewish man. Circumcision is conducted on the eighth day after birth, unless the baby has health problems, by someone who has been specially trained to do so, with special instruments.

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10 G. Giudeicelli-Delage, « Excision et droit pénal ». *Droit et Cultures* n°20/1990. p.201. particularly p. 202 and p. 207.

11 Cf. the list of consulted experts at the end of this opinion.

12 Bolande R..P., Ritualistic Surgery-circumcision and tonsillectomy, *NEJM*, 1969, 280,591-6; Meijer B. en Butzelaar, R.M.J.M. , Circumcisie in historisch perspectief, *Nederlands Tijdschrift voor Geneeskunde*, 2000, 144, 2504-2508.

13 Genesis 17:1-14.

Although Jesus Christ and John the Baptist were both circumcised, the practice was abandoned by Christians after St Paul's position. Given that the precondition of belonging to the Jewish community was no longer required, Christians no longer had to be subjected to this ritual, and since the time of St Paul have no longer been circumcised.

Some North African Christian groups, such as the Coptics, practise circumcision, not for religious reasons but due to their tradition and culture.

In Islam, circumcision is not mentioned in the Qur'an, but it is compulsory or strongly recommended, with reference to Abraham and the tradition. Children are usually circumcised between the ages of 3 and 13 years old. The instructions for circumcision are mentioned in the Sunna,[14] although the authenticity of the *hadith* that deals with circumcision is controversial in some Muslim circles.

Circumcision is also very widespread amongst animistic peoples, in all of sub-Saharan Africa and in Oceania.

Furthermore, on consulting Western medical literature from the 18th century onwards, it can be noted that doctors saw a whole range of medical advantages for both male and female circumcision. The major reason for circumcision in the West was to stop boys and girls from masturbation, which was seen as the cause of numerous incurable diseases. [15]

It can also be inferred that these practices, based on ancient practices and rituals, have been subsequently justified by citing numerous positive health effects; the most recent of these justifications relate to hygienic precautions.

Today, some sources (including the WHO[16]) believe, in the absence of exact data (given the diversity of practices and their private, even intimate character), that between 23% and 30% of the male population on all continents is circumcised, for whatever reason: religious obligation, cultural tradition, hygienic precautions or aesthetic preference.

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14 B. Meijer en R. Butzelaar, ibid.

15 S.A.D.Tissot, *L'onanisme, Dissertation sur les maladies produites par la masturbation*. Lausanne: Marc Chapuis, 1764.

16 WHO, *Male Circumcision: global trends and determinants of prevalence, safety and acceptability*, 2007.

The numbers regarding female circumcision are also estimations:[17] for example, the practice is almost universal in Egypt, where the prevalence is estimated to be 91%.

The Committee will restrict its research to the first and second forms of male circumcision, as described in part III.B, because this is what the opinion request deals with.

D. MEDICAL ASPECTS

1. Positive effects cited

Those who promote circumcision as a preventive intervention cite certain positive health effects from the medical literature:

a) The prevention of urinary tract infections

Singh-Grewal *et al*[18] have conducted a literature review on the occurrence of urinary tract infections depending on whether or not the patient has been circumcised. The main weakness of this literature review is the predominance of observational studies of unequal quality. The results show that circumcision lowers the risk of this type of infection; it should therefore be recommended for boys with a prehistory of repeated infections of this type and/or with a high level of reflux from the urinary tract to the bladder. According to the authors, however, the results are not such as to recommend circumcision of boys for the prevention of urinary tract infections.

b) The prevention of sexually transmitted diseases (STDs) such as the human papillomavirus (HPV)

HPV is one of the most common STDs. Two prevalence studies[19] show evidence of a reduction of infection by 30 to 40% amongst circumcised men. A randomised

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17 WHO, fact sheet number 241, February 2016, http://www.who.int/mediacentre/factsheets/fs241/en/.

18 D. Singh-Grewal et al, "Circumcision for the prevention of urinary tract infection in boys: a systematic review of randomised trials and observational studies", *Dis Child* 2005;90:853-858 doi:10.1136/adc.2004.049353 .

19 Giuliano AR, Lazcano E, Villa LL, et al. "Circumcision and sexual behavior: factors independently associated with human papillomavirus detection among men in the HIM study". *Int J Cancer*. 2009;124(6): 1251–1257. Nielson CM, Schiaffino MK, Dunne EF, Salemi JL, Giuliano AR. "Associations between male anogenital human papillomavirus infection and circumcision by anatomic site sampled and lifetime number of female sex partners". *J Infect Dis*. 2009;199(1):7–13.

clinical trial (RCT) conducted in Uganda[20] confirms this result.
The AAP (American Academy of Pediatrics)[21] states that if it is taken into account that certain strains of HPV can cause cancer (penile and cervical), the reduced risk of infections for circumcised adult men would reduce transmission of the virus and thus all risk to the partner. The AAP notes that the reduction effect could be offset by the increase in the level of vaccination coverage for HPV.
In this context we wish to note that vaccination for HPV occurs only for girls; the possibility of vaccinating boys with the same preventive aim deserves to be discussed.

c) The prevention of penile cancer

Penile cancer is a rare disease (between 0.82 and 0.58/100,000 people, according to research) and it has been noted that the number of cases is decreasing in both the United States, a country with a high rate of circumcision,[22] and Denmark, where few men are circumcised.[23]. The AAP cites two controlled case studies[24] which show lack of circumcision to be a risk factor for the invasive form of penile cancer; it is however the presence of phimosis that leads to a significant risk for invasive penile cancer. If the phimosis variable is excluded, the impact of circumcision is negligible.
As mentioned in point b), it should be remembered that HPV is less likely found to be the cause for penile cancer in circumcised men.

d) The prevention of HIV infection (AIDS)

In the earlier cited report,[25] the AAP discusses the results of a literature analysis from 1995. This shows that heterosexual men living in regions with a high HIV prevalence through heterosexual contact (e.g. Africa) are at lower risk of

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[20] Tobian AA, Serwadda D, Quinn TC, et al. "Male circumcision for the prevention of HSV-2 and HPV infections and syphilis". *N Engl J Med*. 2009;360(13):1298–1309

[21] The American Academy of Pediatrics (AAP) published in *Pediatrics* 2012 September, vol. 130 n°3; e756-e785, a technical report regarding male circumcision. To this end, a multidisciplinary taskforce was put together in 2007 in order to bring the earlier recommendations from 1999 up to date.

[22] Barnholtz-Sloan JS, Maldonado JL, Powsang J, Giuliano AR. "Incidence trends in primary malignant penile cancer" [published correction appears in Urol Oncol.2008;26(1):112]. *Urol Oncol*. 2007;25(5): 361–367 118.

