Legal Protection of Intersex Human Rights in Europe

2022 EU-Taiwan LGBTI Human Rights Conference Friday, October 28, 2022 Irene Kuzemko Capacity & Community Building Officer of OII Europe





OII





Copenhagen - Denmark 2013

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## Human rights and intersex people



**Issue** paper



COMMISSIONER COMMISSAIRE AUX FOR HUMAN RIGHTS DROITS DE L'HOMME



HELPING TO MAKE FUNDAMENTAL RIGHTS 04/2015 A REALITY FOR EVERYONE IN THE EUROPEAN UNION

# The fundamental rights situation of intersex people

## **FRA FOCUS**

Most European societies recognise people as either male or female. However, this does not account for all variations in sex characteristics. As a result, intersex people experience fundamental rights violations ranging from discrimination to medical interventions without their consent.

This paper examines the legal situation of intersex people from a fundamental rights perspective. It draws on evidence from the Agency's updated legal analysis on homophobia, transphobia, and discrimination on grounds of sexual orientation and gender identity, which now includes a section on intersex issues.

#### Key facts

or female.

## **Key conclusions**

- Many Member States legally require births to be certified and registered as either male
- In at least 21 Member States, sex 'normalising' surgery is carried out on intersex children.
- In 8 Member States, a legal representative can consent to sex 'normalising' medical interventions independently of the child's ability to decide.
- 18 Member States require patient consent provided the child has the ability to decide.
- Intersex discrimination is better covered by sex discrimination rather than discrimination on the basis of sexual orientation and/or gender identity as it concerns physical (sex) characteristics.

#### · Legal and medical professionals should be better informed of the fundamental rights

of intersex people, particularly children. · Gender markers in identity documents and

A CATGAZO CITET

- birth registries should be reviewed to better protect intersex people. · Member States should avoid non-
- consensual 'sex-normalising' medical treatments on intersex people.







Doc. 14049 27 April 2016

# Promoting the human rights of and eliminating discrimination against intersex people

Motion for a resolution tabled by Mr Piet De BRUYN and other members of the Assembly

C 449/142

EN

Official Journal of the European Union

23.12.2020

Thursday 14 February 2019

P8\_TA(2019)0128

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## The rights of intersex people

European Parliament resolution of 14 February 2019 on the rights of intersex people (2018/2878(RSP))

(2020/C 449/19)





European Commission

#UnionOfEquality

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# EU strategy on the Rights of the **child**

# **Oll Europe Good Practice Maps**

#### SCOTLAND HATE CRIME & SPEECH

In March 2021, the Sottish parliament passed the Hate Crime and Public Order (Scotland) Act 2021. The Act Includes 'Variations In sex characteristics' among the grounds for 'aggravation of offences by prejudice' and of the offence 'Stirring up haterd'. It requires the Ministers to publish yearly reports on convictions, with information about the offence and which characteristic(s) relate to it.

#### DENMARK ANTI-DISCRIMINATION / HATE CRIME & SPEECH

In December 2021 the Danish parliament extended non-discrimination legislation to intersex people and amended hate crime & speech legislation, by adding sex characteristics.



#### FINLAND ACTION PLAN

In October 2021, the Finnish government published the first implementation plan for the **Netional** (*Thild Strategy*, containing measures to secure the wellbeing of children. The intersex organisation ISIO will have a seat in the panel in charge of developing a uniform model for the provision of first information to families, where it will spure a human rights based approach and accentuate psychoscial support.

#### SERBIA ANTI-DISCRIMINATION LAW

In May 2021 the parliament of the Republic of Serbia amended the Law on Prohibition of Discrimination and included sex characteristics among the protected grounds, in areas such as employment, health, goods & services, education.

## GREECE

ACTION PLAN · RESEARCH · TRAINING

In June 2021, the Greek government published the National Strategic Plan on LGBTQI+ equality, which recognised for the first time some intersex human rights violations, such as IGM.

The research project "Combating hate speech against intersex populations in Greece" of Intersex Greece, which was funded by ILGA, will yield a report and a plan on how to combat hate speech against intersex people in the country. It is the first intersex inclusive research in direceo, as intersex people are involved in all stages including the design of research tools.

