EQUAL RIGHTS FOR INTERSEX PERSONS

Legal instruments

Recommendation CM/Rec(2025)7 and explanatory memorandum

Provisional version

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

EQUAL RIGHTS FOR INTERSEX PERSONS

Recommendation CM/Rec(2025)7
adopted by the Committee of Ministers
of the Council of Europe
on 7 October 2025
and explanatory memorandum

Council of Europe

French edition:

Égalité des droits des personnes intersexes Recommandation CM/Rec(2025)7 et exposé des motifs

Cover design and layout: Publications and Visual Identity Division, Council of Europe

This publication has not been copy-edited by the PVID Editorial Unit to correct typographical and grammatical errors.

Printed at the Council of Europe

Provisional version

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Recommendation CM/Rec(2025)7

of the Committee of Ministers to member States on equal rights for intersex persons

(Adopted by the Committee of Ministers on 7 October 2025 at the 1539th meeting of the Ministers' Deputies)

Preamble

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe (ETS No. 1),

Considering that the member States of the Council of Europe have undertaken to guarantee the rights and freedoms enshrined in the European Convention on Human Rights (ETS No. 5, the Convention) to everyone within their jurisdiction, and that human rights and freedoms are universal, indivisible, interdependent and interrelated, and apply to all persons irrespective of their sex characteristics;

Underlining that the preparation and implementation of policies and legislation that aim at ensuring the realisation of fundamental rights and freedoms of intersex persons should be based on and fully respect the provisions of the Convention, notably the right to life (Article 2), the right not to be subjected to torture or to inhuman or degrading treatment or punishment (Article 3), the right to respect for private and family life (Article 8) and the right to live free from discrimination in respect of protected Convention rights (Article 14);

Recalling that the best interests of the child should be the primary consideration in all decisions concerning children (Article 3 of the United Nations Convention on the Rights of the Child), including intersex children, that an intervention in the health field may only be carried out after the person concerned has given prior, free and informed consent or, under strict conditions, with the authorisation of their representative, an authority or a person or body provided for by law (Article 5 *et seq.* 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), and recalling the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Part I of the European Social Charter (revised) (ETS No. 163) and Article 12 of the International Covenant on Economic, Social and Cultural Rights);

Recognising the breaches of physical integrity and the related psychological repercussions affecting intersex persons as a result of medical, including surgical, interventions that are not necessary to avert an imminent threat to life or imminent serious damage to physical health, which in many cases concern infants or very young children, and which are carried out without their prior, free and informed consent;

Acknowledging the harmful practices to which intersex persons have been and continue to be subjected, the necessity to provide monitoring mechanisms and legal accountability to protect patient rights and the need to ensure they receive justice and redress;

Recognising that intersex persons and their legal representatives continue to face challenges in accessing appropriate information on the purpose and nature of medical, including surgical, interventions, as well as on their consequences and risks; underlining that such information is necessary to enable intersex persons to provide prior, free and informed consent, and assist their legal representatives in giving their prior, informed authorisation where appropriate, without being subject to undue influence; and taking into account that intersex persons and their legal representatives are often presented with incomplete records of medical, including surgical, interventions performed without their consent or authorisation, and that they face obstacles in accessing these medical records;

Acknowledging the progress made in some member States in protecting the physical and mental integrity and bodily autonomy of intersex persons, especially minors and those who are unable to consent, through the enactment

of hate crime, hate speech and anti-discrimination provisions that explicitly protect persons on the ground of sex characteristics;

Noting that progress in protecting the rights of intersex persons is a significant undertaking for governments of member States, and recalling that approaches to implementation may vary in the light of different national legal frameworks and that such progress may require sustained efforts over time;

Recalling that, in accordance with the case law of the European Court of Human Rights (the Court), medical procedures carried out in the absence of any therapeutic necessity and without procedural guarantees, such as the prior, free and informed consent of the person concerned, may constitute ill-treatment;

Underlining the insufficient investment in human rights-based research and data focusing on the life situations of intersex persons and the impact and outcomes of medical, including surgical, interventions performed on them without their prior, free and informed consent;

Recognising the unique experience, challenges and vulnerabilities faced by intersex persons, including discriminatory practices, stigmatisation, inequality, marginalisation, social exclusion, violence, hate and other forms of intolerance, which severely and negatively affect intersex persons' physical and mental well-being, as rooted in pathologisation, stigmatisation and stereotypes related to sex, sexuality and gender;

Underlining the lack of understanding and the prevalence of inaccurate information about intersex persons at the social and institutional levels, and the need to increase awareness and counter stigma;

Acknowledging that a number of human rights issues relevant to intersex persons and to the ground of sex characteristics have remained largely unaddressed, including hate crime and hate speech, access to legal gender recognition and multiple and intersectional forms of discrimination in all areas of life, such as in health, education, employment and sport;

Acknowledging the important role of multistakeholder co-operation and the vital roles of public institutions, including equality bodies and national human rights institutions and non-governmental stakeholders in the concerted effort to end human rights violations against intersex persons;

Acknowledging that any action towards ensuring intersex persons' full enjoyment of their human rights requires the meaningful participation of and consultation with intersex persons and civil society organisations working on

intersex matters with a human rights-based approach, in particular intersex-led organisations;

Taking note of United Nations Human Rights Council Resolution 55/14 on combating discrimination, violence and harmful practices against intersex persons, adopted on 4 April 2024;

Building on existing Council of Europe treaties and other relevant standard-setting instruments, and drawing on the relevant case law of the Court and the findings and recommendations of Council of Europe bodies, in particular Parliamentary Assembly Resolution 2191 (2017) "Promoting the human rights of and eliminating discrimination against intersex people", the Commissioner for Human Rights Issue paper "Human rights and intersex people" (2015) and its recommendations, as well as the European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 17 on preventing and combating intolerance and discrimination against LGBTI persons, and being cognisant of the broader international and European human rights standards;

Concluding, in the light of the foregoing considerations, that achieving equal protection, respect and enjoyment of human rights for all intersex persons requires comprehensive and common approaches,

Recommends that the governments of the member States:

1. take all necessary measures and dedicate sufficient resources to ensure the prompt and full implementation of the principles and guidelines appended to this recommendation to ensure the full enjoyment of human rights by intersex persons;

2. ensure, in particular, that comprehensive legislation, policies and other protective measures are adopted, effectively implemented and reviewed, and that relevant data are collected and analysed, in line with human rights standards, in order to prevent, monitor and redress human rights violations against intersex persons;

3. engage with relevant stakeholders, including civil society organisations, in particular intersex-led organisations, equality bodies and national human rights institutions, and take appropriate action to support relevant actors in implementing the principles and guidelines set out in the appendix of this recommendation;

4. promote the goals of this recommendation at the national, European and international levels and engage in dialogue and co-operation with all stakeholders to achieve those goals;

5. ensure that this recommendation is translated as far as possible into national, regional and minority languages and disseminated as widely as possible, and through all accessible means, among competent authorities and stakeholders;

6. review regularly the status of implementation of this recommendation with a view to enhancing its impact and inform the Committee of Ministers about the measures taken by member States and other stakeholders, the progress achieved and any remaining shortcomings.

Appendix to Recommendation CM/Rec(2025)7

Principles and guidelines on a comprehensive and effective approach to ensuring the full and equal enjoyment of human rights by intersex persons

Scope and definitions

1. The aim of the following principles and guidelines is to assist member States and other relevant stakeholders in adopting a comprehensive approach to addressing the various challenges encountered by intersex persons and ensuring the effective protection of their human rights.

2. It is essential to ensure the use of established, respectful and human rights-based terminology concerning intersex persons and that these definitions are translated accurately in all languages to reflect human rights principles. For the purpose of this recommendation, the following definitions apply:

a. the expression "sex characteristics" shall refer to each person's physical and biological features relating to sex, including internal and external genitalia, sexual and reproductive anatomy, gonads, chromosomes, hormones and distribution of body hair, fat and muscle mass;

b. the term "intersex" shall refer to persons who have innate variations of sex characteristic(s), including chromosomal, gonadal, anatomical or hormonal, that vary from the societal and/or medical understanding of typical female and male bodies.

I. Right to life and respect for human dignity

A. Prohibition of non-consensual interventions or treatments

3. Member States should enact legislation that explicitly and specifically prohibits any medical intervention on a person's sex characteristics, including surgical, hormonal and/or mechanical procedures and other treatments, without their prior, free, informed, express and documented consent.

4. Member States should ensure that any intervention on the sex characteristics of children and other persons who, according to the law, do not have the capacity to consent is postponed until they are capable of providing, withholding or withdrawing consent, except:

a. where it is necessary to avert an imminent threat to life or imminent serious damage to physical health and where the intervention is strictly confined to the minimum required to address the immediate medical need. The opinion of the person on whom the intervention will be carried out should be duly taken into consideration, ensuring that they can express their views freely without undue influence. In the case of a child, their opinion shall similarly be taken into account, as an increasingly determining factor in proportion to their age and degree of maturity;

b. where a sufficiently mature minor explicitly requests a medical intervention related to their sex characteristics, provided that a clear decision-making process is in place to assess such requests. This process should assess the maturity of the minor on a case-by-case basis, with their wishes carefully considered in light of their best interests, taking into account their evolving age, maturity and capacity for discernment. The process should include robust safeguards against undue influence and be thoroughly documented. Under such conditions, the process should then allow the legal representative, or an authority, person or body provided for by law, to authorise such an intervention. A similar process should be provided for adults who have a permanent or long-term incapacity to provide consent. The intervention should be strictly confined to that requested by the person on whom it is to be carried out.

In both cases, the following conditions should be met:

a. the person on whom the intervention will be carried out has received information about it in compliance with paragraph 5 of this appendix;

b. prior, specific and documented authorisation is given by the legal representative or an authority, a person or body provided for by law, who must have received prior information about the proposed intervention, in compliance with paragraph 5.

5. Member States should ensure that all persons on whom any intervention on their sex characteristics is considered, as well as their legal representatives in cases where they do not have the legal capacity to consent, are provided with comprehensive, comprehensible and evidence-based information about the proposed intervention, including the medical rationale, related risks and the short- and long-term consequences of the intervention, of delaying the intervention, not performing the intervention or performing another intervention.

6. Where member States have established specific age thresholds for capacity to consent to medical interventions on sex characteristics, they are encouraged to review and possibly lower these thresholds.

7. Member States should ensure that all appropriate measures are in place for the protection of persons from harmful practices on their sex characteristics, such as bodily examinations and exposure without therapeutic or diagnostic benefit.

B. Monitoring mechanisms and legal accountability

8. Member States should ensure that monitoring and evaluation mechanisms are in place to assess and further the implementation of the aforementioned provisions concerning medical interventions on sex characteristics.

9. Member States should ensure that either the general civil and criminal law provisions on the protection of bodily integrity, or specific provisions with at least equally severe sanctions, are applicable and effectively enforced with regard to the prohibited interventions on sex characteristics referred to in this recommendation, including in relation to referrals to jurisdictions where such prohibitions are not effectively in place.

C. Justice and redress

10. Member States should provide intersex persons who have been subjected to medical interventions or treatments that violated their rights with effective access to justice, access to effective remedy, adequate redress and reparation and safeguards against repetition of these acts, which may include public apologies, financial compensation and, in accordance with national

law, other forms of accountability and restorative justice. Member States should also ensure the right to information and truth about human rights violations based on variations of sex characteristics, and ensure that society at large is adequately informed about such human rights violations and their consequences.

11. Member States should aim to ensure that statutes of limitations allow intersex persons to access redress and reparation at a time when they are able to understand what has happened to them.

II. Right to security

A. Hate crime and hate speech

12. Member States should ensure that their hate crime legislation encompasses sex characteristics as a protected ground in line with paragraph 2.*b* of the appendix to Recommendation CM/Rec(2024)4 on combating hate crime.

13. Member States should introduce provisions in their legal order and take appropriate measures to prevent, prohibit and combat hate speech, hate crime and other hate-motivated incidents based on sex characteristics or other protected grounds that encompass sex characteristics, including in the media and online, in line with Recommendations CM/Rec(2022)16 on combating hate speech and CM/Rec(2024)4, ensuring that they promptly investigate such incidents, hold perpetrators to account and provide victims with support, protection and access to effective remedies.

14. In line with the aforementioned Committee of Ministers' recommendations, member States should establish effective monitoring mechanisms to measure the prevalence of hate speech and hate crime based on sex characteristics, or other protected grounds that encompass sex characteristics, and provide adequate support for victims of hate speech and hate crimes, incorporating an intersectional approach.

B. Protection of persons deprived of their liberty

15. Member States should ensure that intersex persons deprived of their liberty are afforded appropriate care, protection and dignity, including by developing and implementing protocols to address their specific needs, such as the provision of healthcare, protection from violence, adequate living conditions, privacy and other essential requirements.

III. Right to seek asylum

16. Member States should, in line with their international obligations, ensure that a well-founded fear of persecution based on sex characteristics is considered a valid ground for seeking asylum and for granting refugee status under national law. Where the expression "sex characteristics" is not explicitly mentioned in grounds for asylum, member States should ensure that intersex persons are protected under the existing grounds.

17. Member States should ensure that intersex asylum seekers are not sent to a country where they would face a real risk of torture, inhuman or degrading treatment or punishment because of their sex characteristics or where their life, bodily integrity or freedom would be threatened.

18. Appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression and other forms of harassment against intersex asylum seekers, in particular those living in collective housing and those deprived of their liberty, and to ensure they are provided with information relevant to their particular situation, and with healthcare that meets their specific needs.

IV. Substantive equality and prohibition of discrimination

A. General issues

19. Member States should ensure that legislative and other measures are adopted and effectively implemented to promote substantive equality and protect the human rights of intersex persons. To that end, they should develop and implement equality, inclusion and diversity policies in all areas of life, including education, work, healthcare, housing, social protection and sport, as well as in cultural and political spheres.

20. Member States should prevent, prohibit and combat discrimination on the ground of sex characteristics and protect intersex persons from all forms of discrimination, including intersectional discrimination. Where the expression "sex characteristics" is not explicitly mentioned in equality and non-discrimination legislation, member States should ensure that intersex persons are protected under the existing grounds. Additionally, member States should, in consultation with civil society, in particular intersex-led organisations, and other stakeholders, promote understanding and implementation of this protection through awareness-raising and training programmes.

B. Education, work and sport

21. Member States should ensure the adoption and effective implementation of equality, diversity and inclusion policies and practices in the public and private sectors to support intersex persons in education, work and sport.

22. Member States should, in their endeavour to foster inclusivity, review their policies and practices to accommodate the varied life circumstances of intersex persons, including but not limited to inclusive dress codes and the provision of spaces that are safe for all, such as the option for all-gender[1] facilities, particularly in work and educational settings.

23. Member States should, in consultation with civil society organisations, including intersex-led organisations, take effective measures to ensure that intersex persons can participate in sport at all levels, as appropriate, including professional sport, without any additional requirements, such as specific examinations or medical interventions on their sex characteristics. Member States can achieve this by:

a. ensuring that the framework conditions and, where appropriate, legal requirements necessary for the development of sports comply with human rights principles;

b. working with sports bodies to ensure their regulations comply with human rights principles, norms and standards, including when adopting and implementing eligibility rules for sports; and

c. ensuring that athletes have access to effective, human rights-compliant and accessible remedy mechanisms.

24. Member States should take appropriate legislative and other measures, addressed to educational staff and students, to ensure the promotion and achievement of equality in education and the right to education, including informal and non-formal education, and extracurricular activities, without discrimination on grounds of sex characteristics. This includes, in particular, education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment.