[23] Frisch M, Friis S, Kjaer SK, Melbye M. "Falling incidence of penis cancer in an uncircumcised population" (Denmark 1943-90). *BMJ.* 1995;311(7018):1471.

[24] Daling JR, Madeleine MM, Johnson LG, et al. "Penile cancer: importance of circumcision, human papillomavirus and smoking in in situ and invasive disease". *Int J Cancer*. 2005;116(4):606–616 120. Tsen HF, Morgenstern H, Mack T, Peters RK. "Risk factors for penile cancer: results of a population-based case-control study in Los Angeles County (United States)". *Cancer Causes Control. 2001;12(3):267–277.*

[25] Idem footnote 22.

contracting HIV if they are circumcised; this reduction is estimated to be 40 to 60%. The suggested hypotheses are that the skin layer of the foreskin is susceptible to cuts which could act as a gateway for the pathogens and that the foreskin contains a high density of cells which could be targeted by HIV.

e) The prevention of prostate cancer

A study from 2015 evaluated the distribution of 197,434 deaths due to prostate cancer in 85 countries in which the GDP per capita, the life expectancy for men and the prevalence of male circumcision, reported by the WHO, is known. This epidemiological study shows that the mortality rate due to prostate cancer is lower in countries in which more than 80% of men are circumcised. According to the authors, these results are compatible with the hypothesis but do not give proof that male circumcision protects against death by prostate cancer.[26]

2. Remarks

It should be borne in mind that the WHO/UNAIDS[27] have issued a series of guidelines to promote male circumcision, on the basis of randomised clinical trials that show that in countries with a high prevalence of HIV/AIDS through heterosexual transmission, circumcision can protect men from infection.

Boyle[28] however criticises three of these randomised clinical trials (RCT's) in South Africa, Kenya and Uganda regarding the transfer of HIV (from women to men). He denounces the methodological and ethical shortcomings of these studies, despite the fact that these studies formed the basis of the WHO/UN's recommendation in 2007 encouraging male circumcision in Africa.

Regarding the positive health effects of circumcision cited by its promoters, the study results are not in agreement; there are many confusing variables present and the methodology of some of the studies is contestable.

In our own country, no impact has been demonstrated on:

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[26] Mitchell S Wachtel, Shengping Yang, Brian J Morris, "Countries with high circumcision prevalence have lower prostate cancer mortality", *Asian Journal of Andrology* (2015) 17, 1–4© 2015 AJA, SIMM & SJTU.

[27] WHO/UNAIDS: *New data on male circumcision and HIV prevention: Policy and programme implications: conclusions and recommendations*. UNAIDS 2007.

[28] Boyle GJ, Hill G (2011) "Sub-Saharan African randomised clinical trials into male circumcision and HIV transmission: methodological, ethical and legal concerns". *J Law Med* (Melbourne) (2011) Dec 19 JLM 316-34.

a) urinary tract or uro-penile infections;
b) the prevention of STD's, including HPV, or on the prevention of infection by HIV/AIDS, which is primarily a behavioural issue. In this respect it deserves mention that these aspects do not concern babies or children;
c) penile cancer, for which the incidence is falling;
d) the incidence of prostate cancer due to several contributing factors; the effect of circumcision cannot be isolated. Moreover, this question does not concern children.

Regarding the effect of circumcision on the quality of one's sex life, the study results vary considerably. A systematic literature review[29] on studies published until 25/03/2013 concluded that circumcision does not lead to noticeable inconveniences. Two other studies[30][31] raise the issue of less satisfying sexual relations, both for the circumcised man and for his partners. On the one hand, the authors emphasise the important role of the foreskin in the sensitivity of the penis in arriving at full sexual satisfaction. On the other hand, they wish to encourage a surgical attitude which would maximise the amount of foreskin tissue left intact, if a posthectomy (medical circumcision) is required.

In this regard, it should be remembered that circumcision was recommended in the 18th and 19th centuries (cf. III.C. above) in order to lessen the sensitivity of the penis, and thereby to reduce the libido and the intensity of sexual pleasure.[32].

Circumcision is accompanied by a complication rate that is higher than that cited by its defenders (the most often cited figures are 0.1-0.2%); this figure is underestimated. A systematic review[33] mentions an average complication rate of 1.5% after circumcision of newborns (babies younger than one year old).

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[29] Morris BJ and Krieger JN. "Does male circumcision affect sexual function, sensitivity, or satisfaction?—A systematic review". *J Sex Med* 2013;10:2644–2657.

[30] Frisch, Lindholm, Gronbaek. "Male circumcision and sexual function in men and women: a survey-based, cross-sectional study in Denmark". *International Journal of Epidemiology*, 2011;40: 1367-1381

[31] Bronselaer, Schober, Meyer-Bahlburg, T'Sjoen, Vlietinck, Hoebeke. "Male circumcision decreases penile sensitivity as measured in a large cohort". *BJU International*, 2013; doi:10.1111/j.1464-410x.2012.11761.

[32] Freeland, E. Harding 1900 "Circumcision as a preventive of syphilis and other disorders" *Lancet* 156 (4035). 1869-71.

[33] Weiss et al. *BMC Urology* 2010, 10:2.

A retrospective Australian study[34] examined emergency department admissions after circumcision. The advantage of this study is that it lists the complications identified (bleeding, pain, swelling and redness, reduction in urine production, fever, suppuration); 33% of complications – often resulting from circumcisions conducted by traditional circumcisers - required hospitalisation and 18% required new surgery. The disadvantage of this study is that it is retrospective, giving no idea of the total number of circumcised children. The medical expert consulted raised the possibility of even worse complications such as problems with vascularisation (abnormal or excessive formation of blood vessels) or coagulation, partial or full necrosis, excessive resection, …

3. The issue of anaesthesia and pain management

From a medical point of view and according to the urologist consulted, the procedure consisting of the removal of the foreskin on a baby is neither trivial nor free from risks or complications. This procedure causes physical and mental suffering.[35] The pain caused justifies a general anaesthetic, together with systematic pain management over the days that follow.

However, general anaesthesia of a newborn in order to carry out this procedure presents a problem. A literature review[36] evaluated the neurotoxicity of general anaesthesia of newborns. Animal tests have proven that general anaesthesia can cause damage to the central nervous system due to its neurotoxicity. A similar conclusion cannot be drawn based on the available data regarding newborns, due to a lack of prospective studies. The authors do however recommend caution and the postponement of surgery if possible. Many studies suggest that anaesthesia during the first six months of life is not always without risk or consequences. General anaesthesia is always accompanied by risks, anyway, and its indication must be weighed up.

