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(Final version)

Promoting the human rights of and eliminating discrimination against intersex people

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A. Draft Resolution

1. Intersex people are born with biological sex characteristics that do not fit societal norms or medical definitions of what makes a person male or female. Sometimes a person's intersex status is detected at birth; sometimes it only becomes apparent later in life, notably during puberty. Despite the wide variety of situations concerned, the majority of intersex people are physically healthy. Only a few suffer from medical conditions that put their health at risk. Yet the situation of intersex people has for a long time been treated as an essentially medical issue. The prevailing medical view has been that intersex children's bodies can and should be made to conform to either a male or a female paradigm, often through surgical and/or hormonal intervention; that this should be done as early as possible; and that the children should then be raised in the gender corresponding to the sex assigned to their body.
2. The Parliamentary Assembly considers that this approach involves serious breaches of physical integrity, in many cases concerning very young children or infants who are unable to give consent and whose gender identity is unknown. This is done despite the fact that there is no evidence to support the long-term success of such treatments, no immediate danger to health and no genuine therapeutic purpose for the treatment, which is intended to avoid or minimise (perceived) social problems rather than medical ones. It is often followed by lifelong hormonal treatments and medical complications, compounded by shame and secrecy.
3. Parents are often under pressure to make urgent, life-changing decisions on behalf of their child, without having a full and genuine understanding of the long-term consequences for their children of the decisions made about their bodies during their infancy and early childhood.
4. Understanding of these issues is gradually increasing, but concerted efforts are still needed to raise public awareness as to the situation and rights of intersex people so as to ensure that they are fully accepted in society, without stigmatisation or discrimination.
5. The Assembly emphasises that it is crucial to ensure that the law does not create or perpetuate barriers to equality for intersex people. This includes ensuring that intersex people who do not identify as male or female have access to legal recognition of their gender identity, and that where their gender has not been correctly recorded at birth, the procedure for rectifying this is simple and based on self-identification only, as set out in Assembly Resolution 2048 (2015) on discrimination against transgender people in Europe. Anti-discrimination laws may also need to be amended to ensure that the situation of intersex people is effectively covered.
6. The Assembly considers that the above may raise important issues under a number of provisions of the

Amendment 3

Tabled by Mr Pavlo UNGURYAN, Mr Valeriu GHILETCHI, Mr Vlad BATRÎNCEA, Mr Killion MUNYAMA, Mr Zsolt NÉMETH

In the draft resolution, paragraph 5, delete the second sentence.

European Convention on Human Rights (ETS No. 5), notably its Articles 3 and 8.

7. In the light of the above, and bearing in mind the provisions of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164, "Oviedo Convention") and the relevant recommendations made in its Resolution 1952 (2013) on children's right to physical integrity, as well as those by the Council of Europe Commissioner for Human Rights and numerous treaty bodies of the United Nations, the Assembly calls on Council of Europe member States to:
 - 7.1. with regard to effectively protecting children's right to physical integrity and bodily autonomy and to empowering intersex people as regards these rights:
 - 7.1.1. prohibit medically unnecessary sex-"normalising" surgery, sterilisation and other treatments practised on intersex children without their informed consent;
 - 7.1.2. ensure that, except in cases where the life of the child is at immediate risk, any treatment that seeks to alter the sex characteristics of the child, including their gonads, genitals or internal sex organs, is deferred until such time as the child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent;
 - 7.1.3. provide all intersex people with health care offered by a specialised, multidisciplinary team taking a holistic and patient-centred approach and comprising not only medical professionals but also other relevant professionals such as psychologists, social workers and ethicists, and based on guidelines developed together with such professionals and in consultation with intersex organisations;

Amendment 6

(If adopted, amendment 1 falls)

Tabled by Mr Pavlo UNGURYAN, Mr Valeriu GHILETCHI, Mr Vlad BATRÎNCEA, Mr Killion MUNYAMA, Mr Zsolt NÉMETH

In the draft resolution, delete paragraph 7.1.1.

Amendment 1

(Falls if amendment 6 is adopted)

Tabled by Ms Maryvonne BLONDIN, Ms Josette DURRIEU, Ms Petra De SUTTER, Ms Alice-Mary HIGGINS, Mr Manuel TORNARE, Ms Liliane MAURY PASQUIER

In the French text of the draft resolution, paragraph 7.1.1, replace the words "sans indication médicale, ainsi que les stérilisations et autres traitements" with the following words: "sans nécessité médicale ainsi que les stérilisations et autres traitements pratiqués".

Amendment 5

Tabled by Mr Pavlo UNGURYAN, Mr Valeriu GHILETCHI, Mr Vlad BATRÎNCEA, Mr Killion MUNYAMA, Mr Zsolt NÉMETH

In the draft resolution, delete paragraph 7.1.2.