25. Member States should ensure the provision of support for intersex students; the adoption of inclusive curricula, policies and educational materials

1. In accordance with Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Republic of Bulgaria reserves the right of its government to interpret the recommendation regarding the term of gender and the gender–related terminology in accordance with its internal legal order.

that promote awareness of the diversity of sex characteristics and respect for intersex persons; and the design and implementation of monitoring and evaluation systems to assess the effectiveness of measures aimed at promoting and achieving equality for intersex students in education.

26. Member States should, as part of their awareness-raising efforts, encourage the use of calendar dates associated with intersex visibility to increase the understanding of students and young people of human rights concerns that have an impact on intersex people, highlight human rights violations to which they have been subjected and celebrate the contributions of intersex persons to society.

27. Member States should ensure that intersex persons have equal access to work, including remuneration and career advancement, and that, along with other discriminated groups, they benefit from positive measures, where in place, regarding employment and pension rights.

V. Healthcare and social care

A. Medical records

28. Member States should ensure that those legally responsible for keeping medical records, record full information, including about the diagnoses related to a person's sex characteristics, the decision-making process, all details of interventions, the underlying rationale for these interventions, the related risks, short- and long-term consequences of both the intervention and of delaying or not performing the intervention and of possible alternatives to the intervention, as well as the consent or, where applicable, authorisation.

29. Member States should ensure that those legally responsible for retaining medical records retain such records concerning interventions on sex characteristics for a sufficient period, in order to ensure that persons who become aware, at a later stage in life, of medical interventions performed on them during childhood are able to obtain all relevant information. Medical institutions should have the obligation to inform the persons concerned and, where applicable, their legal representatives sufficiently ahead of any potential destruction of such documentation.

30. Member States should ensure that intersex persons and, where applicable, their legal representatives have easy and direct access to their records.

31. Member States should ensure that with regard to retention and access to such medical records, the rights to privacy, including confidentiality of personal data, are safeguarded through effective data protection measures.

32. Member States should take appropriate measures to ensure that persons who have undergone medical interventions on their sex characteristics and, where applicable, their legal representatives are provided, upon their request, with assistance to understand the records, as well as psychosocial support to help them deal with the implications of such interventions.

B. Medical classifications, protocols and guidelines

33. Member States should ensure that medical classifications, clinical coding systems, protocols and guidelines concerning persons with variations of sex characteristics respect their human rights and are non-discriminatory and non-stigmatising. These should be developed and regularly reviewed with the active participation of civil society organisations working on intersex matters with a human rights-based approach, in particular intersex-led organisations. Member States should also ensure that this is reflected in the training curricula of healthcare professionals. This approach should extend to how information regarding care for intersex persons, as well as general information about intersex persons, is provided to the persons concerned, their legal representatives, all prospective parents and the general public.

34. Member States should ensure that variations of sex characteristics are not the sole basis for encouraging selective abortion, where abortion is legal under national law; that prospective parents are provided with clear, comprehensive, comprehensible and evidence-based information about intersex variations and their associated health outcomes; and that they receive psychological and social support services.

C. Access to and provision of healthcare

35. Member States should take effective measures to ensure that persons with variations of sex characteristics have equitable access to healthcare and are provided with effective, lifelong and publicly funded health services tailored to meet their needs. This should include health promotion, prevention and care, including gender-affirming healthcare, access to medically assisted procreation and fertility preservation, alongside knowledgeable medical, psychological and social assistance, as well as peer-support mechanisms provided by intersex persons. This support should extend to their families, caregivers and

legal representatives, ensuring that they, like intersex persons, have access to quality prenatal, postnatal and lifelong care, as well as appropriate diagnostic methods that can facilitate more informed decisions about potential medical treatments, in line with paragraphs 3 and 4 of this appendix; and that they are equipped to support the person effectively from the moment any direct or indirect signs of potential variation of sex characteristics are observed.

36. Member States should address the specific health needs of intersex persons and the multiple barriers they face in accessing healthcare, including psychological support, and address the health issues resulting from previous medical interventions. They should also ensure access to reparative medical treatment, especially for intersex persons who have experienced interventions and treatments without their prior, free and informed consent, as well as for those facing irreversible and irreparable consequences of such interventions.

VI. Right to respect for private and family life

A. Birth registration

37. Member States should review laws and practices governing the registration of births to ensure these adequately address the needs of intersex persons, including the time frames for the registration of births and the legal sex or legal gender and, where applicable, the recognition of gender-neutral first and last names.

38. When member States require that a legal sex and/or legal gender be assigned as part of the birth registration process, they should ensure that laws and practices governing the registration do not lead to the involuntary disclosure of the child having a variation of sex characteristics and/or cause undue delays in the child's birth registration, which would impede the protection of the child's rights and their access to services. It is imperative that such procedures do not create undue pressure on legal representatives to seek medical interventions.

B. Legal gender recognition

39. Member States should take appropriate measures to ensure that, where the gender identity of a person is not aligned with the legal sex or legal gender assigned at birth, they are provided with the possibility to change their names and sex marker or gender marker in official documents in a quick, transparent and accessible manner, based on the principles of privacy and self-determination. Member States should also ensure that non-state actors

recognise those changes and make the corresponding modifications and reissue key documents, such as educational or work certificates.

40. Member States should explore the possibility of optional and voluntary additional sex or gender markers other than "male" or "female", the possibility of voluntary non-declaration of sex or gender on identity documents, where appropriate, and the recognition of gender-neutral first and last names for all.

C. Protection of family life

41. Member States should ensure that family law is applied to intersex persons without discrimination.

42. Member States should take all appropriate measures to ensure that marriage and any other form of legal recognition of partnership are accessible to, and inclusive of, intersex persons.

43. Taking into account that children's best interests should be the primary consideration in all decisions related to them, including regarding the parental responsibility, guardianship or adoption of a child, member States should ensure that such decisions are taken without discrimination based on sex characteristics.

44. Member States should take effective measures to address the multiple barriers that intersex parents face concerning their parenthood, particularly in being legally recognised and recorded as parents without delay.

VII. Public authorities

45. Member States should ensure that their authorities take intersex persons into account in relevant documentation, applications, processes and surveys, including the census, while ensuring that any disclosure of having a variation of sex characteristics and other sensitive or confidential information remains optional. Authorities should also ensure the meaningful participation of intersex persons in decision-making processes across all spheres of life, particularly those directly affecting their well-being and lives, including in the development of care standards and protocols.

46. Member States should ensure that the mandates of equality bodies and national, European and international human rights structures cover sex characteristics.

47. While upholding the independence of the media, press councils, media regulatory bodies and other public entities overseeing media ethics should actively promote inclusive reporting about intersex persons in full respect of

their right to privacy, ensure that information about them is not discriminatory and encourage the media and journalists to disseminate accurate and reliable information that reflects the diversity of intersex persons and avoids misleading or harmful representations.

VIII. Transversal concerns

A. Data collection and evaluation

48. Member States should collect both qualitative and quantitative data, disaggregated by the ground of sex characteristics, analyse these data to assess the life situations of intersex persons, including experiences of bullying, harassment and violence, and identify best practices. Additionally, they should conduct further quantitative and qualitative research on the long-term impact of medical interventions performed without the consent of the concerned person, including in relation to aged care, home care, State care and disability services.

49. Member States should ensure that ethical safeguards are in place that guarantee that intersex persons and intersex-led organisations can participate in research conducted on intersex persons from its design and at all stages, including the formulation of research questions, the identification of research participants, data analysis and contextualisation.

50. Member States should encourage researchers, especially those engaged in medical projects funded by public authorities, to ensure that any data collection in relation to groups that include intersex persons is conducted in a manner that allows effective disaggregation of information relating to intersex persons, and which addresses the specific issues faced by intersex persons. Such data collection should avoid exploitation of intersex persons and related issues, follow ethical research conduct and emphasise approaches that respect human rights and do not perpetuate pathologising and stigmatising understandings of intersex issues.

51. In relation to data collection, member States should ensure that the right to privacy is fully guaranteed, without any obligation to disclose personal characteristics.

B. Training and awareness raising

52. In their efforts to promote and protect the right to equality of intersex persons, member States should raise awareness on those issues among persons

and institutions engaged in various sectors, including education, employment, health, law enforcement, the judiciary, sport, social care and social welfare. In particular, this should include the introduction of mandatory training addressing the fact that innate variations of sex characteristics occur naturally and are not a disease; the human rights of intersex persons; their right to equality; the prevention of and fight against discrimination, hate speech and hate crime against them; and the importance of respecting and upholding the principle of free and informed consent in relation to any medical interventions.

53. Member States should promote respect for the right to equality of intersex persons among the general public through awareness-raising activities, ensuring that these are free from bias, stereotypes or exoticisation of intersex bodies, including through the provision of training for media professionals that promotes inclusive and accurate representations of intersex persons, while respecting the independence of the media.

C. Empowerment of intersex communities

54. Member States should take appropriate measures to support the rights to freedom of expression, assembly and association of civil society organisations working to ensure the full and equal enjoyment of the human rights of intersex persons.

55. Member States should adopt measures that enable the effective and meaningful participation of intersex persons and of civil society organisations working on intersex matters with a human rights-based approach, in particular intersex-led organisations, in consultation processes on policies that have an impact on their enjoyment of human rights, including through access to public funding. State-funded service providers working in the fields of victim support, anti-discrimination, access to justice and human rights, among others, should effectively collaborate with intersex organisations for mutual learning and support.

56. Member States should ensure adequate funding and human resources for community-based and, where feasible, peer-to-peer counselling for intersex persons and their families, especially in relation to guidance on medical interventions and treatments. Such counselling should also be accessible to individuals who may suspect that they have a variation of sex characteristics.

IX. International co-operation

57. Member States should strive to ensure, in co-operation with one another, that the rights and freedoms of intersex persons, in particular their right to access to and protection of their private and family life, are protected and can be enjoyed in cross-border situations.

58. Member States should take effective measures to ensure the exchange of good practices and information regarding legislation and measures for the promotion of equality and the protection of intersex persons.

59. Member States are encouraged to promote, within the relevant international bodies, a review of medical classifications, clinical coding systems, terminologies and nomenclatures, such as the International Classification of Diseases, and of guidelines, including those of the World Health Organization and the European Centre for Disease Prevention and Control, regarding variations of sex characteristics, to ensure alignment with human rights standards.

Explanatory Memorandum

Introduction

1. "Europeans remain largely unaware of the painful personal histories of intersex people and the human rights violations they face. Stereotypes and norms grounded on the binary female-male classification have led to unnecessary medical and surgical interventions on intersex infants and a climate of incomprehension in society. It is time to address this unacceptable situation" (Council of Europe Commissioner for Human Rights, at the release of an Issue paper on human rights and intersex people in May 2015). The lack of awareness and knowledge about intersex people was also highlighted by the UN High Commissioner for Human Rights during his opening remarks at the UN Expert meeting on ending human rights violations against intersex persons in September 2015. The present Committee of Ministers Recommendation contains a comprehensive set of recommendations to address this situation.

2. Intersex people are born with sex characteristics that do not fit societal or medical norms of typical male or female bodies. While these innate variations of sex characteristics are sometimes identifiable at birth, they may also become apparent later in life, particularly during puberty (Parliamentary Assembly of the Council of Europe (PACE), Resolution 2191 (2017), Promoting the human rights of and eliminating discrimination against intersex people, § 1). There are many different variations of sex characteristics, but despite common misconceptions, only some raise questions about the sex that may be assigned at birth, and only a few are associated with medical conditions that pose a risk to the health of the intersex person. Yet, variations of sex characteristics have long been framed as a medical concern. In the aforementioned Resolution, PACE noted that "[t]he 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". PACE considered such a view to amount to "serious breaches of physical integrity", particularly in cases concerning very young children and infants who are incapable of giving consent themselves and whose gender identity is unknown (PACE Resolution 2191 (2017), § 2). PACE noted that there

was no evidence supporting the long-term benefits of such interventions in the absence of any immediate danger to health. It noted that these interventions lack a genuine therapeutic purpose as they are primarily intended to address social rather than medical concerns, and may result in complications and/or lead to life-long medical needs.

3. The vast majority of innate variations of sex characteristics do not pose risks to the life, health and/or physical wellbeing of intersex people. However, such variations are often misconceived as "psychosocial and social/medical emergencies that need to be treated" through medical interventions. Such "treatments" are rooted in prevailing social and medical norms and expectations about female and male bodies. This normative pathologisation of variations of sex characteristics often results in intersex persons being subjected to "normalising" medical interventions or treatments from infancy and continuing during early childhood, puberty, adolescence and sometimes even into adulthood. Most of these interventions or treatments that are not based on medical necessity, adopt other rationales, including cosmetic concerns, assumptions about future gender identity, gender expression and sexual orientation, potential issues affecting organ function in the future, and the presumption that the child will experience distress in the future (see also §47). In some cases, these interventions and treatments are performed to treat parental distress. As a result, intersex people are routinely subjected to surgical procedures, hormonal treatments and mechanical interventions that are invasive, irreversible, and followed by lifelong negative consequences. Parents often lack adequate support and up-to-date information about the lifelong negative consequences of such interventions and the available alternatives, including the often safe option of not performing such interventions at all or postponing them, where feasible. This lack of information impedes their ability to make an informed decision in the best interests of their child. Individuals whose innate variations of sex characteristics are identified later in life may also be subject to the same invasive treatments without comprehensive information and without their prior, free, and informed consent.

4. According to the established case law of the European Court of Human Rights (the Court), the right not to be subjected to torture or to inhuman or degrading treatment under Article 3 of the European Convention on Human Rights (the Convention, (ETS No. 005)) and the right to respect for private and family life under Article 8 of the Convention, guarantee each person that their body is protected from non-consensual medical interventions and/or treatments that amount to forced medicalisation and/or sterilisation.

5. From the perspective of Article 3, the Court has established that for an intervention to be considered as a therapeutic necessity, and not as inhuman and degrading treatment, it must be satisfied that a medical necessity has been convincingly shown to exist and that procedural guarantees for the decision exist and are complied with (*Jalloh v. Germany,* Application No. 54810/00, 11 July 2006, § 69; *Ciorap v. Moldova*, Application No. 12066/02, 19 June 2007, § 77). The Court has consistently noted that interventions aimed at preserving the life of a person will not amount to inhuman and degrading treatment, but where they stray beyond this aim, such as to suppress a protest at conditions in prison (*Yakovlyev v. Ukraine*, Application No. 42010/18, 8 December 2022, §§ 46-51), they may constitute a forced medical intervention and thus amount to a violation of Article 3. In *SFK v. Russia,* the Court considered a forced abortion performed on a young woman with the consent of her parents, but against her will, to be "an egregious form of inhuman and degrading treatment" (Application No. 5578/12, 11 October 2022, § 81).

6. Other standards of particular relevance in addressing the participation of intersex persons in decisions that concern medical interventions on them are the European Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine (ETS No. 164) ("Oviedo Convention") and the European Convention on the Exercise of Children's Rights (ETS No. 160).