The paediatric urologist consulted by the Committee is of the opinion that, given the pain and psychological stress caused by the procedure, general anaesthesia is desirable. This means that doctors who agree to the request of the parents are recommended not to carry out circumcisions on children smaller than 10kg.

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[34] Gold G., Young S. et al.,: "Complications following circumcision presentation to emergency department". *Journal of Pediatrics and Child Health* 51 (2015) 1158-1163.

[35] "Genital Cutting: Protecting Children from Medical, Cultural, and Religious Infringements". Proceedings of the 11th International Symposium on Circumcision, Genital Integrity, and Human Rights, 29–31 July 2010, University of California–Berkeley; Chapter 4 "*The Harm of Circumcision*" by George C. Denniston.

[36] Sanders R.D. et all: "Impact of anaesthetics and surgery on neurodevelopment: an update", *British Journal of Anaesthesia* 110 (S1) 53-72 (2013).

4. The position of the AAP (American Academy of Pediatrics)

The AAP has repeatedly made declarations in the past (there exist statements from 1989 and 1999), and the following conclusion from the latest report from 2012 is in the same line:

"Systematic evaluation of English-language peer-reviewed literature from 1995 through 2010 indicates that preventive health benefits of elective circumcision of male newborns outweigh the risks of the procedure. Benefits include significant reductions in the risk of urinary tract infection in the first year of life and, subsequently, in the risk of heterosexual acquisition of HIV and the transmission of other sexually transmitted infections. The procedure is well tolerated when performed by trained professionals under sterile conditions with appropriate pain management. Complications are infrequent; most are minor, and severe complications are rare. Male circumcision performed during the newborn period has considerably lower complication rates than when performed later in life. Although health benefits are not great enough to recommend routine circumcision for all male newborns, the benefits of circumcision are sufficient to justify access to this procedure for families choosing it …"[37]

5. The position of R. Darby[38]

This author criticises the position of the AAP on several points:

a. the analogy between a therapeutic medical or surgical procedure and a surgical procedure for a cosmetic or cultural purpose;
b. the concept of risk and the relationship between risks and benefits;
c. a reality unknown to or ignored by the AAP: the intrinsic value of the foreskin, as part of the male genital organ.

As far as Darby's first point is concerned, he notes that, whatever their conclusion may be, participants of the current debate on circumcision agree that circumcisions without a therapeutic end carried out on minors who are not yet able to consent are acceptable if it can be proven that the advantages outweigh the risks. According to Darby, this point of view is based on a deceptive analogy between a nontherapeutic intervention and a therapeutic intervention. The former takes place in a cultural, religious or cosmetic context, the latter is a treatment that is appropriate in a given situation. The aim of the latter is a cure or a greater degree of wellbeing. The risk remains the same risk that is always associated with the intervention that has to be carried out in order to achieve the expected outcome.

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[37] "AAP Circumcision Policy Statement" (*Pediatrics* vol130,585-586, 2012 September)

[38] Darby R. Risks, Benefits, "Complications and Harms: Neglected Factors in the Current Debate on Non-Therapeutic Circumcision", *Kennedy Institute of Ethics Journal*, vol.25, n°1, 1-34 © March 2015 by the Johns Hopkins University Press.

Given that circumcision for nonmedical reasons is not a medical treatment, by extrapolation it cannot be decided that it forms a medical benefit.

Regarding the last two points, Darby notes that the AAP acknowledges that no one has been able to exhaustively calculate the ratio of benefits to risks in order to support its position on circumcision.

Moreover, the author states that the AAP uses a certain concept in its approach that is not suitable when reasoning in terms of risk.

What risk are we talking about?

For the AAP it is the risk of surgical or other complications (bleeding, infections etc.) as a consequence of the procedure itself, the surgery, the act of circumcision.

The AAP attaches no importance to the foreskin in its approach, and does not consider any possible inconvenience or damage resulting from the loss of the foreskin, either at an aesthetic or a sensory level.

Furthermore, an additional question must be asked: if we are talking about minors (and children), when is a prophylactic intervention acceptable?

Hodges *et al.*[39] have attempted to find an answer to this question by researching how the conflict between the needs of public health and respect for individual rights can be solved.

From an ethical point of view they put forward two series of criteria, one related to the advantages for public health ("public health benefit") and the other related to the interests of the child ("best interest of the child"). Both series of criteria must be met before a decision can be made to conduct a procedure.

Criteria related to the public health benefit:

- there is no significant risk to public health
- the sickness or condition must have serious consequences if transmitted;
- the efficiency of the intervention has been demonstrated;
- the degree of invasiveness of the intervention is taken into account;

[39] Hodges, Frederick, J. Steven Svoboda, and Robert Van Howe. 2002 "Prophylactic Interventions on Children: Balancing Human Rights with Public Health" *Journal of Medical Ethics* 28 (1):10-16.

- the fact that the person in question gains a direct and measurable benefit from the intervention, independent of hypotheses regarding his future behaviour;
- the public health benefit must outweigh the infringement on the individual's rights.

Criteria related to the best interest of the child:

- the presence of a clinically detectable sickness (or injury);
- the (therapeutic) option chosen must be the least invasive and the most conservative;
- direct benefit to the child concerned and a minimal negative impact on health;
- the child concerned must be capable of consenting to the intervention considered;
- the practice conforms to the standards of reference;
- the child concerned is in a situation with a high risk of developing the sickness.

The authors conclude that vaccination programmes in general meet both series of criteria; circumcision in contrast meets neither series.

In this perspective, the vaccination of boys against HPV mentioned in point D.2. could be viewed as ethically acceptable.

6. The position of the Royal Dutch Medical Association (KNMG)[40]

In the first three points of its conclusions, the KNMG holds that:

- "There is no convincing evidence that circumcision in the context of prevention or hygiene is useful or necessary. Considering the complications that can arise during or after a circumcision, the procedure cannot be justified for nonmedical or nontherapeutic reasons. If there are medical benefits, such as a possible reduced risk of HIV infection, then it would be reasonable to delay circumcision to an age at which such a risk is relevant and the boy himself can decide about the procedure or can choose for possible alternatives.
- Contrary to what is commonly thought, circumcision is accompanied by the risk of medical and psychological complications. The most common complications are bleeding, infections, urethral stenosis and panic attacks. Partial or full penis amputations as a consequence of complications after circumcision have also been reported, as well as psychological problems resulting from the procedure.
- Nontherapeutic circumcision of underage boys is in violation of the rule that

[40] "Niet-therapeutische circumcisie bij minderjarige jongens", (Nontherapeutic circumcision of underage boys) KNMG-standpoint of 27 May 2010, p. 14.

