

Thursday 14 February 2019

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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)

The European Parliament,

- having regard to Article 2 of the Treaty on European Union,
- having regard to Articles 8 and 10 of the Treaty on the Functioning of the European Union,
- having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof,
- having regard to the European Social Charter, and in particular Article 11 thereof,
- having regard to Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime ⁽¹⁾,
- having regard to the report published by the Commission in 2011 entitled ‘Trans and intersex people’,
- having regard to the final reports of the Commission-funded ‘Health4LGBTI’ pilot project on health inequalities experienced by LGBTI people,
- having regard to its resolution of 4 February 2014 on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity ⁽²⁾,
- having regard to its resolution of 13 December 2016 on the situation of fundamental rights in the European Union in 2015 ⁽³⁾,
- having regard to the paper published in May 2015 by the European Union Agency for Fundamental Rights (FRA) entitled ‘The fundamental rights situation of intersex people’ ⁽⁴⁾,
- having regard to the FRA’s online publication of November 2017 entitled ‘Mapping minimum age requirements concerning the rights of the child in the EU’ ⁽⁵⁾,
- having regard to the FRA Fundamental Rights Report 2018,
- having regard to the European Convention on Human Rights,
- having regard to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,
- having regard to Resolution 2191 of the Council of Europe Parliamentary Assembly, adopted in 2017, on promoting the human rights of and eliminating discrimination against intersex people,
- having regard to the 2015 report of the Council of Europe Commissioner for Human Rights on human rights and intersex people,
- having regard to the Universal Declaration of Human Rights,
- having regard to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- having regard to the UN Convention on the Rights of the Child,

⁽¹⁾ OJ L 315, 14.11.2012, p. 57.

⁽²⁾ OJ C 93, 24.3.2017, p. 21.

⁽³⁾ OJ C 238, 6.7.2018, p. 2.

⁽⁴⁾ <https://fra.europa.eu/en/publication/2015/fundamental-rights-situation-intersex-people>

⁽⁵⁾ <https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements-concerning-rights-child-eu>

Thursday 14 February 2019

- having regard to the UN Convention on the Rights of Persons with Disabilities,
 - having regard to the 2013 report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,
 - having regard to the Yogyakarta Principles ('Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics') adopted in November 2006, and the 10 complementary principles ('plus 10') adopted on 10 November 2017,
 - having regard to the questions to the Council and to the Commission on the rights of intersex people (O-000132/2018 — B8-0007/2019 and O-000133/2018 — B8-0008/2019),
 - having regard to the motion for a resolution of the Committee on Civil Liberties, Justice and Home Affairs,
 - having regard to Rules 128(5) and 123(2) of its Rules of Procedure,
- A. whereas intersex individuals are born with physical sex characteristics that do not fit medical or social norms for female or male bodies, and these variations in sex characteristics may manifest themselves in primary characteristics (such as the inner and outer genitalia and the chromosomal and hormonal structure) and/or secondary characteristics (such as muscle mass, hair distribution and stature);
- B. whereas intersex people are exposed to multiple instances of violence and discrimination in the European Union and these human rights violations remain widely unknown to the general public and policymakers;
- C. whereas there is a high prevalence of surgeries and medical treatments carried out on intersex infants, although in most cases these treatments are not medically necessary; whereas cosmetic surgeries and urgent surgeries can be proposed as a package, preventing parents and intersex people from having full information on the impact of each;
- D. whereas surgeries and medical treatments are performed on intersex children without their prior, personal, full and informed consent; whereas intersex genital mutilation can have lifelong consequences, such as psychological trauma and physical impairments;
- E. whereas intersex individuals and intersex children who belong to other minority and marginalised groups are further marginalised and socially excluded and are at risk of violence and discrimination, because of their intersecting identities;
- F. whereas in most Member States surgery can be performed on an intersex child or an intersex individual with disabilities with the consent of their legal guardian, regardless of the capacity of the intersex person to decide for themselves;
- G. whereas in many cases parents and/or legal guardians are strongly pressured to make decisions without being fully informed of the lifelong consequences for their child;
- H. whereas many intersex people do not have full access to their medical records and therefore do not know that they are intersex or are not aware of the medical treatments they have been subjected to;
- I. whereas intersex variations continue to be classified as diseases, as in the World Health Organisation's International Classification of Diseases (ICD), in the absence of evidence supporting the long-term success of treatments;
- J. whereas some intersex people will not identify with the gender they are medically assigned at birth; whereas legal gender recognition based on self-determination is only possible in six Member States; whereas many Member States still require sterilisation for legal gender recognition;