7. When it comes to general measures to how informed consent to medical interventions is to be given, the Oviedo Convention contains binding standards and the Court has also set up several guidelines throughout its jurisprudence concerning Article 8. In *Y.P. v. Russia* the Court stated that an individual's involvement in the choice of medical care provided and consent to such treatment falls within the scope of Article 8 and confirmed that States have a positive obligation to protect individuals from non-consensual sterilisations (Application No. 43399/13, 20 December 2022, §§ 42, 51). Furthermore, in *Csoma v. Romania,* the Court analysed a case related to failures in the applicant's treatment (the interruption of a pregnancy) leading to medical complications endangering her life and leaving her permanently unable to bear children and determined that the applicant suffered an infringement of Article 8 where they were not fully involved in the choice of medical treatment and not informed of its risks (Application No. 8759/05, 15 January 2013, §68). The importance of consensual engagement with healthcare and the impact of decision making on the Article 8 right to self-determination was reinforced by the Court in *WW v. Poland* (Application No. 31842/20, 11 July 2024, § 91) and previously in *Van Kuck v. Germany* (Application No. 35968/97, 12 June 2003, §§ 69-78).

The following paragraphs provide a brief overview of key initiatives concerning the rights of intersex persons over recent decades.

8. From 2009 to September 2024, United Nations (UN) Treaty Bodies called on member States to protect intersex persons from human rights violations 108 times. In this context, 25 different Council of Europe member States have received 73 UN Treaty Body recommendations (Ghattas, D. C. Protecting Intersex People in Europe: A Toolkit for Law and Policymakers with Digital Appendix and Checklist,ILGA-Europe and OII Europe, 2019; Intersex-specific United Nations Treaty Body recommendations compiled by OII Europe, 2025)). This contributed to the adoption of a Resolution by the United Nations Human Rights Council in April 2024 on Combating discrimination, violence and harmful practices against intersex persons (A/HRC/RES/55/14), calling to address their root causes, such as stereotypes, the spread of misconceptions and inaccurate information, stigma and taboo, and to work to realise the enjoyment of the highest attainable standard of physical and mental health of intersex persons.

9. The United Nations High Commissioner for Human Rights, treaty bodies and special procedures mandate holders have also advocated for the human rights of intersex persons. In 2013, in a "Background Note on Human Rights Violations against Intersex People", the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, recognised intersex persons as victims of harmful practices and called on all States to take measures to prevent medical interventions or treatments when performed without their free and informed consent. Later that year, PACE adopted Resolution 1952 (2013) on Children's Rights to Physical Integrity expressing concern "about a category of violation of the physical integrity of children, which supporters of the procedures tend to present as beneficial to the children themselves despite clear evidence to the contrary" (§2), including medical interventions on intersex children. The resolution called on member States to "undertake further research to increase knowledge about the specific situation of intersex people, ensure that no-one is subjected to unnecessary medical or surgical treatment that is cosmetic rather than vital for health during infancy or childhood, guarantee bodily integrity, autonomy and self-determination to persons concerned, and provide families with intersex children with adequate counselling and support" (§7.5).

10. In 2014, the Council of Europe Commissioner for Human Rights published a Human Rights Comment entitled "A boy or a girl or a person – intersex people lack recognition in Europe", urging governments in Europe to review their legislation and practices, address the challenges that intersex persons

encounter and protect their human rights. The aforementioned report "Human rights and intersex people" from 2015 shed light on several violations of their human rights that prevent intersex persons from the full enjoyment of those rights, including in the areas of medicalisation of their bodies, legal gender recognition, non-discrimination and equal treatment, and access to justice and accountability.

11. In 2015, the European Union Fundamental Rights Agency (FRA). reported that sex "normalising" surgeries on intersex infants and children seemed to be performed in at least 21 EU Member States: Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Slovakia, Spain, Sweden and the United Kingdom, although their frequency was unknown (The fundamental rights situation of intersex people, FRA Focus 02/2015). Monitoring results such as ECRI's country monitoring reports, ECRI's General Policy Recommendation No. 17, as well as studies such as the FRA LGBTIQ surveys 2012, 2019, 2024, show that there is an urgent need to act and make further progress to improve the enjoyment of human rights by intersex persons. These reports and studies also show that there is a need for a comprehensive and intersectional approach that does not focus exclusively on the protection of the rights of intersex persons linked to medical treatment but addresses all issues affecting them and ensures the effective protection of intersex persons. Such an approach is deemed essential especially amidst the alarming rise of hate against Lesbian, Gay, Bisexual, Trans and Intersex (LGBTI) people (PACE Resolution 2417 (2022)) to prevent the perpetuation of the violation of intersex persons' rights.

12. The United Nations Free and Equal campaign released a factsheet on the rights of intersex persons in September 2015. In the same month, the office of the United Nations Commissioner for Human Rights convened an expert group meeting on ending human rights violations against intersex persons. In October 2016, United Nations and regional human rights experts jointly issued a statement urging governments to ban forced and coercive surgeries, as well as other medically unnecessary treatments on intersex children without their consent. Additionally, the United Nations Human Rights Office launched its first public education campaign on intersex rights, which featured a dedicated website and a video that garnered over a million views in its first week of release (OHCHR Background Note on Human Rights Violations against Intersex People p. 2). In April 2015, FRA issued a focus paper on "The fundamental rights situation of intersex people", with a number of recommendations aimed at improving the protection of intersex persons' rights.

13. In its 2015 report on "Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons", the Inter-American Commission on Human Rights (IACHR) expressed concern regarding information received on the human rights violations carried out against intersex persons because their bodies do not physically conform to the medically and culturally defined standards for 'female' and 'male' bodies. The report recommended the prohibition of medically unnecessary interventions on intersex persons without their prior, free, and informed consent, requesting that these be delayed until intersex persons can decide for themselves.

14. The UN Committee against Torture (CAT) that monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by its States parties has consistently urged States to adopt legislative and other measures (policy, administrative, etc.) to ensure respect for the physical integrity and autonomy of intersex persons and to explicitly prohibit the performance of "non-urgent irreversible medical interventions" before an intersex minor is sufficiently mature to participate in decision-making and able to give full, free, and informed consent (See for example: Concluding Observations on the Sixth and Seventh Periodic Reports of Austria, CAT/C/AUT/CO/6, 27 January 2016, § 45 and CAT/C/AUT/CO/7, 12 June 2024, § 43; Concluding Observations on the Combined Sixth and Seventh and the Eighth Periodic Reports of Denmark; CAT/C/DNK/CO/6-7, 4 February 2016, § 43 and CAT/C/DNK/CO/8, 8 December 2023, § 33; Concluding Observations of the Eight Periodic Report of Finland CAT/C/FIN/CO/8, 3 June 2024, § 45; Concluding Observations on the Eight Periodic Report of Luxembourg CAT/C/LUX/CO/8, 2 June 2023, § 36; Concluding Observations on the Seventh Periodic Report of the Netherlands, CAT/C/NLD/CO/7, 18 December 2018, § 53; Concluding Observations on the Eight Periodic Report of Switzerland CAT/C/CHE/CO/8, 11 December 2023, § 38; Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland, CAT/C/GBR/CO/6, 7 June 2019, § 65).

15. The Parliamentary Assembly of the Council of Europe and the European Parliament both adopted resolutions in 2017, namely, the aforementioned PACE Resolution 2191 (2017) on promoting the human rights of and eliminating discrimination against intersex people (see above in §2) and the European Parliament resolution of 14 February 2017 on promoting gender equality in mental health and clinical research (2016/2096), each calling for the protection of the rights of intersex persons, including the right to bodily integrity, in national legislation across the member States. Importantly, recent

Council of Europe Standards such as Recommendation CM/Rec(2024)4 of the Committee of Ministers to member States on combating hate crime and Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech, cover sex characteristics and LGBTI-phobic hate crime and hate speech respectively. Following the incorporation of discrimination on the grounds of sex characteristics in its 6th monitoring cycle, in 2023, ECRI adopted General Policy Recommendation No. 17 on preventing and combating intolerance and discrimination against LGBTI persons. That sex characteristics are also recognised as a protected ground under Article 8 and 14 of the Convention was confirmed by the Court in a chamber judgment in *Semenya v. Switzerland* (Application No. 10934/21, 11 July 2023, §158). Later, in the Court's Grand Chamber judgment *Semenya v. Switzerland* (Application No. 10934/21, 10 July 2025), the Court found the claims under these articles inadmissible under Article 1 of the Convention on the jurisdiction of the Court.

16. Across the member States of the Council of Europe, there is limited data on other forms of violence and discrimination experienced by intersex persons. However the 2024 FRA LGBTIQ Survey III found that 71% of intersex respondents experienced bullying by peers in school, 32% reported experiencing discrimination in access to, or in employment in the previous 12 months, and 32% reported experiencing physical and sexual attacks in the previous 5 years.

17. While for many years the human rights issues affecting the well-being of intersex people were mostly unknown to society, and largely ignored by the broader human rights community, awareness of the human rights violations they experience is increasingly recognised as a pressing concern.

18. In light of this and parallel to those developments at international level, from 2015, several member States of the Council of Europe, as well as a number of other jurisdictions, have introduced legal provisions that prohibit or limit unnecessary medical interventions including surgeries on the sex characteristics of intersex minors without their consent, and reviewed their birth registration and legal gender recognition processes to address some of the challenges and the resulting exclusion faced by intersex infants, children and adults.

19. Despite the above-mentioned developments, the protection of the rights of intersex persons across member States remains fragmented and incomplete. To date, only 6 member States (Germany, Greece, Iceland, Malta, Portugal, Spain) have introduced specific legislation to restrict medical and/or surgical treatments and/or interventions in the absence of the specific, full, free and informed consent of the intersex person concerned. Only 12 member States

(Austria, Belgium, Finland, Greece, Iceland, Ireland, Luxembourg, Malta, Norway, Portugal, Spain, Sweden) explicitly protect intersex persons from discrimination in employment as well as in the provision of goods and services through the inclusion of the ground of sex characteristics. Eight member States (Belgium, Denmark, Greece, Germany, Iceland, Ireland, Malta, Portugal) have introduced hate crime provisions that protect intersex persons by explicitly introducing sex characteristics as a protected ground, while another two member States (Spain and UK) provide limited protection at subnational level.

20. In addition, existing efforts to protect intersex persons' rights lack a comprehensive approach, as they do not protect against all human rights violations that intersex persons may encounter throughout their lives, such as issues related to healthcare, legal gender recognition, hate speech and hate crimes, education, employment, and family life. To put an end to the violation of human rights of intersex persons, it is imperative that member States address the various challenges that intersex persons face taking a holistic approach, including specific, effective and sustainable action to ensure the full enjoyment of their human rights. Progress in protecting the rights of intersex persons is a fundamental step for societies and governments of member States. Approaches to implementation of this recommendation may vary in light of different national frameworks and such progress may require sustained efforts over time.

Framework and structure of the Recommendation

21. The present Recommendation has been developed by the Expert Committee on Sexual Orientation, Gender Identity and Expression and Sex Characteristics (ADI-SOGIESC) with the guidance of the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI). It seeks to complement and build on Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity. It guides member States and relevant actors in developing comprehensive frameworks, policies, strategies and action plans to protect the human rights of intersex persons and to ensure equality and non-discrimination on the ground of sex characteristics.

22. Each chapter focuses on measures that member States and relevant stakeholders should introduce to protect the rights of intersex persons and fulfil their responsibilities and obligations under the Convention. The implementation of these principles and guidelines ensures the protection of the

relevant human rights and fundamental freedoms under the Convention, especially those of Article 2 on the Right to Life, Article 3 on the Prohibition of torture, Article 6§1 on the Right to a fair trial, Article 8 on the Right to respect for private and family life and Article 14 on the Prohibition of discrimination, in full respect of the principle of the rule of law. Their status of implementation should be regularly reviewed. Implementation review should provide for reasonable timeframes.

23. The following principles and guidelines are organised into nine chapters mirroring the structure of the Appendix. They offer additional information, guidance and promising practices for the implementation of the Recommendation, which are relevant to all stakeholders involved in the protection and promotion of the rights of intersex persons.

Scope and definitions

On paragraph 1:

24. The Recommendation aims to assist member States in protecting the rights of intersex persons in a comprehensive way. It therefore includes legal and non-legal measures to address not only issues surrounding the pathologisation of intersex persons' bodies but also areas of their lives that until now have so far received little attention, such as family life, education, employment, sport, issues faced by intersex asylum seekers and refugees and older intersex persons. It is addressed to member States and their authorities, but also serves as guidance for other stakeholders and actors, both public and private, relevant to the protection of intersex persons' human rights.

On paragraph 2:

25. The use of human rights-based terminology is paramount for the effective protection of intersex persons, as it ensures that they are not pathologised and prevents the perpetuation of stigma. The ground of "sex characteristics" applies to all human beings, as do other terms such as "sexual orientation" and "gender identity", and clarifies that everybody has sex characteristics. Over the past years, the term "sex characteristics" has been established as the adequate and human rights-based ground to effectively protect intersex persons and it has also been used broadly in human rights instruments and legislation (for instance in Recommendation CM/Rec(2024)4 of the Committee of Ministers to member States on combating hate crime; the PACE Resolution 2191 (2017), and EU Directive 2024/1500 on standards for equality bodies).

26. The term "intersex" is preferred and used throughout the text to refer to persons with an innate variation of sex characteristics that differs from the societal and/or medical understanding of typical male and female bodies. Such innate variations of sex characteristics occur naturally within human species. "Intersex" is the preferred terminology in international human rights law and consequently is the term employed throughout the text (UN Human Rights Council Resolution A/HRC/RES/55/14, cited above, 8 April 2024; OHCHR, Technical Note on the Human Rights of Intersex People: Human Rights Standards and Good Practices, 3 November 2023).

27. The term "persons with variations of sex characteristics", in its unabbreviated form, is sometimes used instead of "intersex" and is also considered as a human rights-based term. It is sometimes quoted as "persons with variations in sex characteristics". The use of terminology in this context can vary and not all persons with innate variation of sex characteristics identify as intersex and may prefer alternative terms, including those employed in medical, academic, or advocacy settings. However, the implications and perceived connotations of these terms can differ, with some persons viewing certain terminologies as pathologising or stigmatising. Accordingly, it is essential to respect personal preferences and to remain sensitive to the evolving nature of language in this field. Variations of sex characteristics of intersex persons can manifest in diverse ways and may be identified at different stages of life.

28. Variations of sex characteristics are still codified in medical classifications as pathologies or disorders, usually referred to as "disorders of sex development" (DSD), a medical term introduced in 2006. The term "disorders of sex development" is problematic, as it is stigmatising, pathologising and exposes intersex persons to discrimination and abuse. This terminology presupposes a norm of male and female bodies and denies the natural variations of sex characteristics that exist; it also assumes a pathologising attitude and implies that variations between those defined norms of male and female sex characteristics need to be "fixed". Increasingly, the abbreviation "DSD" is used to denote "differences of" or "diverse" sex development and there are indications that its use in medical research and clinical contexts reflects this shift.

29. Furthermore, the medical classification of "DSD" is inadequate, as it does not encompass all variations of sex characteristics. This leads to a lack of protection for those intersex persons, who have variations of sex characteristics that are not covered by the medical classification of "DSD", as access to necessary healthcare may be contingent on such medical classifications. This is also true for interventions that intersex persons may seek later in life based on

informed consent, as well as medical support for those who have undergone non-consensual interventions in the past. Insurance coverage and healthcare systems in some jurisdictions may also still require medical categorisation and use of these terms for access to treatment. These complexities highlight the importance of ensuring that medical terminology does not contribute to discrimination, while also addressing the concerns of intersex people who rely on these frameworks for accessing care. While the term "intersex" is the preferred terminology in international human rights law, it is acknowledged that some individuals with innate variations of sex characteristics may prefer other terminology or terms specific to their individual variation.