Following the publication of the National Strategic Plan on LGBTQI+ equality and as a result of the submission sent by Intersex Greece, five members of Intersex Greece have been included in the list of tutors of the National Centre for Public Administration and Local Government of Greece.

#### NETHERLANDS GOVERNMENTAL APPOLOGIES

On 27 November 2021, the Dutch government made a public apologi for the effects of the clid aw on adjusting gender registration, which previously imposed upon trans and intersex people who wished to change their gender marker the obligation to undergo mandstory medical treatment, including genical surgery, hormone treatment and sterilization. Minister Van Engelshoven apologized on behalf of the Cobinet of the Netherlands during a ceremony in The Hague, and called past requirements dehumanizip.

#### FRANCE RESEARCH

The Gender Institute and the Interministerial Delegation for the Fight against Racism, Anti-Semitism and Anti-LGBT Hatred (DILCARH) financed RFRI (Réseau Francophone de Recherche sur l'Intersexuation) for it to hold a summer seminar and to create a bibliographic inventory of francophone research about Intersex.

### GERMANY POLITICAL WILL

The new German government took office in 2021 and in its coalition pact the governing parties committed to several actions to improve the situation of intersex, trans and queer people, including; installing a Queer Coordinator position, proposing a "self-determination law"; establishing a compensation fund for trans and intersex people; improving the law for the protection of children with "variants of sex development", to eliminate opportunities for circumvention.

#### AUSTRIA TRAINING

Austrian intersex-led organisation VIMÖ held up to 60 workshops, consultations and speeches on the topic of intersex human rights in 2021, commissioned by private universities, companies and public institutions.



www.oiieurope.org

#### ANTI-DISCRIMINATION LAW

In May 2021 the parliament of the Republic of Serbia amended the Law on Prohibition of Discrimination and included sex characteristics among the protected grounds, in areas such as employment, health, goods & services, education.

#### In December 2021 the Danish parliament extended non-discrimination legislation to intersex people.

#### It expanded accordingly the mandate of

- the Equal Treatment Board, which deals with discrimination complaints
- Denmark's National Human Rights Institution, that supports victims, conducts independent investigations, nublishes renorts and makes recommendations

#### These good practice examples highlight that adding sex characteristics as a specific ground:

- Ensures explicit protection and legal certainty
- Increases awareness and acceptance among the general public.

Serbia: Law https://www.propisi.net/zakon-o-zabrani-diskriminacije/ Ness Release https://www.labli-ern.org/news/finally-visible Denmark: Law https://www.retsinformation.dk/eli/tta/2021/2591

intersex-led organisation VIMO held up to 60 workshops, consultations and speeches on the topic of intersex human rights, commissioned by private universities, companies and public institutions including:

- Public Employment Service Austria
- (AMS Arbeitsmarktservice)
- . UN-Globe
- Medical University Vienna
- · Ärztekammer Oberösterreich
- Health University of Applied Sciences Tyrol
- Österreichisches Hebammen-Gremium (Austrian Midwives Board)
- University Linz
- TU Wien (Vienna University of Technology)
- The University of Applied Sciences Campus Vienna
- The executives of Österreichische Post AG (the Austrian postal service company)

#### And many others!

In March 2021, the Southan parliament passed the Hate Crime and Public Order (Scotland) Act 2021. The Act includes "variations in sex characteristics" among the grounds for "aggravation of offences by prejudice" and of the offence "stirring up hatred". It requires the Ministers to publish yearly reports on convictions, with information about the offence and which characteristic(s) relate to it.

#### In December 2021 the Danish parliament amended hate crime & speech legislation, by adding sex characteristics:

- To the bias motivations which "must generally be included as an aggravating circumstance"
- To the grounds which make the refusal to serve a person - on the same terms as others in a professional or nonprofit activity - an offence
- To hate speech grounds.