minors may only be exposed to medical treatment in the context of sickness or abnormality, or if it can be convincingly demonstrated that the intervention is in the best interests of the child, as is the case for some vaccinations." (Translation by the Committee)

E. CIRCUMCISION STATISTICS IN BELGIUM

The following tables give a picture of the extent of circumcision practice in Belgium:
1/ Number of circumcisions per year (figures from the INAMI/RIZIV)[41]

Year	1994	1999	2002	2004	2006	2008	2010	2012	2014
Outpatients			15,151	16,843	18,240	21,104	22,831	24,749	24,685
Hospitalised patients			2,643	2,029	1,613	1,455	1,282	1,224	1,013
Total	**13,786**	**15,336**	**17,794**	**18,872**	**19,853**	**22,559**	**24,113**	**25,973**	**25,698**

2/ Expenses for circumcisions, per year and in thousand Euros (figures from the INAMI/RIZIV)[42]

Year	2002	2004	2006	2008	2010	2012	2014
Outpatients	1,279	1,482	1,641	1,962	2,234	2,481	2,547
Hospitalised patients	193	150	120	110	104	100	82
Total	**1,472**	**1,632**	**1,761**	**2,072**	**2,338**	**2,581**	**2,629**

3/ Circumcisions per age group (figures from the INAMI/RIZIV)[43]

Age group (years)	**Outpatients**	**Hospitalised patients**	**Total**
0-4	14,362	212	**14,574**
5-9	4,122	64	**4,186**
10-14	1,231	30	**1,261**
15 years and older	4,970	707	**5,677**
Total	**24,685**	**1,013**	**25,698**

41 Cf. email from 5 May 2016 from the Communications Service of the INAMI/RIZIV.

42 Ibidem.

43 Ibidem.

IV LEGAL FRAMEWORK

A. INTERNATIONAL LAW

The European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), which are considered to be directly applicable to Belgium, meaning they can be invoked as such in court, directly grant freedom of religion and freedom of thought, and indirectly grant the right of parents to decide on the religious or philosophical orientation of their underage children.

For some members of the Committee, these international agreements do not guarantee absolute physical integrity, since they do not prohibit all forms of attack, but only torture and cruel, inhumane or degrading treatment.

These same members recall that the International Convention on the Rights of the Child from 20 November 1989 (of which only a number of provisions are directly applicable, but which is internationally binding in Belgium) mentions that the States which are party to the convention undertake to protect the child and ensure the care necessary for his/her wellbeing, taking into account the rights and duties of the parents, legal guardians or other people who are legally responsible for the child (article 3.2), to guarantee as far as possible the survival and development of the child (article 6.2), to ensure the right of a child who is able to form his/her own opinion to freely express this opinion in all circumstances which concern the child, whereby a suitable degree of importance is given to the child's opinion given his/her age and maturity (article 12.1), to respect the right of the child to freedom of thought, conscience and religion (article 14.1) and to respect the rights and duties of the parents and, if applicable, legal guardians, to guide the child in the exercise of his/her right in a manner which is consistent with the development of the child's abilities (14.2). The freedom to express his/her religion or beliefs can only be limited to the extent required by law and necessary for the protection of public safety, public order, public health or morals, or of the fundamental rights and freedoms of others (article 14.3). The States which are party to this convention also undertake to take all effective and appropriate measures to abolish traditional practices which are detrimental to children's health (article 24.3). Article 30 states that in States in which ethnic, religious or linguistic minorities or native populations are present, a child belonging to these minorities must not be denied the right, together with the other members of his/her group, to exercise his/her culture, to confess and follow his/her religion, or to use his/her own language. In addition, the States which are party to the Convention must take all appropriate legislative and administrative measures in the area of society and education to protect the child from all forms of physical or mental violence, injury or abuse, physical or mental neglect or negligent treatment, mistreatment or exploitation, including sexual abuse, as long as

the child is in the charge of his/her parent(s), legal guardian(s) or other carer (article 19.1). The States which are party to the Convention also acknowledge the right of every child to a living standard that is adequate for the physical, mental, intellectual, moral and social development of the child (article 27).

The interpretative authority of the Convention is the United Nations' Committee on the Rights of the Child. However, the members of the Belgian Advisory Committee on Bioethics wish to emphasise that this authority has never condemned the circumcision of boys, in contrast to its position regarding female genital mutilation, restricting itself, not without reason according to the Advisory Committee members, to the statement that it is "concerned about circumcisions conducted unhygienically or in dangerous circumstances."[44].

Other members note that, in contrast, on 1 October 2013 the Parliamentary Assembly of the Council of Europe passed resolution 1952 (2013) "Children's right to physical integrity", which understands under the violation of the physical integrity of children amongst other things "female genital mutilation, the circumcision of young boys for religious reasons, early childhood medical interventions in the case of intersex children, and the submission to, or coercion of, children into piercings, tattoos or plastic surgery"; on the same day, the same Assembly approved recommendation 2023 (2013) in which it "points out [...] that a certain category of human rights violations against children is not yet explicitly covered by any international or European policy or legal instrument: the medically unjustified violations of children's physical integrity as specified in Assembly Resolution 1952 (2013)" (paragraph 3) and invited the Committee of Ministers to take action in this situation. On 19 March 2014 the Committee of Ministers answered that "the practices mentioned in Resolution 1952 (2013) are by no means comparable, as female genital mutilation is clearly prohibited by international law. It falls within the scope of Article 3 of the European Convention on Human Rights and, under the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, is among the most serious violations of human rights of girls and women. It can, in no way, be put on an equal footing with practices such as the circumcision of young boys for religious reasons, the practice of which is not the subject of similar legal provisions. Whilst the resolution does warn that there are distinctions to be made, the Committee of Ministers notes that the formulation of this text is susceptible to cause confusion." In concluding, the Committee of Ministers wished to "stress the importance" of the following point: "many [members States] pay particular attention to the conditions in which such interventions are carried out in order to limit any risks to the health and wellbeing of the child."

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[44] For the first time: final observations in South Africa, 22 February 2000, CRC/C/15/Add. 122, § 33 ; final observations in Lesotho, 21 February 2001,CRC/C/15/Add.147, § 44.

The members of this Advisory Committee find that the Committee of Ministers does not justify its position by referring to differences in the severity of injuries, thus making its reasoning susceptible to criticism. It amounts to arguing that there is no need for special protective measures for boys because none exist, while specific protective measures are necessary for girls because they exist. These members are of the opinion that, whatever the case may be, the governments of the member states of the Council of Europe were unable to announce more clearly that they do not intend to consider condemning male circumcision of minors, and that the question posed to the Advisory Committee on Bioethics was not posed in order to know whether this attitude is good or bad, but whether ethical considerations are involved, and if so, which.