30. The experiences of intersex people are linked to those of LGBT people by the discrimination they face. These stem from entrenched societal norms leading to harmful stereotypes that enforce a strict understanding of sex and gender. This framework categorises sex strictly as male or female and prescribes rigid gender roles associated to that sex, marginalising those whose sex characteristics, gender identities, gender expressions or sexual orientations do not conform to these norms. This common source of prejudice, marginalisation and discrimination affects both intersex and LGBT people, which explains the inclusion of the "I" for "intersex" in the "LGBTI" acronym, despite the vast and inherent diversity of experiences it represents. Additionally, intersex people also share human rights concerns with other minorities such as persons with disabilities and those who have been subjected to genital mutilation or cutting.

I. Right to life and respect for human dignity

A. Prohibition of non-consensual interventions or treatments

On paragraph 3:

31. As stated in the introduction to this explanatory memorandum, intersex persons are often subjected to medical interventions including surgical, hormonal and other procedures and treatments that aim to 'normalise' sex characteristics to align with societal norms of male and female bodies, often without their prior, free, informed, express and documented consent. These procedures may result in irreversible bodily modifications, psychological trauma, physical impairments and/or sterilisation. The FRA LGBTIQ Survey III (2024) showed that more than half of the intersex respondents (57%) reported having been subjected to surgery without informed consent or their parents' authorisation. Almost half of the intersex respondents (49%) said that fully informed consent was not requested for hormonal treatment. These numbers

closely mirrored those recorded in the previous FRA LGBTIQ Survey II published in 2019. As already mentioned, these interventions are usually performed for psychosocial, cultural and cosmetic reasons that are not evidence-based, medically essential, nor vital (PACE Report 14404, 2017, Promoting the human rights of and eliminating discrimination against intersex people, § 13 seq.). In many cases, they are performed during infancy or early childhood, and often driven by the questionable purported intention to make the life of the parents and their attachment to the child easier in the short term, and not by a long-term assessment of the child's best interest. Their root causes are related to inflexible societal and medical norms, stereotypes, misconceptions, inaccurate information, and the prejudice against bodily diversity, which perpetuates stigma and taboo surrounding sex characteristics and their variations.

32. The Committee against Torture has consistently raised concerns regarding legal or policy frameworks, or their practical implementation, that permit unnecessary and irreversible surgical interventions and medical treatments on intersex children before they are able to give their free, prior, and informed consent, or receive impartial counselling (see, the references in § 14 above). The Committee has also expressed concern when a State failed to prohibit such non-vital medical treatments by law, even when a policy framework had been adopted, and when reimbursement for these procedures was ceased (see CAT/C/LUX/CO/8, § 35, 2023).

33. At national level, several reports have been published by member States denouncing human rights violations occurring from the performance of medical interventions and treatments on intersex persons without their consent and from the ethical dimensions of such interventions and treatments (See Comitato Nazionale di Bioetica, *I disturbi della differenziazione sessuale nei minori: aspetti bioetici*, Rome, Presidenza del Consiglio dei Ministri, 2010; Deutscher Ethikrat, *Stellungnahme zur Situation von Menschen mit Intersexualität in Deutschland*, Berlin, 2012; Comité Consultatif National d'Éthique pour les Sciences de la Vie et de la Santé, *Avis 132: Ethical questions raised by the situation of people with differences of sex development*, France, 2019; National Advisory Commission on Biomedical Ethics, Opinion 20/2012 "On the management of differences of sex development. Ethical issues regarding "intersexuality"", Berne 2012).

34. Article 5 of the Oviedo Convention, mandates that a medical intervention should only be carried out after the person has given free and informed consent and upon the provision of appropriate information as to the purpose and nature of the intervention, its consequences and risks. In the case of a minor, the authorisation of their representative or an authority or a person or

body provided for by law is required and authorisation should be given under the same conditions as mentioned above (Article 6, which is consistent with Article 12 of the United Nations Convention on the Rights of the Child (UNCRC)). When authorisation is required by the parents, legal guardians or any other person who has the care of the child, it is essential to set the best interests of the child as a primary consideration to guarantee the protection of intersex children from harmful practices and any form of physical or mental violence, injury or abuse (Articles 3 and 19 of the UNCRC; PACE Resolution 1952 (2013) on Children's right to physical integrity).

35. The Committee on the Rights of the Child (CRC) has cautioned that the requirement to give priority to the "best interests of the child" may be open to manipulation and should not be abused to justify discriminatory policies (CRC, General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, § 1), (CRC/C/GC/14, 29 May 2013) § 34).The Committee has stated that assessments of a child's best interests must encompass the views of the child, and interpretations of a child's best interests cannot be used to justify practices that conflict with human dignity and the right to physical integrity (General Comment No. 14 (2013) (Art. 3, § 1), n 53; General Comment 13: Article 19: The Right of the Child to Freedom from All Forms of Violence (CRC/C/GC/13, 17 February 2011) § 61). Beliefs about a child's best interests, including under the guise of medical necessity, must not outweigh their right to free and informed consent (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report A/HRC/35/21, United Nations, 28 March 2017 § 63; Special Rapporteur on the rights of persons with disabilities, A/HRC/34/58, 20 December 2016, §§ 14, 41). While the right to free and informed consent takes precedence, this right may exceptionally be outweighed by the best interest of the child in instances of medical emergency, in line with article 8 of the Oviedo Convention.

36. Performing medical interventions on intersex persons without prior, free, informed, express and documented consent can also violate fundamental human rights under the Convention. In *M v. France,* a case concerning medical interventions on an intersex person, the Court provided an in-depth overview of its case law, affirming that medical procedures undertaken in absence of therapeutic necessity and without free and informed consent of the patient could amount to ill-treatment within the meaning of Article 3 of the Convention, before declaring the case inadmissible on procedural grounds (Application No. 42821/18, 26 April 2022, §§61, 63). The rights violated by such

interventions can furthermore include the right to private life (Article 8 of the Convention, see *Y.P. v. Russia*, Application No. 43399/13, 20 December 2022, §§ 42, 51)). In 2014, a UN interagency statement issued by the WHO addressed the fact that "in some countries, people belonging to certain population groups, including [...] intersex persons, continue to be sterilized without their full, free and informed consent" (OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF, WHO, Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement, 2014, p1) and noted that such sterilisation practices violate fundamental human rights, including the right to found a family (Article 12 of the Convention and Article 23.2, ICCPR).

37. Such medical interventions can furthermore violate the right to the highest attainable standard of health under Article 11 of the European Social Charter (Revised (1996) ETS. 163) and the right of the child to be heard under Article 12 UNCRC. (See in this respect Council of Europe Commissioner for Human Rights, 2014; PACE Resolution 2191(2017); Zillén et al., Council of Europe's Committee on Bioethics, The rights of children in biomedicine, 2017; Resolution of the European Parliament on the rights of intersex people (2018/2878 (RSP), 2019; UN Human Rights Council Resolution A/HRC/RES/55/14).

38. The absence of an intention to harm or ill-treat a patient will not prevent a finding of an Article 3 violation, as was held in *VC v. Slovakia* (Application No. 18968/07, 8 November 2011). Similarly, where an irreversible medical procedure, such as sterilisation which is not intended to be lifesaving, is undertaken without the consent of the patient and/or their representative, it will amount to a violation of the right to human freedom and dignity contrary to Article 8 (*NB v. Slovakia,* Application No. 29518/10, §§ 74-81, 12 June 2012). The Court has recently reiterated the obligation on member States to have the necessary regulatory measures in place to ensure that medical professionals consider the foreseeable impact of a planned medical procedure on their patients' physical integrity and to inform patients of these consequences beforehand, in such a way that the latter are able to give informed consent. This is particularly important where the patient is a minor (*Traskunova v. Russia*, Application No. 21648/11, §70-79, 30 August 2022).

39. To protect intersex persons from such human rights violations emanating from the performance of medical interventions and other treatments without their informed consent, member States should enact laws or other binding regulations explicitly and specifically prohibiting them (see the PACE Resolution 2191 (2017); Resolution of the European Parliament (2018/2878

(RSP)), 2019; ECRI General Policy Recommendation No. 17, § 32, 2023; United Nations Human Rights Council Resolution A/HRC/RES/55/14).

40. As already outlined, six member States of the Council of Europe have so far enacted such laws or regulations to restrict medical and/or surgical treatments and/or interventions in the absence of the specific, full, free and informed consent of the intersex person concerned: Germany, Greece, Iceland, Malta, Portugal and Spain (Germany: § 1631e Bürgerliches Gesetzbuch, introduced in 2021; Greece: Medically Assisted Reproduction Reforms Act No. 4958/2022, 2022; Iceland: Law No. 154, 2020; Malta: Article 14 of the Gender Identity, Gender Expression and Sex Characteristics Act No. XI (GIGESC Act), 2015; Portugal: Article 5 of the Law on Right to Self-Determination of Gender Identity and Gender Expression and Protection of Everyone's Sex Characteristics No. 38/2018, 2018; Spain: Article 19 of Law 4/2023, of February 28, for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people). All these jurisdictions enable an exception to the prohibition in circumstances where there is a risk to the life of the intersex person. Where the intersex person is a child or otherwise unable to provide consent, all those jurisdictions have procedures in place to enable authorisation to be given, where necessary. Some of those jurisdictions support the prohibition with sanctions (Malta: Act No. XIII 2018; Greece: Medically Assisted Reproduction Reforms Act No. 4958/2022, 2022). Not all these jurisdictions cover all variations of sex characteristics. Other countries have enacted legislation addressing specific medical interventions on intersex persons. For example, France introduced regulations that aim at reducing cosmetic surgeries on intersex children (*Arrêté du 15 nov. 2022, Appendix*).

41. Besides the legal prohibitions of medical interventions of intersex persons at national level presented above, there have been more efforts within the member States of the Council of Europe to protect the bodily integrity of intersex persons. For example, in Belgium, the Flemish Parliament in 2024, and the Chamber of Representatives in 2021, adopted Resolutions to protect the right to bodily integrity of intersex minors (1850 (2023-2024 and No. 0043/008) and urged the government to restrict medical interventions on intersex children except for serious medical necessity, and to provide access to information and psychosocial support for intersex persons and their families. In 2021, in Austria, the National Council adopted Resolution No. 183/E on the protection of intersex children and adolescents from medically unnecessary treatments on their sex characteristics calling on the federal government to introduce measures to effectively protect intersex children from "medical interventions

that do not avert permanent physical suffering, a threat to life, or the risk of serious damage to health or severe pain. Additionally, countries like Switzerland (National Advisory Commission on Biomedical Ethics, cited above in § 32), Italy (Minor's sexual differentiation disorders: bioethical aspects, Italy, 2010) and Luxembourg have seen ethical committees take a formal stance against non-essential medical procedures on intersex individuals.

42. The decisions of the Court referenced above (§§ 5, 6, 34, 36), confirm that member States have positive obligations to take appropriate steps to protect intersex persons just as any other person from medical interventions without consent and the resulting human rights violations (see *Y.P. v. Russia,* Application No. 43399/13, 20 December 2022).

43. For legal regulations to be effective, they should cover all variations of sex characteristics and apply to all kinds of medical interventions and treatments on variations of sex characteristics.

On Paragraph 4

44. Paragraph 4 contains two exceptions to the general prohibition of medical intervention on a person's sex characteristics without their consent.

On Paragraph 4 a)

45. According to the first exception in paragraph 4a, such interventions should be allowed to avert an imminent threat to life or imminent serious damage to their physical health (*Mayboroda v. Ukraine,* Application No. 14709/07, §§ 55,56, 13 April 2023; PACE Resolution 1952 (2013)). In this respect, the UN Committee against Torture recommended guaranteeing independent oversight of the relevant decision-making processes to ensure that every medical treatment for children with intersex traits who are unable to consent is necessary, urgent and the least invasive option (see CAT/C/FIN/CO/8, § 45, 2024; CAT/C/NZL/CO/7, § 54, 2023). Where member States engage external decision-making bodies to assess the necessity of such interventions, the composition of these bodies should be carefully balanced to include not only persons from the medical profession, independent of those treating the patient, but also suitably knowledgeable, psychosocial professionals including counsellors, psychologists, social workers, child advocates and human rights experts. Wherever possible, representatives of civil society organisations working on intersex matters with a human rights-based approach, particularly intersex-led organisations, should also be involved to ensure that the lived experience and perspective

of intersex persons is taken into account. This interdisciplinary approach helps to safeguard against decisions driven by social pressures or outdated medical norms, ensuring that the person's best interests remain paramount.

46. Regarding children and other persons, who according to the law, do not have capacity to consent to medical interventions, it follows from the above cited case-law of the Court that interventions on their sex characteristics should be postponed until they are capable of providing consent themselves, except where such an intervention is necessary to avert an imminent threat to life or imminent serious damage to physical health. The rights stemming from the Convention and the Oviedo Convention, as further elaborated by the Strategy for the Rights of the Child and the Strategic Action Plan on Human Rights and Technologies in Biomedicine, clearly demonstrate the adherence to a child-centred approach to health.

47. Medical research shows that rationales for medical procedures on intersex children often include cosmetic, anatomical, and functional considerations, as well as alignment with perceived sex or parental preferences, rather than an urgent medical need (Perspectives on conducting "sex-normalising" intersex surgeries conducted in infancy: A systematic review | PLOS Global Public Health; Genital Modifications in Prepubescent Minors: When May Clinicians Ethically Proceed? - PubMed (nih.gov)). Although sometimes framed in terms of health risks or benefits, these justifications are often based on a lack of evidence of urgent medical necessity, and alternative measures that could safeguard physical integrity and respect autonomy are frequently overlooked. Interpretations of "medical necessity" or "therapeutic treatment" can also be used to rationalise interventions for social and cultural reasons, such as assumptions about future gender identity, gender expression and sexual orientation as discussed in § 3 (OHCHR 2019, Human Rights Violations Against Intersex People: A Background Note).

48. Member States should therefore ensure that the risks and advantages of any medical and surgical treatment or intervention (and in particular on infants, children and others who are unable to give consent) be thoroughly assessed, that non-vital treatment is postponed until participation of the person concerned in decision-making is possible, in line with the evolving capacity of the child, and that there are procedural safeguards foreseen to ensure this is respected. This approach allows for an assessment of medical interventions and treatments based on their short- and long-term consequences and their deferral or refusal until the time the intersex child can express their wish and participate in informed decision-making, based on the right to self-determination and

the principle of free and informed consent (See Explanatory Memorandum of PACE Report 14404, §§ 40-42, 2017). As mentioned above a number of UN bodies issued an interagency statement on Eliminating forced, coercive and otherwise involuntary sterilization calling for the postponement of treatments that result in sterilisation, including on intersex persons, until the person is sufficiently mature to participate in informed decision-making and consent.

49. Even in the exceptional cases, where an intervention is necessary to avert an imminent threat to life or imminent serious damage to physical health, member States have the positive obligation to ensure that there are protections in place to ensure that the intervention is undertaken in the best interests of the child (*Vavřička and Others v. The Czech Republic*, Application Nos. 47621/13 and 5 others, §§ 287, 288, 8 April 2021).

50. In all cases, the first such protection is that any intervention must be strictly confined to the minimum required to prevent an imminent threat to life or significant harm to physical health, and should not extend to other procedures. This requirement applies to all components and phases of an intervention, regardless of its stated justification, whether cosmetic, anatomical, functional, or otherwise. The intervention's scope should always be as conservative as possible to limit unnecessary medicalisation. This is consistent with Articles 8 and 9 of the Oviedo Convention, which only allow interventions without consent in emergencies that prevent the appropriate consent from being obtained and are strictly limited to "medically necessary interventions which cannot be delayed", and are carried out "for the immediate benefit of the individual concerned". Even in such cases, healthcare professionals must "make every reasonable effort to determine what the patient would want", and previously expressed wishes must "be taken into account", provided they remain applicable to the current context and reflect the individual's best interests.