Amendment 2

Tabled by Ms Maryvonne BLONDIN, Ms Josette DURRIEU, Ms Petra De SUTTER, Ms Alice-Mary HIGGINS, Mr Manuel TORNARE, Ms Liliane MAURY PASQUIER

In the draft resolution, at the end of paragraph 7.1.3, replace the words "together with such professionals and in consultation with intersex organisations" with the following words: "by

intersex organisations and the professionals concerned".

- 7.1.4. ensure that intersex people have effective access to health care throughout their lives;
- 7.1.5. ensure that intersex people have full access to their medical records;
- 7.1.6. provide comprehensive and up-to-date training on these matters to all medical, psychological and other professionals concerned, including conveying a clear message that intersex bodies are the result of natural variations in sex development and do not as such need to be modified;
- 7.2. with a view to assisting intersex people, their parents and the people around them in dealing with the challenges posed inter alia by social attitudes towards variations in sex characteristics:
 - 7.2.1. ensure that adequate psychosocial support mechanisms are available for intersex people and their families throughout their lives;
 - 7.2.2. support civil society organisations working to break the silence around the situation of intersex people and to create an environment in which intersex people feel safe to speak openly about their experiences;
- 7.3. with regard to civil status and legal gender recognition:
 - 7.3.1. ensure that laws and practices governing the registration of births, in particular as regards the recording of a newborn's sex, duly respect the right to private life by allowing sufficient flexibility to deal with the situation of intersex children without forcing parents or medical professionals to reveal a child's intersex status unnecessarily;
 - 7.3.2. simplify legal gender recognition procedures in line with the recommendations adopted by the Assembly in Resolution 2048 (2015) and ensure in particular that these procedures are quick, transparent and accessible to all and based on self-determination;
 - 7.3.3. ensure, wherever gender classifications are in use by public authorities, that a range of options are available for all people, including those intersex people who do not identify as either male or female;
 - 7.3.4. consider making the registration of sex on birth certificates and other identity documents optional for everyone;
 - 7.3.5. ensure that, in accordance with the right to respect for private life, intersex people are not prevented from entering into a civil partnership or marriage or from remaining in such a partnership or marriage as a result of the legal recognition of their gender;
- 7.4. with regard to combating discrimination against intersex people, ensure that anti-discrimination legislation effectively applies to and protects intersex people, either

Amendment 4

Tabled by Mr Pavlo UNGURYAN, Mr Valeriu GHILETCHI, Mr Vlad BATRÎNCEA, Mr Killion MUNYAMA, Mr Zsolt NÉMETH

In the draft resolution, delete paragraph 7.3.2.

by inserting sex characteristics as a specific prohibited ground in all anti-discrimination legislation, and/or by raising awareness amongst lawyers, police, prosecutors, judges and all other relevant professionals as well as intersex people of the possibility of dealing with discrimination against them under the prohibited ground of sex, or as an “other” (unspecified) ground where the list of prohibited grounds in relevant national anti-discrimination provisions is non-exhaustive;

- 7.5. collect more data and carry out further research into the situation and rights of intersex people, including into the long-term impact of sex-“normalising” surgery, sterilisation and other treatments practised on intersex people without their free and informed consent, and in this context:
 - 7.5.1. conduct an inquiry into the harm caused by past invasive and/or irreversible sex-“normalising” treatments practised on individuals without their consent and consider granting compensation, possibly through a specific fund, to individuals having suffered as a result of such treatment carried out on them;
 - 7.5.2. in order to build a complete picture of current practice, keep a record of all interventions carried out on children’s sex characteristics;
- 7.6. carry out campaigns to raise awareness among the professionals concerned as well as among the general public as regards the situation and rights of intersex people.
8. Finally, the Assembly invites national parliaments to work actively, with the participation of intersex people and their representative organisations, to raise public awareness about the situation of intersex people in their country and to give effect to the recommendations made above.

B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2017) on promoting the human rights of and eliminating discrimination against intersex people, in which it calls on member States to take a number of measures to achieve these goals, inter alia in the field of children's rights and bioethics.
2. The Assembly believes it essential that rapid progress be achieved by member States and that Council of Europe standards be developed further in this field.
3. It therefore invites the Committee of Ministers to:
 - 3.1. bring Resolution ... (2017) to the attention of the governments of all member States;
 - 3.2. instruct the Committee on Bioethics to continue its work on strengthening children's rights in biomedicine, in particular as regards the protection of intersex children's right to physical integrity and respect for the principle of free and informed consent, with a view to drawing up Council of Europe standards and guidelines in this field.