#### These good practice examples highlight that legislation should:

 Address the reality and serious nature of bias-motivated violence and speech against intersex people

ties and colleges on intersex rights for a while. Following

the publication of the National Strategic Plan on LGBTOI+

equality and as a result of the submission sent by Inter-

sex Greece, five members of Intersex Greece have been

included in the list of tutors of the National Centre for

Public Administration and Local Government of Greece.

They will be delivering trainings to civil servants with a

goal of educating professionals and public institutions on

intersex issues from the human rights perspective.

Intersex-led organisations have the expertise and the

capacity to give training to a wide range of entities

acknowledge that expertise and to ensure sustainability.

Geschlechtersensible Sprache - Dialog auf Augenhöhe"

(Gender Sensitive Speech - Dialogue on Equal Terms) lan-

guage sensitivity guide, published by the Ombuds office.

Language sensitivity guide: https://www.gleichbehandlungsanwoltschaft.gv.ot/

VIMO participated in the creation of the

Proper compensation for training is necessary to

These good practice examples highlight that :

has been delivering lectures at Universi-

Increase data collection efforts.

Intersex

Spruche A5 BF.pdf

#### Scotland: Act https://www.iegisiation.gov.uk/ksp/2021/14/introduction/enacted Denmark: Law https://www.retsinformation.dk/vili/ta/2021/2591

### ACTION PLANS

In June 2021, the Greek government published the National Strategic Plan on LGBTOI+ equality, which recognised for the first time some intersex human rights violations, such as IGM. Intersex Greece, which had submitted a detailed report, encourages the Government to address other areas in its future work, e.g. education, employment, access to health, hate speech.

In October 2021, the Finnish government published the first implementation plan for the National Child Strategy, containing measures to secure the wellbeing of children. The intersex organisation ISIO will have a seat on the panel in charge of developing a uniform model for the provision of first information to families, where it will spur a human rights based approach and accentuate psychosocial support.

#### These good practice examples highlight that:

 Consulting intersex-led organisations is essential First steps can be taken from the government in any country to protect intersex people's rights.

#### Greece National Stateals Plan - https://bit.bu/CdrQAT

Finland: Child Strategy - https://www.lapsenaikeudet.fl/en/tampaign/national-

On 27 November 2021, the such government made a public apology for the effects of the old law on adjusting gender registration, which previously imposed upon trans and intersex people who wished to change their gender marker the obligation to undergo mandatory medical treatment, including genital surgery, hormone treatment and sterilisation. Minister Van Engelshoven apologized on behalf of the Cabinet of the Netherlands during a ceremony in The Hague, and called past requirements dehumanizing.

#### This good practice example highlights that public apologies from the Government:

- Are an important form of reparation
- Send a clear message to society about the obligation to respect the dignity of trans and intersex people.

Concerns remain around the compensation scheme: its amount is too low and was not determined in consultation with CSOs.

Austria - In June 2021 the Minister of Justice made an official apology statement to LGBTIQ people.

Netherlands: Video of the speech: https://hit.ly/3uxPQwS Austria: Video of the speech: https://bit.ly/3rgjbcw

#### RESEARCH

Intersex Greece got its project "Combating hate speech against intersex populations in Greece" funded by ILGA. It will yield a report and a plan on how to combat hate speech against intersex people in the country. It is the first intersex inclusive research in Greece, as intersex people are involved in all stages including the design of research tools.

In France the Gender Institute and the Interministerial Delegation for the Fight against Racism, Anti-Semitism and Anti-LGBT Hatred (DILCRAH) financed RéFRI (Réseau Francophone de Recherche sur l'Intersexuation) for it to hold a summer seminar and to create a bibliographic inventory of francophone research about intersex.

These good practice examples highlight the importance of funding intersex-led and intersex inclusive research

#### WHO ELSE:

- The European Commission launched a "Study on Intersex neonle in the FU" with results expected by the end of 2022
- INIA Intersex: New Interdisciplinary Approaches is an EU funded international research network. OII Europe seats in the advisory board.