51. The individual concerned shall as far as possible take part in the authorisation procedure (Article 6.3.2 of the Oviedo Convention).The Oviedo Convention provides under Article 6.2.2 that in cases where a minor does not have the capacity to consent, the opinion of the minor should be taken into consideration "as an increasingly determining factor in proportion to his or her age and degree of maturity". These core principles are further elaborated in the Committee of Ministers Guidelines on child-friendly health care, 2011, which identifies the two dimensions of the right to participate in the context of healthcare, and more recently in the Guide to Children's Participation in Decisions about their Health (CDBIO,CDENF, 2024). Children should also be considered as active members of society, and not as mere passive subjects of

decisions taken by adults. This implies, taking into consideration their age and degree of maturity, that they should be informed and consulted, and given the opportunity to take part in decision-making processes on health care issues, including the assessment, planning and improvement of health care services (Guidelines on child-friendly health care, at § 12). In the spirit of the guidelines on the implementation of active and meaningful child participation as set by the Committee of Ministers Recommendation CM/Rec(2012)2 on the participation of children and young people under the age of 18, children have unique knowledge about their lives, needs and concerns and the consideration of their views can lead to more improved individual decisions and enhanced fulfilment of their rights. Moreover, Recommendation CM/Rec(2012)2 highlights that children should be given the support to freely express their views, to be heard and to contribute to decision-making on matters affecting them, being given due weight in accordance with their age and maturity.

On Paragraph 4 b)

52. The second exception to the principle set out in paragraph 3 concerns certain mature minors, who may, while not being legally capable of providing consent, still express a clear and explicit request for medical interventions related to their sex characteristics. These requests should be considered in line with their age, maturity, and ability to understand the implications of the requested medical intervention ("evolving capacities"). This concept refers to minors' increasing ability to make informed decisions as they grow older and gain more maturity, as expressed in Article 6.2.2 of the Oviedo Convention and recognised in international human rights law (Articles 5 and 12 of the UNCRC) and detailed in the Guide to Children's Participation in Decisions about their Health (CDBIO, CDENF, 2024).

53. In such cases, States need to establish robust and transparent procedures to ensure that a minor's wishes are genuine, free from coercion or external pressures, and grounded in a comprehensive understanding of the intervention's implications. Such safeguards could include an independent assessment of the minor's ability to contribute to important decisions about their body and the specific intervention requested, conducted by an impartial third party, such as a psychologist or other qualified professional, and ensuring the minor's request is considered over time rather than as a result of a momentary desire. It should be ensured that these safeguards are not themselves a source of harm, such as by introducing long waiting periods, or as a means to pressure the minor into changing their decision. The purpose of the safeguards should

be to provide minors with comprehensive and comprehensible information and to protect them from undue influence by family members, other attachment figures or medical professionals, not to deter them from expressing their wishes or to prevent them from accessing to medical interventions. As already mentioned, the child's best interests must be the primary consideration also in such procedures.

54. There may be situations where the person concerned and their legal representatives do not agree on the proposed medical intervention. In such cases, it is essential that the person concerned, even if a minor without legal capacity to consent, has access to a system that allows their voice to be heard, and their wishes considered. This means ensuring that minors have the right to be involved in decision-making processes affecting their health, and that their perspectives are not overshadowed by those of their legal representatives. A fair and balanced process should allow for the minor's views to be weighed appropriately alongside those of their legal representatives, taking into account their evolving capacity and the medical, psychological, and emotional context. In this case, the best interests should be interpreted holistically, taking into account not only the medical aspects but also the psychological and emotional wellbeing of the child, not only in the immediate future, but long-term. This may involve consultations with medical professionals, legal representatives, intersex organisations and, where necessary, authorities or other bodies designated by law. The decision-making process should be transparent, impartial, and informed by expert advice, with the primary objective of safeguarding the child's rights and wellbeing.

55. These considerations also apply to adults with permanent or long-term incapacity to provide legal consent, where a similar procedure should be established to ensure their best interests are protected, taking into account their specific needs, vulnerabilities, and any ability they may have to express their wishes. Here too, safeguards against undue influence and robust decision-making processes must be in place with the involvement of legal representatives and other authorised bodies.

On paragraphs 4i, 4ii and 5:

56. Up until recent times, the predominant approach in clinical practice regarding intersex variations across Europe, including for adults, was to withhold the correct diagnosis from patients and instead provide only vague or general descriptions of their condition. This lack of transparency extended beyond diagnosis to decision-making about medical interventions, where

critical information was often not fully disclosed to patients or their families. A notable example is a case in Germany (County Court Erlangen-Nürnberg, judgment 17 May 2015, 4 O 7000/11), in which the Court held the hospital liable for failing to fulfil its duty to provide the claimant with full information regarding her variation of sex characteristics, as well as the consequences and possible long-term effects of the surgeries and hormone treatment performed on her as a young adult. The ruling underscored that information must not be withheld on the presumption that disclosure would cause psychological distress, reaffirming the legal and ethical obligation to ensure informed consent. According to a Resolution of the European Parliament on the rights of intersex people (2018/2878 (RSP), in many EU member States "cosmetic surgeries and urgent surgeries" are proposed as a "package, preventing parents and intersex people from having full information on the impact of each" (§ C), and 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" (§ G). These lifelong consequences may include chronic pain, urinary complications, loss of sexual sensation, infertility, and dependence on ongoing hormone treatment. When interventions are carried out without the person's informed consent or without full disclosure to them, they are also more likely to lead to psychological trauma, identity confusion, and a lasting loss of trust in medical institutions and their parents.

57. Intersex persons and their legal representatives need, just as any other person, comprehensive, comprehensible and evidence-based information on any proposed medical intervention in order to be able to take or contribute to an informed decision whether to undergo it or not.

58. To guarantee the effective support of intersex persons, including intersex children and their legal representatives in decision-making, information on any medical intervention should comprise objective and evidence-based information from responsible health care professionals as to the purpose, nature and the potential harms and benefits of the planned intervention and of its alternatives, in the absence of any pressure from anyone. Information should comprise not only the risks inherent in the type of intervention contemplated, but also any risks related to the individual characteristics of each patient, such as age or the existence of other pathologies. It should include thorough explanations of the follow-up care that will be necessary after the intervention including additional interventions or on-going treatments that may be required as well as care that the patient might need to undertake on themselves or that might need to be done for them by those legally responsible for their care. According to § 35

of the Explanatory Report to the Oviedo Convention, requests for additional information made by patients must be adequately answered. According to § 36 of the same Explanatory Report, information must be sufficiently clear and suitably worded for the person who is to undergo the intervention. In the case of children, this necessitates the provision of child-friendly information, that is, information communicated in a manner appropriate to the child's age, maturity, and evolving capacities, enabling them to meaningfully understand and participate in decisions regarding their care. The patient must be put in a position, through the use of terms they can understand, to weigh up the necessity or usefulness of the aim and methods of the intervention against its risks and the discomfort or pain it will cause (Article 10 of the Oviedo Convention; *Yatsenko v. Ukraine* (Application No. 75345/01, 16 February 2012); *VC v. Slovakia* (Application No. 18968/07, 8 November 2011); *N.B. v. Slovakia* (Application No. 29518/10, 12 September 2012).

59. Detailed minutes of the consultations, communications and information should be provided to the person concerned, and their legal representatives as applicable. Prior to the intervention, the person should be given information about and the opportunity to consult with, civil society organisations working on intersex matters with a human rights-based approach, including intersex-led organisations. Several national practices illustrate the implementation of this approach. For instance, French law provides that, upon diagnosis, a member of the multidisciplinary team responsible for the child's care must inform the holders of parental authority about the existence of specialised associations supporting individuals with variations in genital development, and, where applicable, about the possibility of accessing a fertility preservation programme in accordance with Article L. 2141-11 of the Public Health Code. Similarly, the Belgian Institute for the Equality of Women and Men, at the request of the federal government, has published a brochure for the parents of intersex children. This brochure contains objective information on variations of sex characteristics and contact details of peer support groups and civil society organisations. It is freely available in all hospitals and is distributed by medical personnel to parents upon the birth of a child with such characteristics.

60. As mentioned in the Explanatory Memorandum of the 2017 PACE Report 14404 on Promoting the human rights of and eliminating discrimination against intersex people, intersex children's parents and legal representative(s) "often feel lost and alone in the face of a complex situation for which they were unprepared" and therefore "not only the intersex person but also their parents and indeed any other concerned person are entitled to receive these services".

The Committee against torture recommended ensuring that all intersex children and adolescents and their families receive professional counselling services and psychological and social support (e.g. CAT/C/FIN/CO/8, § 45, 2024); CAT/C/DNK/CO/8, § 33, 2023; CAT/C/CHE/CO/8, § 38, 2023). Thus, member States should ensure that unbiased, human rights informed, and long-term support and counselling is provided to intersex persons, in particular to intersex children and their legal representatives and to intersex adults. The Maltese law (Article 15, GIGESC Act No. XI, 2015) for example ensures that in the case of medical interventions relating to sex or gender, the person should be given expert, sensitive, individually tailored support by psychologists and medical practitioners or peer counselling for as long as necessary. The Spanish law [4/2023, article 19.3] directs the Public Administrations to develop protocols ensuring the participation of minors in the decision-making process and the provision of counselling for intersex minors and their families.

On paragraph 6:

61. To ensure that the opinion of children is respected as much as possible, in line with the principles elaborated on in § 51, member States should consider revising the legal age of consent in respect to medical decisions. There are substantial differences among member States regarding the age and conditions under which children may consent to medical treatment. In some countries, such as France, Italy and the Slovak Republic, the age of consent aligns with the age of legal majority (18), with limited exceptions. Others establish a lower fixed age: 14 in Austria, Latvia and Ukraine; 15 in Denmark and Slovenia; and 16 in Bulgaria, Ireland, the Netherlands, Norway, Poland and Portugal. Some states apply joint consent mechanisms e.g. in Poland and Ukraine, the child's consent must be supplemented by that of a legal representative. Dutch law permits children aged 12-16 to consent in specific circumstances to avoid serious harm. A few systems, like the UK, do not rely on fixed ages but assess individual maturity and decision-making capacity ("competence"). In the context of clinical research involving children, most national laws emphasise that a child's refusal to participate must be respected, even if parental consent is given (Council of Europe, Guide to Good Practice concerning the Participation of Children in the Decision-Making Process on Matters Regarding their Health, CDBIO, CDENF, April 2024).

62. Given the pressure that may be placed on intersex children to undergo interventions to align their sex characteristics with societal norms for male and female bodies, safeguards should be in place to ensure that children who are

legally able to consent, are enabled to arrive at their own decisions on whether to consent or withhold their consent for an intervention without any undue influence or pressure. The withholding of consent at a particular point in time also encompasses the decision to delay an intervention with the possibility of reviewing that decision in the future (see earlier discussion on the rights engaged at §§ 12-13, and especially the discussion regarding the requirements for free and informed consent of persons in vulnerable situations above at §§ 24-25). In countries which foresee an individual assessment of the intersex child's capacity to provide consent, the assessment should be conducted by a suitably qualified and independent professional. Such professionals should be specifically trained to recognise intersex-specific pressures, societal biases, and the potential impact these may have on the child's ability to express their genuine preferences. In this context, the UN Committee against Torture recommended providing training to persons working with or for intersex persons, particularly children. (e.g. CAT/C/CHE/CO/8, § 38, 2023). Comprehensive training in these areas is crucial to ensure that assessments are not only independent but sensitive to the unique challenges intersex children face.

On paragraph 7:

63. Historically, intersex persons have been subjected to repeated, inhumane and unnecessary examinations of their sex characteristics, usually from a very young age. These have included genital inspections, photography, and "demonstrations" on occasions performed in front of a number of medical professionals, trainees, or other observers not essential to the examination. Such practices have led to trauma and long-term psychological harm.[2] Even today, examinations on the sex characteristics of intersex persons can be experienced as stigmatising, particularly when conducted without explicit informed consent and without clear explanation of their purpose.[3]

64. The lack of sufficient communication and consent in these contexts reflects a broader issue in medical practice, with intersex persons being disproportionately affected. Special protections from violence and other harmful practices should be ensured, including respect for privacy and the prohibition of bodily

2. N. Ehrenreich and M. Barr, 'Intersex surgery, female genital cutting, and the selective condemnation of 'cultural practices'', Harvard Civil Rights-Civil Liberties Law Review, vol. 40, 2005, pp. 71-140, available at: https://ssrn.com/abstract=2926589
3. J. M. Ussher, M. Carpenter, R. Power, S. Ryan, K. Allison, B. Hart, et al., "I've had constant fears that I'll get cancer": The construction and experience of medical intervention on intersex bodies to reduce cancer risk, International Journal of Qualitative Studies on Health and Well-Being, vol. 19, no. 1, 2024, available at: https://doi.org/10.1080/17482631.2024.2356924.

examinations, or exposure, such as medical photography and display, that do not have a therapeutic scope. Member States should ensure that medical professionals prioritise fully informed and voluntary consent before conducting any examination. This includes clearly explaining the necessity, process, and potential impact of the examination, as well as obtaining explicit agreement from the individual. Medical professionals must also be trained to balance the need for clinical experience and healthcare training with ethical alternatives to invasive procedures, such as prioritising medical photography over repeated physical examinations, while actively avoiding stigmatisation and pathologisation.

65. In the framework of their obligations under Article 2 of the Convention, member States should also assess whether there is a risk of infanticide and killings[4] of intersex persons that can occur in some communities living in Europe based on cultural beliefs, and take effective action to prevent such crimes (See OHCHR Technical note on the human rights of intersex people, 2023; CCPR/C/KEN/CO/4 (CCPR 2021), § 12 (e); CEDAW/C/NPL/CO/6 (CEDAW 2018), § 18 (c)).

B. Monitoring mechanisms and legal accountability

On paragraph 8:

66. As already stated, several member States have enacted legal provisions to limit medical interventions on intersex persons; but oversight of and data on the implementation of these measures is at times lacking. According to § 27 of ECRI GPR No. 17 on preventing and combating intolerance and discrimination against LGBTI persons (2023), the "practice [of medical interventions on intersex persons] remains largely under-explored, and it is often decided within the discretion and regulation of domestic medical bodies and individual clinicians". The UN Committee against Torture recommended that legislation prohibiting irreversible surgical interventions on intersex children for cosmetic reasons be adequately enforced and that studies be conducted to better understand and address this issue (e.g. CAT/C/DNK/CO/8, § 33, 2023). To ensure effective implementation of the aforementioned provisions, it is important to mandate and sufficiently resource monitoring and evaluation mechanisms in this area, which should collect data on the number and nature of interventions on variations of sex characteristics performed in the member State, whether by public or private health care providers. A notable example

4. Hugo, J. & Pertl, L. (2023). Intersex Refugees & Asylum Seekers Toolkit. OII Europe, 1st edn, December 2023. Available at: https://www.oiieurope.org/wp-content/uploads/2024/03/RASTK-web.pdf

is the French Bioethics Law (Article 30 III), which requires the Government to submit a report to Parliament on the activity and functioning of the relevant rare disease reference centres. The report must include information on the care of persons with variations of sex characteristics, the number and nature of medical procedures carried out in connection with these variations, and the extent to which international treatment guidelines are followed. It is also accompanied by statistical data on the number of persons concerned and may be the subject of parliamentary debate.

