

The protection of intersex persons by public international law

Introduction

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Preliminary thanks

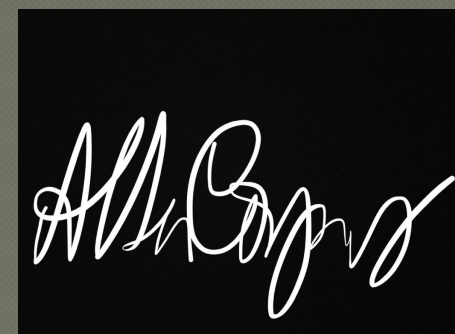
- University of Huddersfield



- DILCRAH (French LGBT governmental body)



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Introduction

1. What are we talking about ?

- Intersex : people who has sex characteristics different from the general norm (corporal minority)
- Public international law
 - Public ≠ private
 - Public = law for States
 - Private = law for individual
 - International ≠ national : two different legal orders
 - no automatic application of international norms in national legal orders
 - State responsibility to enforce international norm
 - Law ≠ moral or religion
 - Definition = norms issued by official institutions (Yogyakarta ?)
 - Variety of norms = soft law or hard law
- Legal protection
 - General protection through primary or secondary sources
 - Particular protection through State Liability

Introduction

2. When did human rights law started to protect intersex persons ?

∞ **Before
2009**

∞ No occurrence of intersex in
international law

(except the *Goodwin* case)

Introduction

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∞ **2009**

∞ First occurrences of intersex

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2009 – European Union

- *Fondamental Right Agency, Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States, Part II – The social situation*

“20. Member States should ensure all rights to **informed consent** are respected in regard to procedures on **intersex children**. Medical associations should ensure that their members are fully informed on current trends in ethics, therapy and care for intersexual persons.”

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2009 – Council of Europe

- Commissioner for Human Rights. *Issue paper on human rights and gender identity*, p. 3 (introduction)

“a relatively small number of people experience problems with being a member of the **sex recorded at birth**. This can also be so for **intersex** persons whose bodies incorporate both or certain aspects of both male and female physiology, and at times their genital anatomy”

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2009 – United Nations Organization

- Committee on Economic, Social and Cultural Rights, *General Comment n° 20*, E/C.12/GC/20, n° 32
“Other status” as recognized in article 2, paragraph 2, includes sexual orientation. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or **intersex** often face serious human rights violations, such as harassment in schools or in the workplace.
- Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, A/64/272, para. 49
“Health-care providers should strive to postpone non-emergency invasive and irreversible interventions until the child is sufficiently mature to provide informed consent. [**Footnote 67 : This is particularly problematic in the case of intersex genital surgery**, which is a painful and high-risk procedure with no proven medical benefits]

Introduction

2. When did human rights law started to protect intersex persons ?

- ✧ **Before 2009**
- ✧ No occurrence of intersex in international law
- ✧ **2009**
- ✧ First occurrences of intersex
- ✧ **2015**
- ✧ First documents dedicated to intersex

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2015 – First documents addressing intersex issues alone

- European Union, Fundamental Rights Agency, *The fundamental rights situation of intersex people*, FRA Focus, April 2015
- Council of Europe, Commissioner for Human Rights, *Human rights and intersex people*, Issue paper, 12 May 2015
- United Nations Organization, High Commissioner for Human Rights, September 2015
 - Publication of a Fact Sheet on intersex
 - Organization of an Expert meeting on ending human rights violations against intersex persons



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- ✧ **2017** ✧ First parliamentary resolution dedicated to intersex

☞ Council of Europe, Parliamentary Assembly,
*Promoting the human rights of and
eliminating discrimination against intersex
people*, Resolution 2191 (2017)



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| ∞ 2017 | ∞ First parliamentary resolution dedicated to intersex |
| ∞ 2019 | ∞ First ECHR decision on liability of State |

Introduction

3. Plan of the panel

- Three examples of the protection of intersex by public international law from a French perspective
 - Right to bodily integrity (Benjamin Pitcho)
 - Right to a third sex/gender marker (Mila Petkova)
 - Right to no sex marker (Benjamin Moron-Puech)
- General thoughts on intersex and international law (Nella Truffer and Markus Bauer – STOP IGM)