B. BELGIAN LEGISLATION

1. The Belgian Constitution

The Constitution safeguards equality between men and women (Article 10, paragraph 3) and directly or indirectly allows freedom of religion and of thought (Article 19), and the right of parents to decide on the religious or philosophical orientation of their underage children. The Constitution also states that every child has the right to respect for his moral, physical, mental and sexual integrity, and that, in every decision affecting the child, the child's interests must be of primary consideration (Article 22*bis*). In order to interpret the relevant provisions of the Constitution, the Constitutional Court attempts to align itself with the interpretation of the corresponding standards of the European Convention on Human Rights, enforced by the European Court of Human Rights.

2. The Criminal Code

Article 392 of the Criminal Code states that '... inflicting injury with the intention of attacking a certain person [is classified as intentional]'; this text uses the term 'injury' to include what in Article 398 is called wounds or blows' in the expression: 'He who intentionally inflicts wounds or blows, shall be punished with a prison sentence of 8 days to 6 months and with a fine of 26€ to 100€[45] or with either one of these punishments.' The Court of Cassation[46] clarifies that the injuries, within the meaning of this provision, include any external or internal injury caused externally by a mechanical, physical or chemical act or omission on the human body, that these injuries can be either biological or functional, and that the severity of the injuries is of no importance.

[45] These sums must be multiplied by 150 in accordance with the Law of 5 March 1952 on the decimations of criminal fines, most recently adapted by the Law of 24 December 1993.

[46] Cass. 3 December 2014, R.D.P.C. 2015, 684, cf. the conclusions of the Public Prosecutor.

Whether the injury that results from circumcision is voluntarily caused is disputed by some of the experts who appeared before the Committee. According to them, the circumciser does not desire to injure but rather to perform a rite that is assumed to be beneficial for the person subjected to it; this distinction is however not admissible in the Criminal Code as it sets the intention of the acting person on the same level as his motive: the wish of the circumciser is to remove, in other words to wound, regardless of the underlying motive;[47] the Court of Cassation confirms this in a judgement of 25 February 1987: 'the provisions of this article apply whenever a voluntary act is carried out, regardless of the motive that caused this act'[48] and clarifies on 13 November 2012: 'the crime of intentional injury requires as sole moral component general intention, that is knowingly and willingly carrying out an illegal act consisting of an attack on the physical integrity of the person injured; it does not require that the accused should have had the intention to harm the person.'[49]. Finally, the second paragraph of Article 398 states the following: 'in the event of premeditation, the guilty party shall be condemned to a prison sentence of one month to one year and a fine of 50€ to 200€'[50]: one speaks of premeditation when the action is not only voluntary, but also thought about and prepared, which is certainly the case with circumcision.

Under the provisions of Article 405*bis*, 2°, the penalties are increased, and in the case of premeditation, increased to a prison sentence of two months to two years and a fine of 50€ to 200€[51] if the crime is carried out on a minor. Moreover, Article 405*ter* doubles the minimum prison sentence, if the accused is directly related by blood or a relative to the fourth degree of the minor's guardian.

It would appear therefore that the Belgian Criminal Code does indeed punish circumcision.

On the other hand, it does make a difference whether the circumcised is male – a situation which is clearly covered by the provisions cited above – or female: Article 409 § 1, the wording of which is derived from a law of 28 November 2000, punishes specifically the exercise, facilitation or promotion of 'any form of mutilation of the genitals of a person of the female gender, with or without her consent.' This provision deals not only with the cutting away of the clitoris, as it speaks of *any form of*

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47 Similarly, anyone who kills someone in order to free humanity from a murderer or a serial child rapist, commits murder. It should be remembered in this regard that it had to be explicitly stated by law that the practice of euthanasia, conducted under certain conditions, is not punishable as murder.

48 Pas. 1987,I,761.

49 Pas. 2012,I,2203.

50 Idem footnote 46.

51 Idem footnote 46.

mutilation of the genitals, which of course includes the removal of the clitoral hood. (This is classified as a minimum form of female circumcision.) In the absence of a legal definition of the word 'mutilation', this term should be understood according to its everyday meaning (the cutting away or harming of an external bodily organ).[52]. The punishment is a prison sentence of three to five years, which can be increased to a confinement of five to seven years if the mutilation is carried out on a minor (paragraph 2 of the same article), confinement of five to ten years if the mutilation caused an apparently incurable disease or incapacity for personal labour (paragraph 3), and confinement of ten to fifteen years if the mutilation resulted in death (paragraph 4); if the crime was carried out by a direct relative by blood or the victim's guardian, the minimum punishment is doubled when dealing with a prison sentence and increased by two years when dealing with confinement.

However, apparently no decisions made in this area, either from the Court of Cassation or from any other court, have been published, suggesting that none have ever been made, with the exception of the conviction by the Brussels Court of Assize from several years ago involving a case of female circumcision, which the press reported at the time.

The criminal statistics published on the website of the Criminal Justice Information Service (in Dutch: Dienst voor het Strafrechtelijke Beleid; in French: Service de la Politique criminelle) make no single mention of convictions between 1995 and 2013 based on articles 405*bis*, 405*ter*, or 409 of the Criminal Code, and ignore the terms *circumcision* and *genital mutilation*.[53].

According to information obtained from the Brussels Public Prosecutor's Office, there has never been an arrest warrant issued on the basis of Article 409. There are at least two possible explanations for this: the extremely young age of the victims, hence the absence of complaints; and the fact that the rules governing the term of limitation of common law apply to infringements which the law classifies as blows and wounds and not as sexual crimes, the only type of offence for which the term of limitation begins once the victim reaches the age of majority. According to the same source, if there had been an accusation of female genital mutilation, this would certainly have led to prosecution.

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52 Petit Robert, v° Mutilation, 1°.

53 The current version of these provisions was established by the laws of 26 June, 28 November 2000, 23 January 2003, 26 November 2006 and 5 May 2014. The statistics on the convictions and suspensions by the various courts explicitly refer to articles 398, 399, paragraph 1, 400, paragraph 1, and 401, paragraph 1, of the Criminal Code, so that, whenever there were convictions dealing with circumcision, they only concerned male victims, and are included in the more general notion of blows and wounds (injuries).

The question should be raised of whether the custom of *praeter legem* (which fills the silence of the law), or even *contra legem*, exists, allowing male circumcision, and also about the reasons why there have apparently never been convictions of female circumcision, except for the above mentioned Assize case, which consisted of a very severe mutilation and which seems to have led to the Law of 28 November 2000.