67. Such monitoring could involve the setting up of new structures or where present, extending the scope of existing ones where such mechanisms are already in place. Those tasked with this monitoring and evaluation function should, based on clear terms of reference, be able to operate impartially and independently from any undue interference. Monitoring mechanisms should also guarantee anonymous reporting channels to safeguard against malpractice and unethical practices by healthcare providers. Evaluation should focus on the overall implementation of the provisions and, where applicable, make recommendations to address any outstanding issues, including proposals for closing gaps and amending existing provisions to ensure effectiveness. It is also recommended to consult with organisations representing the national intersex community as part of the evaluation process.

On paragraph 9:

68. The positive obligation under Article 3 of the Convention necessitates establishing a legislative and regulatory framework to shield individuals adequately from breaches of their physical and psychological integrity, particularly, in the most serious cases, through the enactment of criminal-law provisions and their effective application in practice (*X and Others v. Bulgaria*, Application No. 22457/16, § 179, 2 February 2021). Member States thus have a positive obligation to investigate such allegations of ill-treatment, even if administered by a private individual, when they are "arguable" and "raise a reasonable suspicion" (*M. and Others v. Italy and Bulgaria,* Application No. 40020/03, §100, 31 July 2012). Further, Articles 23 and 25 of the Oviedo Convention oblige States parties to provide for appropriate judicial protections and appropriate sanctions to be applied where there are unlawful infringements of the rights and principles set forth therein. For the prohibited practices enumerated in this Recommendation, especially those related to violations of Article 3 and the protection of bodily integrity to be effective, States must ensure that they provide for sufficiently severe sanctions as well as measures to ensure their

effective enforcement. As regards extra-territorial jurisdiction for investigating and sanctioning, the Council of Europe has already called in a similar case for States to take legislative or other measures to ensure jurisdiction over offences established in the Istanbul Convention, including female genital mutilation, where committed by one of their nationals or a person who has her or his habitual residence in their territory, even if those acts are not criminalised in the territory where they are committed (see Istanbul Convention ETS No. 210, Article 44, §§ 1 and 3). Considering the serious nature of the interventions prohibited in this Recommendation, member States, in respect of their national frameworks on extra-territorial jurisdiction, should similarly criminalise these practices even if committed outside of their territory.

C. Justice and redress

On paragraph 10:

69. To date, few cases of human rights violations experienced by intersex persons have reached the courts. A contributing factor to this could be that often, lawsuits would need to be taken against the parents or legal representatives who consented to the medical interventions and not against institutions or individuals who performed the interventions (Council of Europe Commissioner for Human Rights, 2017). Under Article 3 of the Convention, member States have a positive obligation to investigate allegations of torture and inhuman and degrading treatment (*Assenov and Others v. Bulgaria*, Application No. 24760/94, § 102, 28 October 1998). The United Nations Committee on the Rights of the Child (CRC), in its concluding observations, has urged several member States to provide intersex persons subjected to medical interventions with access to justice and redress, including appropriate compensation and rehabilitation, among them Belgium, Cyprus, Czechia, Denmark, Croatia, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, Portugal, Spain, Switzerland and the United Kingdom. The CAT also recommended ensuring that medical records can be accessed, and investigations launched in all cases where intersex persons have been treated or operated on without their effective consent (CAT/C/CHE/CO/8, § 38, 2023), and that perpetrators are prosecuted and, if found responsible, punished (CAT/C/NLD/CO/7, § 53, 2018). To ensure that intersex persons receive adequate redress, Member States should provide access to justice, including transitional justice and other forms of restorative justice that lead to adequate reparation and comprise safeguards against repetition (Resolution of the European Parliament on the rights of intersex people (2018/2878 (RSP); UN Human Rights Council Resolution A/HRC/RES/55/14, cited above).

70. Redress should also comprise a public apology, coordinated with national intersex organisations and impacted persons, which provides adequate acknowledgement of the suffering and injustice caused to intersex persons, as well as measures to address any discriminatory treatment and human rights violations where these persist. Member States could take inspiration from the Dutch government, which in 2021 issued a public apology and established a fund to provide financial compensation to trans and intersex persons who were subjected to medical interventions and treatments that led to forced sterilisation in order to access legal gender recognition. To secure access to justice and redress, member States should also consider introducing national enquiries with a view to investigate the number of intersex victims and the scope of the damages created in the past and establishing a public or private fund charged with protecting the rights of intersex persons for the future, including through strategic litigation. The French Senate for example has recommended that the State considers granting compensation, possibly through a specific compensation fund, to individuals having suffered as a result of non-consensual medical interventions or treatments (PACE Report 14404, Explanatory Memorandum, 5.1 Prohibitions taken at international level, 2017).

71. In 2005, the UN Human Rights Committee Resolution on the Right to Truth recognised the importance of respecting and ensuring the right to the truth in order to contribute to promoting and protecting human rights (Doc E/CN.4/RES/2005/66, § 1). This obligation, taken together with the rights of intersex persons under the General Data Protection Regulation (Regulation (EU) 2016/679) supports the finding of the Council of Europe Commissioner for Human Rights that truth, and accountability for past malpractice and human rights violations, should be the cornerstones of any process towards reparation (Council of Europe Commissioner for Human Rights, 2017, p. 51). At the same time, intersex persons' right to truth is intrinsically related to the right to know the truth about their own past and present and it enables member States to address the root causes of human rights violations (Report of the Office of the UN High Commissioner for Human Rights on the Right to Truth, A/HRC/12/19, 2009). Moreover, member States should guarantee that society at large is properly informed about human rights violations that intersex persons have faced and their consequences, to address current stereotypes which lead to the marginalisation of intersex persons and to early medical interventions and treatments. All the above actions should be realised in consultation with intersex persons and intersex rights organisations.

On paragraph 11:

72. Member States should ensure the adoption of appropriate statutes of limitations under their criminal law to enable intersex persons to access redress and to enable investigation, prosecution, trial and judicial decision for medical interventions and treatments that were performed on them without their consent and that were not necessary to avert an imminent threat to life or imminent damage to physical health. In doing so, they could take inspiration from Article 13 of Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence dealing with limitation periods, which calls on member States to take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and adjudication of criminal offences for a sufficient period of time after the commission of those criminal offences in order for those criminal offences to be tackled effectively.

73. They could also take inspiration from the UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Court of Human Rights. The former, in its General Comment No. 3 (2012) on the Implementation by States parties of Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, stated that "on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress" (§ 40). The latter, sometimes quoting the Council of Europe Committee against Torture, has repeatedly stated that member states should not apply limitation periods with "excessive formalism", especially when it is about torture and other inhuman and degrading treatment, which may "undermine victims' capacity to complain about treatment inflicted on them, and may thus constitute a significant impediment to the right to redress of victims" (*Mocanu and Others v. Romania*, Application No. 10865/09, §§ 224 and 274, 17 September 2014). The Court has also found excessive "formalism" when limitation periods were interpreted in a way that would lead to declare a case inadmissible before the victim had sufficient evidence demonstrating the breach of their right (*Loste v. France*, Application No. 59227/12, § 77, 3 November 2022). The limitation period should be commensurate with the gravity of the criminal offence concerned and the ability of the victim to effectively ask for redress.

74. Member States should also ensure appropriate statutes of limitations for intersex persons seeking redress or damages. The extension of the statute of limitation in civil law proceedings, should likewise accommodate the fact that intersex persons subjected to violations may need a significantly long time

to recover from trauma and discrimination and to access information about treatment performed on them; thus they might need a longer time period for initiating legal proceedings. Additionally, intersex persons may not have had access to their full medical records or information about past medical interventions, which could delay their ability to fully understand the nature and consequences of what was done to them.

75. Article 13.2 of Directive (EU) 2024/1385 also stipulates that where the victim is a child, the limitation period for the criminal offence of female genital mutilation, should not commence before the victim has reached the age of 18. Given the similarities between female genital mutilation and intersex genital mutilation (both are typically performed when the person is a child, leaving the person with long lasting consequences on their health and mental well-being), member States should ensure that when there is a limitation period for civil or criminal actions related to violations that occurred while the person was a minor, this limitation period should not begin until the person reaches majority or, if later, when the person becomes aware of the violation.

II. Right to security

A. Hate crime and hate speech

On paragraph 12-14:

76. Negative stereotypes and bias against intersex persons are deeply entrenched in society without being perceived or addressed as such. As a result, intersex persons are exposed to incidents of hate speech and hate crime that undermine their rights to life, to protection from inhuman or degrading treatment, and to respect for their private life. An Intersectional Analysis of the 2019 FRA LGBTI II Survey dataset conducted by ILGA-Europe and OII Europe revealed that almost half (49.40%) of intersex respondents indicated that they had been physically or sexually attacked compared to 25% of all LGBTI respondents. Among those intersex persons who were attacked at least once for any reason, almost half of respondents indicated that they were attacked for being intersex and this amounted to 24% of all intersex respondents. In the 2024 FRA EU LGBTIQ Survey III, 32% of intersex respondents reported having been a victim of physical and sexual violence in the previous five years, while 67% of intersex respondents in the EU27 reported experiencing harassment in the previous 12 months. Of these, 55% reported experiencing offensive or threatening comments at least once due to being LGBTIQ in the previous 12 months with 5% reporting that such incidents occurred all the time. ECRI has

expressed concern about violence and discrimination against intersex persons, underlining the need for authorities to effectively address hate speech and hate crime targeting LGBTI people (e.g. ECRI General Policy Recommendation No. 15 on Combating Hate Speech and General Policy Recommendation No. 17, and monitoring reports for member States. The UN Committee against Torture has raised similar concerns in several concluding observations (e.g., CAT/C/POL/CO/7, § 35, 2019; CAT/C/RUS/CO/6, § 32, 2018) regarding reported violent incidents against LGBTI persons, as well as the inadequate or lack of investigation and prosecution of such incidents. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), in its evaluation reports on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("the Istanbul Convention"), repeatedly highlighted the heightened exposure of LBTI women, including intersex women, to violence against women (e.g., GREVIO's first thematic evaluation report on Spain, 2024, §26).

77. To combat these phenomena, the legislation should be reviewed to prevent, prohibit and combat hate crime, hate speech and other hate motivated incidents against intersex persons. To that aim, the ground of "sex characteristics" should be included as a specific ground in hate crime legislation or, at the least, the ground of sex or gender should be authoritatively interpreted to include sex characteristics (§ 2 of Recommendation CM/Rec(2024)4 of the Committee of Ministers to member States on combating hate crime; see also the Commissioner's recommendations on "Human rights and intersex people", 2015, European Parliament Resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones (2019/2933 (RSP); and ECRI General Policy Recommendation No. 17, 2023). At the time of the drafting of this Recommendation, only seven member States had introduced specific protections from hate crime on the ground of sex characteristics (Belgium, Denmark, Germany, Greece, Iceland, Ireland and Malta) with Spain and the United Kingdom providing such protection in some regions or jurisdictions.

78. Hate speech is another phenomenon with far-reaching and harmful consequences that impacts on the dignity and human rights of the individual targeted as well as on persons belonging to the same group. As outlined in CM/Rec(2022)16, careful balancing between the rights of victims of hate speech and the right to freedom of expression is needed, including respect for the independence of the media. "The targets of hate speech become increasingly excluded from society, forced out of the public debate and silenced. Hate speech also inhibits those targeted by it from freely sharing and imparting ideas, to

voice their concerns and be adequately represented (Explanatory Memorandum to CM/Rec(2022)16, §§ 1-2). The rise of hate speech, especially online, has been well-documented by various monitoring bodies and organisations, indicating a concerning trend that requires decisive action to safeguard human rights and democratic stability (ECRI Factsheet on LGBTI Issues; FRA Report "Online content moderation – Current challenges in detecting hate speech", 2023; PACE Resolution 2417 (2022): "Combating rising hate against LGBTI people in Europe"). Member States should make sure that they implement, based on Recommendation CM/Rec(2022)16, a comprehensive set of measures for the prevention and combat against hate speech that also cover intersex persons.

79. Importance should also be given to establishing monitoring mechanisms to guarantee the effective implementation of the above-mentioned provisions and measures, including the recording of hate crimes and hate speech on the ground of sex characteristics. In addition, intersex persons should be included in provisions and measures concerning the rights, support, and protection of victims of hate crime and hate speech. Intersex persons who are victims of hate crime and hate speech should be provided with adequate support which is based on the individual's needs, along with individually tailored psychosocial counselling by trained professionals, and peer support (see paras. 11 et seq. of CM/Rec(2024)4; GREVIO, Baseline evaluation report on Greece, 2023, §137). An intersectional approach should be incorporated in all provisions and measures taken, as intersex persons can be victims of hate based on multiple and intersecting grounds including disability (See UN Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016), § 30-32).

B. Protection of persons deprived of their liberty

On paragraph 15:

80. Intersex persons deprived of liberty face unique vulnerabilities and are at heightened risk of physical and sexual violence, discrimination, harassment, degrading treatment due to their sex characteristics, and medical neglect in detention settings, where institutional policies may not be designed to accommodate their needs. Therefore, specific protections are required to ensure their dignity, safety and access to appropriate care. The protection of intersex persons in detention is grounded in established human rights law, including the European Convention on Human Rights (Article 3 – prohibition of inhuman or degrading treatment) and international standards such as Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules and the 2015 UN Standard Minimum Rules for the Treatment of Prisoners.

81. Failure to provide adequate safeguards for intersex persons in detention may constitute a violation of international human rights obligations. The UN Committee Against Torture has considered the situation of intersex persons deprived of their liberty under articles 2, 11 and 16 of the Convention and noted the absence of protocols addressing their specific needs (e.g. CAT/C/SLV/CO/3, § 22-23, 2022, and CAT/C/GTM/CO/7, § 40-41, 2018). It expressed concern about the abuse and stigmatisation faced by LGBTI persons at the hands of public officials and fellow inmates, as well as the lack of risk assessment regarding violence against them in the places of deprivation of liberty (e.g. CAT/C/MKD/CO/4, § 16, 2024; CAT/C/BLR/CO/5, § 29, 2018). As a result, the Committee called on States parties to ensure that the specific needs of LGBTI persons deprived of their liberty are adequately addressed (e.g. CAT/C/SLV/CO/3, § 23, 2022), to expedite the adoption and implementation of protocols to address these needs in the prison system (e.g. CAT/C/GTM/CO/7, § 41, 2018), and to take all necessary measures to protect LGBTI persons from threats and violence, particularly in detention. States should ensure that violence against LGBTI persons is promptly, impartially and thoroughly investigated and that perpetrators are prosecuted and punished (e.g. CAT/C/NAM/CO/2, § 31, 2017). Detention facilities may overlook the need to provide safe placement options for intersex persons. Many detention facilities may not have healthcare protocols addressing the needs of intersex persons, leading to denial of essential medical treatment, including follow-up care for previous medical interventions. Intersex persons may also be subject to invasive searches and examinations, often conducted without necessity or regard to dignity (See also § 84).

