

CDDH comments on the Parliamentary Assembly Recommendation 2116(2017) “Promoting the human rights of and eliminating discrimination against intersex people”

88th meeting - 5/7 December 2017 - CDDH(2017)R88

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly Recommendation 2116 (2017) - “*Promoting the human rights of and eliminating discrimination against intersex people*” and commends to the Committee comments provided by the Committee on Bioethics (DH-BIO) on this subject.

2. The CDDH takes this opportunity to stress the need, for the member States, to recall the common basic standards to be respected in the field of human rights with regard to intersex people; indeed, the protection of human rights concerns each individual and the member States have committed themselves to secure the enjoyment of the rights and freedoms to everyone within their jurisdiction without discrimination on any ground such as sex. From this perspective, member States may be required to provide practical orientation on the best way to protect human rights of intersex persons and most particularly of intersex children. In view of the complexity of these issues, the CDDH welcomes the commitment made by the DH-BIO under paragraph 7 of its comments to continue its work in this field, in close co-operation with other relevant bodies and institutions within the Council of Europe.

Comments by the DH-BIO¹ (for information of CDDH)

1. The Committee of Ministers agreed to communicate to the Committee on Bioethics (DH-BIO), as well as to the Steering Committee for Human Rights (CDDH), for information and possible comments, Recommendation 2116 (2017) – “*Promoting the human rights of and eliminating discrimination against intersex people*”

2. The DH-BIO examined the Recommendation at its 12th plenary meeting (26-27 October 2017) and adopted these comments.

3. In its Recommendation, the Assembly, referring to its Resolution 2191 (2017), invites the Committee of Ministers to “*instruct the Committee strengthening children’s rights in biomedicine, in particular 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 recommendations on children’s rights to physical integrity and respect for the principle of free and informed consent*”. The DH-BIO observes that not all of the issues addressed in Resolution 2191 (2017) fall within its field of competence. It will therefore confine itself to the issues relevant to the latter.

4. The objective of the work carried out by the DH-BIO is to protect human dignity and individual rights in the field of biomedicine. Children’s rights to physical integrity and respect for the principle of free and informed consent, as protected by the Convention on Human Rights and Biomedicine (Oviedo Convention), form part of this objective.

5. The DH-BIO has instigated work in the area referred to by the Assembly by organising a hearing addressing, in particular human rights issues for intersex children, at its 9th plenary meeting (Strasbourg, 31 May-2 Jun 2016), in cooperation with the Council of Europe Orientation and Gender Identity (SOGI) Unit. Those issues were further analysed in two studies on children’s rights to physical integrity and respect for the principle of free and informed consent, commissioned by the DH-BIO within the framework of the Strategy for the Rights of the Child, which specifically refer to the situation of

¹ Adopted by the Bureau of the DH-BIO, by written procedure, on 27 November 2017.

² Kavot Zillén, Jameson Garland, Santa Slokenberga, Uppsala University, *Biomedicine: Challenges posed by Scientific Advances*, <https://rm.coe.int/16806d8e2f>; and Ton Liefwaard, Aart Hendriks, Daniella Zlotnik, Leiden University, “*From Law to Practice, towards a roadmap to strengthen children’s rights to physical integrity and respect for the principle of free and informed consent*”, 2017, <https://rm.coe.int/leiden-university-report-biomedicine-final/168072fb46>

children with differences in sex development and intersex conditions³. Against this background and taking into account the interest already expressed by delegations in the ethical issues raised by interventions on intersex children, the DH-BIO, at its 11th plenary meeting (Strasbourg, 6 – 8 June 2017), agreed to include the topic of Intersex Children in its program of activities.

6. Consequently, this subject matter will be part of a Strategic Action Plan to be developed by the DH-BIO with the objective to ensure, *inter alia*, that human rights of particularly vulnerable groups are better protected. This Strategic Action Plan will be based on the outcome of the Conference organised by the DH-BIO on the occasion of the 20th anniversary of the Convention on Human Rights and Biomedicine (Oviedo Convention) on 24-25 October 2017, under the auspices of the Czech Chairmanship of the Committee of Ministers, which dedicates a session to the evolution of practices in the biomedical field in relation to autonomy – consent and privacy.

7. The DH-BIO appreciates the encouragement to pursue its work in the field of human rights in biomedicine, and, in particular, of intersex children and agrees with the Assembly that there is a strong need for working towards common European standards and to provide guidance on how best to protect the human rights of intersex children, taking into account the different groups of persons involved (the child itself, its parents, health professionals, social workers (...)). It is in this spirit that the DH-BIO is committed to continue its work in this field, in close co-operation with other relevant bodies and institutions, including in particular the Ad Hoc Committee for the Rights of the Child (CAHENF) and, the Commissioner on Human Rights, as well as with the SOGI Unit.

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Text of Recommendation 2116(2017)

Promoting the human rights of and eliminating discrimination against intersex people

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 2191 \(2017\)](#) 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 2191 \(2017\)](#) 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 particular regarding the protection of intersex children's right to physical integrity, free and informed consent, with a view to drawing up Council of Europe standards and guidelines in this field.

³ Leiden, pp. 34-35, Uppsala, pp. 40-45.