Some of the members of the Committee are of the opinion, for the reasons explained in the section titled 'Anthropological and psychoanalytical aspects of circumcisions', that the Criminal Code rightly makes a distinction according to whether the circumcised person is male – a situation which is clearly covered by the above mentioned provisions – or female.

3. The law of 22 August 2002 on the rights of the patient

With regard to the consent to healthcare, Article 12 of the Law of 22 August on the rights of the patient states that 'for a patient who is a minor, the rights as laid down by this law shall be exercised by the parents or guardians who exercise guardianship of the minor' and that 'the patient shall be included in the exercise of his rights, taking into account his age and maturity. The rights listed in this law can be independently exercised by a minor patient who is judged to be able to make a reasonable assessment of his [own] interests.'

For some members of the Committee, this Law does not apply to circumcision as intended in the questions received by the Committee. These questions do not refer to 'healthcare' and the child is not a 'patient' in the sense understood by this Law.

For other members of the Committee, this Law is applicable if a medical practitioner is called upon to carry out the intervention.

C. THE SITUATION IN NEIGHBOURING COUNTRIES

The information below was provided by urologists, members of the European Society for Paediatric Urology, consulted by one of the experts heard by the Committee.

The Netherlands:

Circumcision is not prohibited, but it is not reimbursed by social security if performed for religious reasons. Some private medical centres specialise in the practice, using local anaesthetic (cost: 300-400€).

France:

Circumcision is not prohibited by law but the costs are completely carried by the family or covered by private insurance. In its 2004 Annual Report, dedicated to secularism, the State Council ruled that it was a “religious practice devoid of any legal basis but nevertheless 'tolerated'” (own translation).

Germany:

The Cologne District Court (“Landgericht”) ruled in a judgement of 7 May 2012 that a child's body “is altered in an irreparable way by circumcision. (...) This alteration conflicts with the interests of the child, who must be able to decide himself when older about [the consequences of] his religious convictions.”
The Court argued that the right of parents to decide on how to raise their child is not violated by postponing circumcision until the child is able to decide himself whether or not he wishes to be circumcised as a “visible sign of his Muslim faith.” The Court judged in this case that the doctor who conducted the circumcision on the four year old child was exempt from all guilt, but had committed an “insurmountable error” at the request of the parents. In reaction to this ruling, Germany legalised circumcision. It can now be carried out on male children younger than 6 months, by an appropriately designated and trained person (e.g. a religious leader), without financial intervention from the Government.

United Kingdom:

The NHS (National Health Service) does not cover circumcision for religious reasons, but it does organise community centres, in certain sensitive areas, where the circumcision of newborns is carried out.

Italy:

Circumcision is conducted without problems by doctors. Depending on the region, social security may or may not intervene in the costs (without intervention by social security, this amounts to a cost of approximately 500€ for the family).

Denmark:

Circumcision is legally conducted by private doctors, but is not reimbursed.

Sweden:

Since 2009, circumcision can be conducted by any doctor in the name of religious freedom, either in private health care (at the cost of the family), or under their social security, but with problems of waiting lists as this procedure is not considered to be a priority (cost price: 100€ in the region of Stockholm, more expensive elsewhere).

Turkey:

Circumcision is allowed and has been reimbursed by social security (20€) for the last four years. As a reaction to this reimbursement, doctors rarely conduct circumcisions unless they receive more money from the parents.

Israel:

Circumcision is conducted whenever one of the parents requests it.

V. ANTROPOLOGICAL AND PSYCHOANALYTICAL ASPECTS OF CIRCUMCISION

Some members of the Committee believe that the above analyses must be supplemented by the following description of the anthropological and psychoanalytical aspects of circumcision.

Circumcision stems from a practice that can be found to varying degrees in all cultures, and the primary significance lies in the rite of passage from child to adult man or woman, whereby traces are left behind on the body.[54] It can be wondered whether similar cultural mechanisms might be at work in the current practices of piercing and tattooing.

The issue of circumcision, and the particular issue presented to the Committee, cannot be approached from a strictly individual point of view, a point of view encouraged by our European culture and our legal presuppositions, focussed on strictly personal rights. Circumcision is also a sign of entry and belonging to a cultural or religious community.

With respect to circumcision, Freud speaks in “Totem and Taboo” about a “relic of ancient tribal practices.” Lacan takes a diametrically opposed position and emphasises the beauty and beneficial influence of the procedure, albeit so long as “it is carried out well.” The psychoanalyst Bruno Bettelheim has elaborated an extensive theory about 'symbolic injuries', which aim at ensuring the passage from childhood to adulthood according to the cultural code to which they belong.[55]. This leads him to the deduction that initiation rites point towards the deepest expression of the bisexuality of both genders, in which girls have penis envy, a phenomenon known since Freud, and boys desire a vagina, a phenomenon not yet fully accepted. The axiom of Bettelheim is: “One

[54] For a summary of the anthropological question, cf. C. Clément, Encyclopaedia Universalis, éd. 2017, v° Circoncision & Excision.

[55] B. Bettelheim, Les blessures symboliques. Essai d’interprétation des rites d’initiation (1954), tr. fr. C. Monod, Paris, Gallimard, 1971.

sex envies the genital organs and functions of the other sex." The theories of Bettelheim have at least the advantage of highlighting male dominance, as the man maims not only himself but also his wife, for a reason which is explained in a different way in the Greek myth of Tiresias: he is blinded by the goddess Hera because, after being a woman for many years, he revealed to Zeus that women experience ten times more pleasure in sex than men. It appears as if the capacity for sexual enjoyment by both genders plays a role in these rites of mutilation, which aim at controlling and culturally regulating the uncontrollable.

However, the significance of male circumcision is only comparable to female circumcision to a certain degree. While both practices are undoubtedly related to rites of passage, the former is obviously religious, while the latter is also, and maybe primarily, a form of female repression in the sense that it aims at taking away part of the woman's sexual enjoyment. Male circumcision is in no way an attack on virility; female circumcision however is a direct attack on the woman herself.

Symbolic injuries have a specific function in each culture. They are intended to divide, in a dichotomous way, gender roles according to more variable differences than the great divide between men and women. They fall back upon many centuries of history and culture, and are thus very difficult to change.