82. To address these challenges, member States should develop and implement specific policies to safeguard the rights of intersex persons deprived of liberty, including ensuring appropriate placement policies that prioritise the safety and dignity of intersex persons; developing specific healthcare protocols to ensure intersex detainees receive adequate medical care; and providing training for detention facility staff on the rights and needs of intersex persons. Although European standards have primarily addressed the situation of transgender persons, the principles articulated are equally relevant to the situation of intersex detainees. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has emphasised the importance of individualised risk assessments and protective measures for vulnerable detainees, along with regular training for prison staff. Such training should enable staff to "prevent, identify and respond to bullying, harassment and discrimination on the grounds of sex, sexual orientation, gender identity, gender expression and sex characteristics", and should be part of both initial

and ongoing professional development. It should involve external experts with relevant experience and, where possible, peer counselling. These measures are essential to ensuring that the specific needs of intersex persons are recognised and effectively addressed. Similarly, it is important to underline the importance of equipping law enforcement officials, which may include custodial staff, including those in immigration detention centres and prisons, with the competencies to prevent and combat anti-LGBTI discrimination, hate speech and violence . A practical example is Malta's Trans, Gender Variant and Intersex Inmates Policy, which sets out comprehensive guidance on respecting the gender identity of intersex inmates, including policies on, among other issues, names, pronouns, clothing, showers and changing facilities, access to LGR processes and to all necessary healthcare, including intersex-specific healthcare.

III. Right to seek asylum

On paragraph 16-18:

83. According to the UN Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity from 2012, intersex persons qualify for protection based on membership of a particular social group under Article 1.a.2 of the UN Refugee Convention of 1951 (§ 46). The European Union Agency for Asylum has likewise, in 2024, published a set of guides and tools on applicants with diverse sexual orientations, gender identity, gender expressions and sex characteristics for EU member States. The guidance recognises that intersex persons may face persecution linked to their sex characteristics, including forced medical interventions and societal stigma, and may therefore qualify for international protection. It stresses that intersex applicants must not be required to conceal their identity or undergo medical testing, and that authorities should ensure respectful, individualised procedures, including the right to choose the interviewer's sex and be interviewed separately from family members. It emphasises that reception conditions must safeguard dignity, safety, and privacy, supported by trained staff sensitive to intersex-specific needs. Belgium, Malta, Montenegro, Norway, and Sweden explicitly recognise persecution on the ground of sex characteristics for the granting of refugee status. This should include the well-founded fear from medically unnecessary interventions and enable persecuted children and their families to obtain protection.

84. As official data on the reasons of intersex persons for fleeing, their specific protection needs during the arrival and asylum application and integration

process are lacking, there is a need for the collection of information and data to reflect the specific risks faced by intersex asylum seekers and refugees (see for example FRA 2017 Current migration situation in the EU: Lesbian, gay, bisexual, transgender and intersex asylum seekers). The only available guidance was published by OII Europe in 2023 and reveals a number of challenges, including a lack of access to education and health services, as well as experiences of bullying and physical abuse by family members. Intersex persons may also encounter difficulties in the process of seeking asylum if their identity documents are interpreted as not being aligned with the way a person looks based on societal norms for male and female bodies. This also applies to intersex minors, whose bodies are further developing because of their variation of sex characteristics, and whose secondary sex characteristics may no longer match the photo in their passport. These "differences" may raise the suspicion of authorities and may result in the intersex person being further questioned and/or examined, thereby exposing the person to discrimination and/or violence.

85. Measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression, or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their situation. Member States should ensure access to intersex-specific healthcare in both the host and transit country, being reminded that upon arrival, some intersex persons may have urgent healthcare needs. Individual assessments should determine the specific needs of intersex refugees and asylum seekers that may involve hormonal treatment, hormone blockers, antidepressants and other mental health medications, bone density medication and medical care, salt-wasting medication, adrenal supplements, corticosteroids, glucocorticoids, and thyroid medication. Lack of access to such services may give rise to serious and life-threatening consequences. In some instances, the intersex person may already have gone through extended periods without accessing such healthcare (for example, in the case that the person is fleeing armed conflict, or a warzone; or if the person has travelled by sea). The housing of intersex persons in shelters and camps and their access to facilities should be aligned with their gender identity and take their specific needs into account. Intersex persons should also have access to intersex-sensitive doctors, translators, asylum officers and counsellors, all of whom should adopt a human rights-based approach, as well as contact with intersex organisations and intersex peers, or when not available in the host/transit country, LGBTI civil society. Member States should consider the specific needs of families and parents with intersex children, which can include those just mentioned. (See also §§ 80-82).

IV. Substantive equality and prohibition of discrimination

A. General issues

On paragraph 19:

86. ECRI notes in ECRI GPR No. 17 (§ 2) that across the area of the Council of Europe intersex people continue to experience high rates of discrimination and abuse, including violence, on the ground of sex characteristics. Similarly, the FRA 2023 LGBTIQ Survey III found that intersex persons experience disproportionately high levels of discrimination, with 61% of intersex respondents reporting having experienced discrimination because of being LGBTIQ in at least one area of life in the year before the survey. For instance, visible physical variations may serve as a pretext for bullying and exclusion in schools, as well as underemployment or dismissal later in life. According to the aforementioned FRA EU LGBTIQ Survey III, intersex persons report experiencing disproportionately high levels of discrimination including when searching for work (31%) or when searching for housing to rent or buy (28%). Reports of bullying experiences at school have increased by half again, with 76% of intersex respondents saying that during their time in school they suffered bullying, ridicule, teasing, insults or threats, compared to 50% in the previous FRA LGBTI Survey II of 2019. With regards to homelessness, a notable proportion of intersex respondents (6%), have had to sleep in a public space at least once in their life, a figure 30 times higher than the 0.2% applicable to the general population.

87. To remedy this high level of discrimination, there is a need to protect the human rights of intersex persons and promote substantive equality for them through targeted equality, inclusion and diversity policies, including positive action in all spheres of life, particularly in education, work, healthcare, housing, social protection, sport, as well as in cultural and political spheres. Data collected in 2025 through the comprehensive review of the implementation of Recommendation CM/Rec(2010)5 indicates that a number of member States protect intersex persons on an equal footing with others across several key areas. Specifically, twelve States (Albania, Belgium, Bosnia and Herzegovina, Denmark, Finland, Greece, Iceland, Malta, Montenegro, Netherlands, Serbia, and Spain) include intersex persons in protections related to public sector employment. Eleven States (Albania, Belgium, Bosnia and Herzegovina, Denmark, Finland, Iceland, Malta, Montenegro, Netherlands, Portugal, Serbia, and Spain) reported relevant measures in the field of education. Six States have adopted equality action plans that incorporate measures that address

the ground of sex characteristics (Bosnia & Herzegovina; Greece; Iceland; Ireland; Luxembourg & Malta). Healthcare-related measures were identified in six States (Albania, Bosnia and Herzegovina, Denmark, Iceland, Netherlands, and Spain), while eight States (Belgium, Bosnia and Herzegovina, Germany, Greece, Iceland, Malta, Netherlands, and Slovenia) reported mandates for their National Human Rights Institutions (NHRIs) that include intersex persons. To ensure equality for intersex persons and protect their human rights comprehensively, member States should adopt and effectively implement legislative and other measures that cover all spheres of life.

On paragraph 20:

88. Regarding anti-discrimination frameworks in particular, as of 2023, only a few European countries provide express protection for intersex persons through the inclusion of "sex characteristics" as a formal ground in anti-discrimination laws. In some jurisdictions, domestic courts have interpreted existing "sex" or "gender" protections to cover unequal treatment of intersex persons (ECRI General Policy Recommendation No. 17, § 35; see also European Commission, 2018, Trans and intersex equality rights in Europe). In the second group of jurisdictions, domestic courts retain a certain degree of discretion in determining whether intersex persons are protected under these existing grounds. The resulting legal uncertainty leaves intersex persons vulnerable to inconsistent judicial interpretation and gaps in protection. Therefore, the ground of sex characteristics should be included in equal treatment and anti-discrimination provisions and failing this, it should be ensured that sex characteristics are effectively covered under the grounds of 'sex' 'gender' or 'other' or unspecified grounds (See PACE Resolution 2191 (2017); European Parliament resolution on the rights of intersex people (2018/2878 (RSP)). On a similar note, the member States of the EU need to ensure, according to Article 6 of EU Directive 2024/1500 on standards for equality bodies, that their equality bodies are able to provide assistance to all persons who consider that they have experienced discrimination, irrespective of their sex characteristics. To guarantee the effective implementation of the above-mentioned provisions and measures, member States should support activities that include awareness raising, capacity building and trainings addressed to lawyers, police, prosecutors, judges and all other relevant professionals, as well as intersex persons about the protection of intersex persons under anti-discrimination law (ECRI GPR No. 17, 2023, recommendation 36; Recommendation CM/Rec (2010)5; PACE Resolution 2191 (2017)).

B. Education, work and sport

On paragraph 21-22:

89. For the field of education, the FRA 2023 LGBTIQ Survey III findings referenced above demonstrate that intersex persons experience discrimination and bullying at school and in further education, which includes the use of derogatory language and psychological and physical violence. Such incidents often occur when a person's stature or other parts of their appearance or their gender expression, do not conform to the prevailing female or male norms in settings such as gendered dress codes, gendered spaces and facilities, or entrance requirements, or when their legal sex, as documented, does not align with their gender identity. Intersex students, in educational environments which lack appropriate policies on preventing and combatting bullying, harassment, discrimination and violence, are at risk of suffering acute and chronic stress, impacting their physical and mental health. This situation is exacerbated where educational curricula make little or no reference to variations of sex characteristics, reinforcing social isolation (ECRI GPR No. 17, §§ 29-30).

90. Throughout its sixth monitoring cycle ECRI has called on a number of member States to introduce systems capable of effectively monitoring LGBTI-phobic incidents at school, including bullying, with a view to devising relevant long-term policies and appropriate prevention and response mechanisms including through the conduct of regular surveys and mandatory teacher training (ECRI Country Monitoring Reports on: Serbia (2024) §17; Iceland (2023) §19; Luxembourg (2023) §15; Poland (2023) §12). At national level, a good practice is the policy by the Maltese Ministry for Education and Employment entitled Trans, Gender Variant and Intersex Students Policy, 2015 developed in conjunction with LGBTI civil society. The Policy states that "in order for the issues of trans, gender variant and intersex students to be addressed effectively, responsibility for creating a safe school is to be shared by all stakeholders involved, including all teaching and administrative school staff (college principals, school management teams, educators, etc.) and support services. Addressing gender identity, gender expression and sex characteristics issues in schools is a continuous endeavour that involves a proactive approach to new forms of inclusivity. This process includes not only understanding and supporting the student, but also identifying areas of change and adjusting accordingly".

91. It is equally important that member States ensure that regulations and practices in public and private sectors do not bypass national protection and

anti-discrimination legislation and provisions such as in unjustified exemptions related to religion in educational institutions or discriminatory guidelines and regulations for participation set by sport governing bodies. The 2020 Report (A/HRC/44/26) of the United Nations High Commissioner for Human Rights to the General Assembly on the intersection of race and gender discrimination in sport recommended that in addressing discrimination in sport they should ensure "that their national anti-discrimination law is adequate to address discrimination on the basis of gender[...] including discrimination on the basis of particular intersex variations or on the basis of sex characteristics. Such domestic law, in conformity with international human rights obligations, needs to be applicable to and in practice be applied to sport governing bodies" (§ 54b).

92. Member States should also consider the at times long-term impacts that intersex persons may experience due to discrimination and inequality they may have experienced in education and work settings. Discrimination in access to education could lead to lower educational attainment and result in lower earnings throughout the working life of intersex persons. The 2024 FRA LGBTIQ Survey III found that respondents' educational attainment is related to their experiences of discrimination with respondents with lower levels of education reporting a higher prevalence of discrimination (41% for those achieving International Standard Classification of Education (ISCED) levels 1-3 compared with 36% for those achieving ISCED levels 5-8). Similarly, discrimination in access to work, including recruitment practices and career advancements or interruptions in working life due to medical leave can impact pension wealth. The survey also found that a higher proportion of intersex respondents reported experiencing discrimination, such as when looking for work (31%) in 2023 than in 2019 (27%). These could give rise to a pension gap and inequalities posing a risk to intersex persons' quality of life, dignity and autonomy in old age.

On paragraph 23:

93. Article 10 of the Revised European Sports Charter states that all human beings have an inalienable right of access to sport in a safe environment as it relates to the exercise of the rights to health, education, culture and participation in the life of the community (Article 10, Recommendation CM/Rec(2021)5 of the Committee of Ministers to member States on the Revised European Sports Charter). According to Articles 6 and 10 of this Charter, member States should therefore ensure that intersex persons are able to participate in sport, including competitive sport at all levels (from grass roots/amateur to professional), in

accordance with their gender identity (see also PACE Resolution 2465 (2022) and the conclusions and recommendations of the EPAS Diversity Conference in 2021 for the protection and promotion of the human rights of intersex and transgender athletes in sports).

94. Emphasis must be placed on ensuring inclusive access at all levels, from grassroots, recreational and amateur sports to elite competitions, as appropriate, for both children and adults. This is essential for promoting health, education, culture, and community participation of intersex persons. It is important to acknowledge that the sports movement is autonomous whereby sport bodies enjoy a degree of autonomy in regulating competitions. Such autonomy should be exercised in a manner consistent with international human rights standards, ensuring that participation is inclusive and non-discriminatory.

95. While the issue of the participation of intersex athletes in elite sport, such as the Olympics, often captures public and media attention, it is important to recall that most people, including intersex people, who participate in both recreational and organised sports do so at the grass roots or amateur level.

96. The risk of discrimination relating particularly to intersex participation in sport can arise through the establishing of criteria for participation in the women's category on the basis of innate sex characteristics. These policies can at times be entrenched in stereotypes and norms related to physical appearance of female athletes whose bodies are perceived as not fitting to sex characteristics typically attributed to women. These policies have been particularly enforced against and disproportionately harm Black and Brown women and athletes from the Global South, particularly those who do not conform to Western norms of femininity[5]. The processes, methods and criteria used by sport organisations for determining sex have shifted over time with current practices requiring women athletes with variations of sex characteristics

5. Dugas, M. (2024) 'Gender According to World Athletics: The Regulation of Racialized Athletes from the Global South', Dalhousie Law Journal, 47(2), pp. 465-500. Available at: https://digitalcommons.schulichlaw.dal.ca/dlj/vol47/iss2/5/; Karkazis, K. and Jordan-Young, R. (2018) 'The Powers of Testosterone: Obscuring Race and Regional Bias in the Regulation of Women Athletes', Feminist Formations, 30(2), pp. 1-39. Available at: https://www.jstor.org/stable/26776911; Laura A. Wackwitz, "Verifying the Myth: Olympic Sex Testing and the category 'woman' (2023) 26(6) *Women's Studies International Forum* 553-560. Available at https://www.sciencedirect.com/science/article/pii/S0277539503001237?casa_token=wT5i-irfixbsAAAAA:eLJ0QjIcUvHNsSR5hD0t9UORw1ApVuZv0m2gp8lu7NhEK2AHAWvxAu6NpMJSP869Yd7tKHiK; Lindsay Parks (2014). Sex Testing and the Maintenance of Western Femininity in International Sport, The International Journal of the History of Sport, 31:13, 1557-1576, DOI: 10.1080/09523367.2014.927184

to reduce their blood testosterone to a specified level to maintain eligibility to compete in the female category. While aiming to create fair competition rules, international sports bodies, such as World Athletics (formerly, the International Amateur Athletic Federation (IAAF)) among others, have adopted regulations and guidelines for sex verification that have presented significant challenges to intersex persons and their access to elite sports. In general, these may also influence policies at school and community levels, limiting the participation and inclusion of intersex persons in non-professional sports. The Women's Sports Foundation has expressed concerns that eligibility standards requiring athletes to demonstrate particular hormone levels promote the policing of gender by medical means, leading to unwarranted invasions of privacy not only for intersex athletes but for any athlete whose femininity is questioned. In this regard, World Athletics announced in March 2025 that it intended to require pre-screening of all women athletes to determine their eligibility for the female category. This has elicited criticism from a range of stakeholders, including Organisation Intersex International (OII) Europe, which condemned the policy as scientifically flawed due to its reliance on SRY gene testing, warning it risks misclassifying athletes. The organisation further denounced the measure as a return to outdated and harmful practices abandoned in 1999 for their discriminatory impact on athletes with variations of sex characteristics. The 2021 International Olympic Committee Framework on Fairness, Inclusion and non-Discrimination on the Bases of Gender Identity and Sex Variations sets out ten guiding principles for sport organisations that aim to promote a safe and welcoming environment for everyone, consistent with the principles enshrined in the Olympic Charter. These include the prevention of harm, including that the physical, psychological and mental well-being of athletes should be prioritised when establishing eligibility criteria; that there is no presumption of advantage and that no athlete should be precluded from competing or excluded solely on the ground of an unverified, alleged or perceived unfair competitive advantage due to variations in sex characteristics; and the primacy of health and bodily autonomy, which states that athletes should never be pressured to undergo medically unnecessary procedures or treatment to meet eligibility criteria.