France: Facebook Event page - https://bit.ly/3rltThC INTA - https://www.intercommerco.uk/about

The new Garman government took office in 2021 and in its coalition contract the governing parties committed to several actions to improve the situation of intersex, trans and queer people, including:

- Installing a Oueer Coordinator position
- Proposing a "self-determination law" (including making a gender marker change possible in principle by selfdisclosure)
- Establishing a compensation fund for trans and intersex people affected by bodily harm or forced divorce due to previous legislation
- "variants of sex development", to eliminate opportunities for circumvention. > see section IN THE MAKING

#### This good practice example highlights that:

- Strong commitment and political will are a necessary first step to drive policy reforms
- Written pledges, such as a coalition contract, are one way to hold the government accountable.

### 🔊 IN THE MAKING: PUT AN END TO IGM 🍂

On 11 February 2021, the Belgian House of Representatives unanimously adopted a resolution calling on the federal government to create "a legislative framework protecting the physical integrity of intersex minors" by ensuring:

- "the prohibition of any decision to change the sex characteristics of a minor without their fully informed consent, whether for social, psycho-social, cultural or aesthetic reasons", with the exception of medical necessity and emergency situations
- the inclusion of intersex-led NGOs in the development of all measures
- measures about data collection, awareness raising, training, protection of intersex asylum seekers and migrants.

#### Further points that should have been addressed for more comprehensive protection include:

- Depathologisation, starting with the terminology used
- Access to medical records and extended retention time
- Legal sanctions and extension of statutes of limitation
- Access to expert sensitive counselling.

As the resolution is not binding, a legislative act must follow now to give it due course.

rress receises. https:///ilinurone.org/belgion.org/bition-on-protection-intersee.clobts/

On 12 May 2021 in Germany a law was adopted "on the protection of children with variants of sex development". The framework it sets out to preserve intersex children from non-vital, non-emergency medical interventions is not yet comprehensive, and some obstacles persist in the way towards full protection.

The law makes treatments solely performed for aligning the intersex child's body to a more normative appearance and without their fully informed consent unlawful. While it requires the approval of the family court for surgical interventions that "cannot be postponed" until the child can decide for themselves.

The text extends the retention period for medical records: provides for an interdisciplinary commission to issue an opinion; provides for an evaluation of the law after 5 years.

#### ! Lack of universality - pathologizing stance

The medical term 'variants of sex development' excludes from protection intersex children who, from a current medical perspective, do not fall under this definition. It also perpetuates a pathologizing perspective.

#### ! Risk of interventions in the lack of health needs

Interventions that may be approved include those "necessary to cure or eliminate a functional disorder or to preserve the ability to reproduce, without there being any In January 2021, a law regulating interventions on intersex minors entered into force in Iceland. It stipulates that if the child is incapable of giving consent, an intervention can only be performed if health needs so require.

It also sets up a ministerial committee in charge of approving interventions.

A working group must be formed within the following three years to review the law.

A major problem is the explicit exclusion of certain intersex variations from protection, that in the medical environment are designated as pathologies within the binary model i.e. "hypospadias" and "micropenis". It is also regrettable that potentially any health needs - not limited to only urgent ones - are considered as reasons for intervening.

Act 154/2020 https://www.althinal.is/altext/stit/2020.154.html which amends Act \$0/2019 https://www.althinai.is/lagas/huna/2019080.html Official English translation: https://www.anvernment.is/nublications/leakslations

real risk to health at the present time, even if they have the effect of altering physical appearance".

- The "consolidated wish" of the child, even if they are incapable of giving informed consent, may also justify an intervention; this carries the risk of misuse due to still existing social pressure.
- The law does not differentiate between physical and potential (presumed) mental health needs.

#### ! Composition of the interdisciplinary commission

https://oligermany.org/ein-steiniger-weg-fuer-menschenrechte/

https://olieurope.org/o-good-first-step-germany-adopts-law-banning-igm/

over can find a more detailed overview to this topic on the following live webpage that is being updated periodically with new levelonments

developments. www.oileurope.org/IGM-legal/ 12

- > The majority can still consist of staff of the same health care facility
- The involvement of a peer counsellor is not mandatory.

#### German Law: https://bit.ly/3jxESk2 Press releases

# **IGM Bans**

- Malta
- Portugal
- Iceland
- Germany
- Greece







# Thank you!!

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