Other members of the Committee argue along with Delage that those who conduct female circumcision find positive motives to do so: they see in female circumcision a "creative act, instituting a 'rite for social integration'. The removal of the clitoris, a 'hard' body part, is considered to be the removal of the male vestige of a primordial bisexuality, with as a consequence that this removal (…) confirms the child in one single sex (the female), and, more broadly, in an individuality, an identity. It is also very important to note that in all societies which conduct female circumcision, the foreskin is also systematically removed from men (the reverse is not always true): the removal of this 'weak' part acts to remove from the boy what is left of femininity, installing him in the male sex, giving him his male identity, inserting him as a person in the community of his peers."[56] (own translation)

In both the Jewish and the Muslim religion, circumcision comprises essentially two things: "an

[56] P. J. Delage, *op. cit.*, p. 66. Delage for his part cites J.-P. M'Barga, Excision et migrants de France,in E. Rude-Antoine (dir.) *L'immigration face aux lois de la République*, Karthala, 1992, p. 165 ; E. Rude-Antoine, *Des vies et des familles. Les immigrés, la loi et la coutume*, Odile Jacob, 1997, pp. 237 s. ; N. Rouland, *Aux confins du droit. anthropologie juridique de la modernité*, Odile Jacob, coll. Sciences humaines, 1991, p. 153 ; J.-T. Martens, Notion de mutilation et criminalisation de l'excision en France, *Droits et Cultures* n° 20/1990, p. 169 ; R. Verdier, « Chercher remède à l'excision : une nécessaire concertation », *Droit et Cultures* vol. 20/1990, p. 147.

act of faith", and at the same time a social act, "in order to belong"[57], an act which integrates the child in the community (or, in other words, an act which ensures the child – and, by extension, his family – that he will not be rejected from the group).[58] It should be added that a number of animistic societies also conduct circumcision on male children as a custom: in those societies, circumcision is similarly a rite of passage that, when the boy reaches marriageable age, marks his initiation into marriage and at the same time his participation in the life of the clan, his integration in the group.[59]

The same members of the Committee add that there is at least one culture which has never allowed these practices and which plays an important role in the present-day European culture: the Greek-Roman culture with its Christian successor. For these members, all cultures are worthy of interest and none of them should dominate over the others. This implies that the ethical rules which govern some cultures are not necessarily justified for other cultures. The same is true for religious and philosophical convictions. Geography and history teach us that religious, legal and ethical rules can vary in space, and for a given population, in time: for example, at a certain moment in time human sacrifices were offered in Central America, while this did not occur in Europe; animal sacrifices were the custom in ancient Rome but no longer. Western Europe now practices religious tolerance, while religious wars in the 16th century devastated the continent. There are many more examples. The Committee received the question in the context of a certain society – Belgian – in a certain time period – today – and these members believe that equality between men and women entails that women and men should be treated in the same way. They conclude that the Belgian legislature has not explained why differences in sex would justify an unequal treatment of the victims of sexual mutilation.

VI. ETHICAL CONSIDERATIONS

The issue here is to balance on the one hand respect for the religious and culture convictions of the parents and a sign for the child of belonging to the community, and on the other hand the right to physical integrity.

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57 A. Maherzi, « La circoncision et "le dialogue interculturel et interreligieux" », in M. L. Cohen (dir.), *op. cit.*, p. 67, particularly pp. 68-69 ; P. Gourdon, « Une conséquence inattendue de la modification de l'article 16-3 du Code civil: la légalisation de la circoncision rituelle "médicalisée" », Médecine & Droit, n° 59/2003, p. 69.

58 A. Maherzi, *op. cit* ; P. Gourdon, *op. cit.*; cf. also Gen., 17:14: "Any uncircumcised male, who has not been circumcised in the flesh, will be cut off from his people; he has broken My covenant." (New International Version)

59 A. Ossoukine, « Approche juridique de la circoncision », *JIB*, vol. 7/1996, p. 212.

According to some members of the Committee, the right to physical integrity is not an absolute right. They believe that the legal difference based on whether female or male genital organs are involved can be justified in the meaning and especially the degree of the physical transgression.

Regarding the issue of informed consent, these members believe that the fact that circumcision has been practiced all over the world for thousands of years, so that currently on a world scale approximately 30% of the male population is circumcised, means that the so-called absence of consent is questionable. They also note that all of our decisions are dependent on the context in which they are made. By declaring that the consent of an adolescent cannot be reasonably determined, the freedom of a youth of 14 years of age is simply considered to be impossible.

For other members of the Committee, circumcision – regardless of the religious or cultural justification – is a transgression of the physical integrity of the person subjected to it. In the absence of a medical indication, this intervention undermines personal physical integrity, and it is irreversible as interventions which aim to reconstruct the foreskin do not restore the original situation.

Regarding the issue of informed consent, these members state the following: although, given the right of every person to respect for his physical integrity and private life, there appear to be no ethical objections to voluntary self-mutilation, to the extent that the person involved consciously and free from all coercion consents, these members of the Committee see no ethical justification for a transgression of physical integrity, of whatever nature – and thus also of the integrity of the genital organs – of another person, *a fortiori* if he does not consent. Given the age of the baby or young child, he cannot give his opinion and his informed consent cannot be sought. It cannot be assumed that a child, and certainly a baby, would consent. An adolescent of 14 years old can be subjected to such social and familial pressure that it cannot be reasonably assumed that his consent has been proven.

The fact that similar practices can be found for thousands of years in all regions of the world, so that currently about 30% of the male population is affected, is not of such a nature to call this finding into question.

The finding that circumcision in Belgium, and more generally in Europe, is apparently not prosecuted, can be explained by various factors: a lack of complaints, a lack of men who claim their rights in this matter, respect for religious beliefs or cultural traditions, respect for the right to protection of privacy, fear of causing social unrest, etc. These members of the Committee do not consider religious belief to be an ethical justification for these factors. Nor do they consider there to be an ethical justification for the

difference in legal treatments of transgressions involving the integrity of female and male genital organs.

These members strongly refer to the fourth and fifth points of the aforementioned conclusions of the Royal Dutch Medical Association (KNMG):

1. "Nontherapeutic circumcision of underage boys conflicts with the child's rights to autonomy and to physical integrity;
2. The KNMG calls upon (referring) physicians to explicitly inform parents/guardians considering nontherapeutic circumcision of underage boys of the risk of complications and the lack of convincing medical benefits. The fact that this is a medically unnecessary intervention with a real risk of complications, places extra high demands on this information. The physician should record the written informed consent given in the medical records." [60] (Translation by the Committee)

In the absence of a medical indication, this intervention is difficult to justify. Many doctors attempt to dissuade parents from having it performed. The doctors are faced with the dilemma that, if the parents stick to their wishes, the intervention might be performed clandestinely, under circumstances which expose the child to even more suffering and complications.

In our country, it appears to be common practice for doctors and health institutions to fill in the necessary information on the documents concerning the care provided that will ensure a full or partial reimbursement by the health insurance. Some members are of the opinion however that this is not healthcare; other members are of the opinion that it is healthcare if a doctor performs the circumcision. All members of the Committee agree that the financial burden of circumcision for nonmedical reasons should not be carried by society.