Thursday 14 February 2019

- K. whereas anti-discrimination legislation at EU level, and in most Member States, does not include discrimination based on sex characteristics, whether as a standalone category or interpreted as a form of discrimination based on sex;
 - L. whereas many intersex children face human rights violations and genital mutilation in the EU when undergoing sex-normalising treatments;
1. Notes the urgent need to address violations of the human rights of intersex people, and calls on the Commission and the Member States to propose legislation to address these issues;

Medicalisation and pathologisation

2. Strongly condemns sex-normalising treatments and surgery; welcomes laws that prohibit such surgery, as in Malta and Portugal, and encourages other Member States to adopt similar legislation as soon as possible;
3. Stresses the need to provide adequate counselling and support to intersex children and intersex individuals with disabilities, as well as to their parents or guardians, and fully inform them of the consequences of sex-normalising treatments;
4. Calls on the Commission and the Member States to support organisations that work to break the stigma against intersex people;
5. Calls on the Commission and the Member States to increase funding for intersex civil society organisations;
6. Calls on the Member States to improve access for intersex people to their medical records, and to ensure that no one is subjected to non-necessary medical or surgical treatment during infancy or childhood, guaranteeing bodily integrity, autonomy and self-determination for the children concerned;
7. Takes the view that pathologisation of intersex variations jeopardises the full enjoyment by intersex people of the right to the highest attainable standard of health as enshrined in the UN Convention on the Rights of the Child; calls on the Member States to ensure the depathologisation of intersex people;
8. Welcomes the depathologisation, however partial, of trans identities in the eleventh revision of the ICD (ICD-11); notes, however, that the category of 'gender incongruence' in childhood pathologises non-gender-normative behaviours in childhood; calls, therefore, on the Member States to pursue the removal of this category from the ICD-11, and to bring future ICD revision into line with their national health systems;

Identity documents

9. Stresses the importance of flexible birth registration procedures; welcomes the laws adopted in some Member States that allow legal gender recognition on the basis of self-determination; encourages other Member States to adopt similar legislation, including flexible procedures to change gender markers, as long as they continue to be registered, as well as names on birth certificates and identity documents (including the possibility of gender-neutral names);

Discrimination

10. Deplores the lack of recognition of sex characteristics as a ground of discrimination across the EU, and therefore highlights the importance of this criterion in order to ensure access to justice for intersex people;
11. Calls on the Commission to enhance the exchange of good practices on the matter; calls on the Member States to adopt the necessary legislation to ensure the adequate protection, respect and promotion of the fundamental rights of intersex people, including intersex children, including full protection against discrimination;

Thursday 14 February 2019

Public awareness

12. Calls on all relevant stakeholders to carry out research concerning intersex people, taking a sociological and human rights perspective rather than a medical one;
13. Calls on the Commission to make sure that EU funds do not support research or medical projects that further contribute to violating the human rights of intersex people, in the context of the European Reference Networks (ERNs); calls on the Commission and the Member States to support and fund research on the human rights situation of intersex people;
14. Calls on the Commission to take a holistic and rights-based approach to the rights of intersex people and to better coordinate the work of its Directorates-General for Justice and Consumers, for Education, Youth, Sport and Culture, and for Health and Food Safety, so as to ensure consistent policies and programmes supporting intersex people, including training of state officials and the medical profession;
15. Calls on the Commission to reinforce the intersex dimension in its multiannual LGBTI list of actions for the current period, and to begin preparing as of now a renewal of this strategy for the next multiannual period (2019-2024);
16. Calls on the Commission to facilitate the sharing of best practices among Member States on protecting the human rights and bodily integrity of intersex people;

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17. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the Parliamentary Assembly of the Council of Europe.