VII. CONCLUSIONS

The Committee had the ***question posed*** rephrased as follows (cf. chapter I):

- Is it ethically acceptable to perform a circumcision if there are no medical indications?
- Is it ethically acceptable for a doctor to perform a circumcision in a hospital if there are no medical indications?
- Is it ethically acceptable that the costs of this procedure be borne by social security?

[60] Cf. footnote 41.

- Is it ethically acceptable to make a distinction between male and female circumcision?

Answers to question 1:

Is it ethically acceptable to perform a circumcision if there are no medical indications?

According to some members of the Committee, absolute physical integrity and 'the right to protection against all bodily harm' are not at all guaranteed by international law on the rights of the child. International law includes no such provision. If that were the case, parents would be unable to consent to having the ears of their children pierced for earrings, for example, or they would be unable to allow their children to play violent sports such as rugby or even football.

According to these members, a balance must be found between a transgression of the physical integrity of young boys which (for these members) does not involve mutilation, and respect for the cultural and religious convictions of the parents. They believe that the balance is in favour of allowing circumcision, to the extent that it is of type 1 or 2.

These members declare themselves to be ethically in line with the position of most countries around the world and the international community, that is the acceptance of the circumcision of young boys in the name of freedom of religion and the opinion of the parents and in the name of recognising communities with a specific culture, so long as the practical circumstances make it possible to limit the pain to a minimum and to provide sufficient safeguards in order to avoid complications.

According to other members of the Committee, what has been written above shows a raging discussion and scientific controversy in the literature regarding circumcision as a medical act with a preventive aim. In view of this finding, the currently available knowledge provides no certainty. The Advisory Committee on Bioethics has neither the competence nor the authority to definitively decide on this medical and scientific discussion. Either way, the potential advantages of circumcision cited in the literature are not applicable to babies or children; the intervention can therefore be delayed until adolescents and young adults can completely freely form a judgement and consent for themselves.

The standpoint of these members is thus that circumcision without a medical indication cannot be ethically justified, and certainly not in the case of minors.

Answers to question 2:

Is it ethically acceptable for a doctor to perform a circumcision in a hospital if there are no medical indications?

For some members of the Committee, a doctor must be present for an in principle admissible circumcision (see the first three paragraphs of the answer to question 1) to be ethically and deontologically permissible, precisely to minimise the risks related to

the transgression of physical integrity.
For other members, circumcision conducted for religious reasons gives a certain tension between, on the one hand, the constitutional principle of freedom of religion and the right of parents to raise their children according to their religious convictions and, on the other hand, the protection of the weakest, of children against an intervention for which they have not consented.
According to these members, the carrying out by a doctor of a medically unjustified intervention and the resectioning of a part of an organ of a minor who cannot give his consent, constitutes a grave ethical problem: the doctor called upon to carry out the procedure should do everything in his power to discourage the parents from going through with the intervention, for as long as their child is not able to consent himself. This duty to inform on the part of the doctor is important, as the challenge is to prevent the intervention taking place in a clandestine way in circumstances which might increase the risk of complications.
At the same time, these members wish to emphasise that if, regardless of all attempts, a circumcision must be carried out on a child, it is important that this procedure be carried out by a urologist, as this greatly decreases the risk of complications.

Yet other members believe that doctors should not accept this procedure from a deontological point of view, as it is a medically unjustified transgression of the physical integrity of an often very young child, one who is unable to give his consent.

Answer to question 3:

Is it ethically acceptable that the costs of this procedure be borne by social security?
All members of the Committee agree that the financial burden of a circumcision for nonmedical reasons should not be carried by society.

Answers to question 4:

Is it ethically acceptable to make a distinction between male and female circumcision?
Some members of the Committee answer: yes, of course, given that, on the one hand, the World Health Organisation (WHO) qualifies all interventions, regardless of their nature, involving female genital organs, carried out for nonmedical reasons, as sexual mutilation, while, on the other hand, the WHO/UNAIDS have published a series of guidelines to promote male circumcision on the basis of random clinical trials which show that in countries with many cases of HIV/AIDS transmitted heterosexually, circumcision can protect men against infection.
These members also assume that, while both practices are doubtlessly related to rites of passage, male circumcision is obviously religious, while female circumcision is also, and

maybe even primarily, a form of female repression in the sense of depriving women of part of their sexual enjoyment. Male circumcision is in no way a form of aggression against virility; female circumcision is however a direct attack on femininity.
This notwithstanding, these members believe that the right to physical integrity is not an absolute right. They find that the difference in legal treatments depending on whether female or male genital organs are involved can be justified in the meaning and especially the severity of the physical transgression.

Other members of the Committee answer: no. They point to the fact that the Committee received the question in the context of a certain society – Belgian – in a certain era – today – and they argue that equality between men and women means that women and men should be treated in the same way. They note that Belgian law has not ruled on the reasons that might justify such unequal treatment of the victims of sexual mutilation depending on their gender.
These members of the Committee see no ethical justification for a transgression of physical integrity, regardless of the nature – and therefore also the integrity of the genital organs – of anybody, *a fortiori* if the person in question does not consent.
They also fail to see an ethical justification for the difference in treatments provided by the law for the transgression of the integrity of female and male genital organs.

VIII. RECOMMENDATIONS

The Advisory Committee on Bioethics does not recommend a law change.
All members of the Committee agree that the financial burden of a circumcision carried out for nonmedical reasons should not be carried by society.
The Committee unanimously proposes reflection on how to transcend the controversies. The best way forward would be to strive for a symbolic practice, in which physical integrity would be respected (in other words, no cutting of the flesh). In this way, all religious sensitivities would be respected, without transgressing anyone's physical integrity.

* * *

This opinion was prepared in the select committee, consisting of:

Joint chairpersons	Joint reporters	Members	Member of the Bureau
Béatrice Toussaint	Béatrice Toussaint	Cathy Herbrand	Marie-Geneviève Pinsart
Robert Rubens	Jules Messinne	Jacqueline Herremans	
	Robert Rubens	Julien Libbrecht	
		Richard Rega	

Member of the secretariat
Francine Malotaux

Experts interviewed
Prof. T. Gergely, Université Libre de Bruxelles (ULB), Faculty of Philosophy and Social Sciences, *Institut d'Etudes du Judaïsme*
Prof. Dr. P. Hoebeke, department head of Urology, University Hospital Gent, specialised in child urology
Prof. X. Luffin, professor of Arabic language and literature at the ULB

The working documents of the select committee 2015-1 – request for opinion, personal contributions of the members, minutes of the meetings, documents consulted – are stored as annexes 2015-1 at the Committee's Documentation Centre, where they may be consulted and copied.

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This opinion is available on the website www.health.belgium.be/bioeth.