97. In *Semenya v. Switzerland* (2025, cited above), the Court examined a complaint brought by a professional athlete who had been required under non-State regulations enacted by World Athletics to lower her natural testosterone levels in order to be allowed to compete in the women's category in international competitions. The athlete's complaint to the Court followed an unsuccessful private arbitration at the Court of Arbitration for Sport (CAS)

and subsequent affirmation of the CAS decision by the Swiss Federal Tribunal (SFT). Following a Chamber judgment which found a violation of Article 14 in conjunction with Article 8, the Grand Chamber found the claims under these articles inadmissible under Article 1, but did find a violation of Article 6(1). The Court held that where there is a structural imbalance between athletes and sports governing bodies, and participation in competitions is subject to compulsory arbitration (§§ 211-216), any conditions affecting the ability to compete must be subject to particularly rigorous judicial scrutiny (§§ 205-210, 238) to ensure their compatibility with the Convention. This is especially so where such conditions engage fundamental rights, including dignity, bodily and psychological integrity, privacy, social identity and gender (§ 215-216), or risk disclosing personal information without an in-depth proportionality assessment (§ 234).

98. A significant challenge to testosterone-based eligibility regulations arose in Dutee Chand v. Athletics Federation of India & IAAF (CAS 2014/A/3759; 2015) before the Court of Arbitration for Sport (CAS). Chand, an Indian sprinter, contested regulations requiring female athletes with naturally high testosterone levels to undergo medical interventions to compete. CAS ruled that the regulations were discriminatory as they only applied to a subset of female athletes with a certain natural physical characteristic (namely elevated endogenous testosterone levels, often resulting from variations in sex characteristics) and that they did not meet proportionality requirements due to the lack of sufficient scientific evidence proving that endogenous testosterone conferred a competitive advantage significant enough to justify exclusion of the athlete from any competition in the female category. The case highlighted concerns about the arbitrary and invasive nature of sex testing, including physical and genital examinations, breaches of privacy, and pressure on athletes to undergo medically unnecessary interventions. CAS temporarily suspended the regulations, marking an important legal precedent in challenging discriminatory eligibility rules in sport. Taking into account the autonomy of sport and the sports movements role to decide its competition rules, where it has been determined that intersex athletes have been subjected to humiliation, unjustly excluded from competition or unfairly stripped of their titles, they should have accessible and effective remedy mechanisms, and reparation such as reinstatement.

99. In a letter to IAAF (now World Athletics) regarding the 2018 regulations, two Special Rapporteurs and a Working Group of United Nations human rights experts raised concerns that the regulations effectively legitimise the

surveillance of all women athletes based on stereotypes of femininity, adding that the regulations would in effect single out a group of women athletes, putting them at risk of repercussions far beyond the inability to compete, while also subjecting them to shame, ridicule and intrusion upon their personal and private lives. Additional harms stemmed from the implication that the women need to be "fixed" through medically unnecessary interventions with negative health impacts (Letter to the IAAF, September 2018; Reference OL OTH 62/2018).

100. The 2020 Report A/HRC/44/26 of the United Nations High Commissioner for Human Rights to the General Assembly on the Intersection of race and gender discrimination in sport linked the regulations for female eligibility in sport to potential human rights violations including: the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment; the right to work and to the enjoyment of just and favourable conditions of work; the right to the highest attainable standard of physical and mental health; the right of everyone to be free from arbitrary interference with their privacy; and the right to respect for the dignity, bodily integrity and bodily autonomy of the person (§ 33-34). The report recommended that "States should prohibit the enforcement of regulations that pressure athletes to undergo unnecessary medical interventions as a precondition for participating in sport and should review and investigate the alleged enforcement of such regulations" (§ 55). The 2024 Report of the UN Special Rapporteur in the field of cultural rights: The right to participate in sports (A/79/299) points to the diverse factors that have a bearing on sport performance. It finds that 'Indiscriminate bans excluding women based on presumed physical advantage do not comply with current standards of international human rights law, and any organisation seeking to restrict participation in the women's category through medical or other interventions must justify such interventions on a case-by-case basis as both necessary and the least restrictive measures that may be taken to achieve a legitimate aim.

101. Article 3 of the Revised European Sports Charter, states that "(t)he role of the public authorities is primarily complementary to the action of the sports movement and corporate sector", recognising the autonomy of sports movement organisations. These organisations "fully enjoy the freedom of association enshrined in the Convention", including the "autonomy to make decisions without undue interference". However, "public authorities are responsible for setting framework conditions and, where appropriate, legal requirements which are necessary for the development of sport". Bearing in mind that the

sport sector has a clear ambition to operate within the international human rights frameworks (See The revised Olympic charter IOC 2023), the principle of sports autonomy in decision-making does not imply, of course, an exemption from human rights obligations. As articulated in Article 4 of the European Sports Charter, "[t]he sports movement [...], is the main partner of public authorities for the implementation of sports policies [and] its organisations are bound by the requirements and limits imposed on them by legislation in accordance with international standards". Article 6 reinforces that "all stakeholders, including sports organisations, "shall respect and protect internationally recognised human rights and fundamental freedoms and [...] observe the general framework established for their implementation". This "requires the respect, protection and promotion of the human rights of those involved", including athletes. It also calls on stakeholders to fight against arbitrariness and other abuses in sport and provide access to remedies, justice and a fair trial in line with the applicable human rights standards. The 2024 Report of the UN Special Rapporteur in the field of cultural rights (cited above) states: "The existing high degree of autonomy and self-regulation in sport must not be detrimental to human rights. Ensuring the application of human rights standards in sport is clearly part of the human rights obligations of States and other relevant stakeholders".

102. The revised Olympic charter (IOC 2023) affirms that the practice of sports is a human right (Article 1) that must be accessible without discrimination of any kind in accordance with international human rights standards. It also states that the Olympic spirit requires mutual understanding with a spirit of friendship, solidarity and fair play (Article 4). Article 8 of the revised Olympic charter also addresses "sport integrity", encompassing personal, competitive, and organisational integrity. It emphasises that the pursuit of sport integrity requires stakeholders to "protect all people, particularly the young, from violence, harassment and abuse, ensure the safety and security of individuals and foster respect for and protection of internationally recognised human rights, including social rights". Similarly, the UNESCO International Charter of Physical Education, Physical Activity and Sport affirms that "every human being has a fundamental right to physical education, physical activity and sport without discrimination on the basis of ethnicity, gender, sexual orientation, language, religion, political or other opinion, national or social origin, property or any other basis" (Article 1).

On paragraph 24-26:

103. Children have the right to a safe and inclusive learning environment, free from discrimination and all forms of violence. This obligation flows from Article 2 of Protocol No. 1 to the European Convention on Human Rights, read in conjunction with Article 14 (non-discrimination), and the UN Convention on the Rights of the Child (Articles 19 and 28).The Court has recognised that a member State "in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner." (*Kjeldsen v. Denmark,* Application No. 5095/71; 5920/72; 5926/72, § 53, 7 December 1976). To comply with those requirements, it is essential to introduce measures that meet the specific needs of intersex students. This could be realised through the introduction of activities that do not exclude or render invisible intersex students and through support and protective mechanisms for young intersex persons in educational settings who are victims of violence and discrimination (Recommendation CM/Rec(2022)16; ECRI General Policy Recommendation No. 17, 2023).

104. In many European countries, educational curricula make little reference to the existing diversity of sexual orientations, gender identities and expressions and sex characteristics. The absence of inclusive educational resources reinforces social isolation and increases the risk of stigma and minority stress, poses a risk to sexual and reproductive health, and exposes students to LGBTI-phobic bullying by peers (CDENF, Feasibility study on age-appropriate comprehensive sexuality education, 2024). In March 2023, three UN Special Rapporteurs and one Working Group published a Compendium on Comprehensive Sexuality Education (CSE) with the purpose to recall the main international standards on CSE and to make a specific call to States to ensure the right to CSE without discrimination.

105. Member States should therefore ensure the adoption of inclusive curricula, policies and educational materials that promote awareness and include information about intersex persons and innate variations of sex characteristics. Intersex realities should be included as a mandatory part of school curricula especially in biology, comprehensive sexuality education and related subjects, as well as in the curricula of educators to promote awareness on intersex issues among students and educators. Such efforts should ensure that intersex variations are presented as natural variations of the human body in a positive and empowering way; they should also include activities that do not exclude or render invisible intersex students and support and protective mechanisms

for young intersex persons in educational settings who are victims of violence and discrimination (Recommendation CM/Rec(2022)16; ECRI General Policy Recommendation No. 17, 2023). To secure the effectiveness of such measures, monitoring and evaluation tools and measurements for school inclusiveness should be introduced or reviewed. Member States should also ensure that such inclusive measures extend to all educational institutions, including those run by non-state legal actors such as faith-based organisations.

106. Some member States have initiated steps towards including intersex issues in CSE such as Belgium, France, Germany, Greece and Malta.

On paragraph 27:

107. Significant challenges are present in the field of employment, often impacting hiring practices. This perpetuates taboo, secrecy and shame. The introduction of inclusive policies in work settings, including recruitment policies, terms of employment, retention policies, promotion opportunities, disciplinary procedures, and dismissals, in both public and private sectors, should be ensured while recognising that intersex persons may benefit from accommodations and reasonable adjustments, including special needs requirements, workplace adjustments, job access assistance, and provisions for medical leave (ECRI GPR No. 17, 2023, §§ 47, 48).

108. The EU Directive 2024/1500 on on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation refers to gender identity, gender expression and sex characteristics as criteria which cannot be used to restrict the definition of all persons who experience discrimination (Article 6(1)). The UK government has introduced a guidance on transgender, non-binary and intersex inclusive workplaces. It aims to support employees, and those managing employees, who are transgender, non-binary and/or intersex, and to raise awareness of transgender, non-binary and intersex issues to help all employees contribute to an inclusive and supportive workplace.

109. When member States pursue positive actions to promote substantive equality based on sex or gender, they should ensure that these include persons who have similar experiences of structural discrimination, including intersex persons. Persons who are identified as other than male or female in their official documentation, should be counted with the under-represented sex.

V. Health and social care

A. Medical records

On paragraph 28-32:

110. For years, medical protocols on so-called normalising treatments for intersex persons included the recommendation not to share diagnostic and treatment information with them. This has perpetuated challenges when it comes to intersex persons accessing the information held in their medical records (PACE report, Explanatory Memorandum, 2017; Council of Europe Commissioner for Human Rights, 2017). The right to access to medical records is guaranteed under Article 10 of the Oviedo Convention, which secures the right of every person to know any information collected about their health. Further, access to medical records engages binding standards under Articles 8 and 10 of the Convention, as confirmed by the Court where it found that there is a right to access to information held by public authorities under Article 10 of the Convention (Magyar Helsinki Bizottság v. Hungary, Application No. 18030/11, 8 November 2016) as well as a positive obligation on the state to facilitate access to medical records under Article 8 (*K.H. and Others v. Slovakia,* Application No. 32881/04, §§ 44-47).

111. An inability to access medical records directly impacts an intersex person's right to access to justice. Sometimes, access to medical documents is so much delayed that it is legally too late to seek justice, as claims are prescribed. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has reported that the current inability to access medical records as well as to access justice and remedy for the violations that intersex persons face is due to retention and access policies that are not aligned with international standards, (OHCHR, *Technical Note on the Human Rights of Intersex People: Human Rights Standards and Good Practices*, 3 November 2023. (See also General Data Protection Regulation (Regulation (EU) 2016/679)).

112. As confirmed by civil society organisations, this inaccessibility to medical records can happen for a range of reasons, such as the retention period having expired, and hospitals and doctors not giving them access, even in those countries where the right of patients to access their medical records is legally protected (Ghattas, D.C.2019: *Protecting Intersex People in Europe: A Toolkit for Law and Policymakers with Digital Appendix and Checklist,* Brussels: ILGA-Europe and Berlin: OII Europe, 2019).

113. Therefore, Member States should ensure that the full information related to the health of intersex persons is accurately recorded in patient files, and that those records, including electronic records, are available in a timely manner upon the request of the patient or those with legal access (Council of Europe Commissioner for Human Rights, 2017, Recommendation 2; PACE, Resolution 2191 (2017), § 7.1.5; European Parliament resolution on the rights of intersex people (2018/2878 (RSP), §6; CAT/C/CHE/CO/8, § 38, 2023). Intersex persons should also be provided with the information and support that are necessary to assist them in understanding the medical interventions they underwent and any health and human rights implications. In cases where intersex persons have been treated or operated on without effective consent or authorisation, investigations should be promptly initiated (CAT/C/CHE/CO/8, § 38, 2023).

114. At the same time, member States should also ensure the protection of the rights to privacy and confidentiality of intersex persons through effective data protection measures in line with Article 8 of the ECHR, the Modernised Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Modernised Convention 108+), General Data Protection Regulation (Regulation (EU) 2016/679) and Recommendation CM/Rec(2019)2 on the Protection of Health Related Data. In particular, the health information of intersex persons should be protected from misuse and/or unethical use for non-consensual research.

115. Given that not all intersex persons may be initially aware of medical treatments or interventions they underwent as a minor, retention of medical records should be such that allows them to easily and directly access their files as an adult. This will facilitate access to comprehensive information, improved access to health care throughout their life, and allow them to access justice and seek redress in the case of human rights violations, including bodily and psychological harm. Where a life-long retention of medical records by health care providers cannot be guaranteed, it should be ensured that intersex persons are informed prior to the destruction of such records and that they are given the possibility to obtain a copy. Member States could for example take inspiration from the 2021 French Bioethics Law (*Élargir l'accèss aux technologies disponibles sans s'affranchir de nos principes éthiques, LOI n° 2021-1017 du 2 août 2021 relative à la bioéthique*) where Article 30 secures an "easy and direct" access to full information pertained in the medical records. The 2021 German law has extended the period for keeping medical records of any interventions

performed on intersex minors (*§ 1631e.6 Bürgerliches Gesetzbuch*) up until they have reached 48 years of age, that is 30 years after attaining majority.

B. Medical classifications, protocols and guidelines

On paragraph 33:

116. Member States may have in place specific or national applications of international diagnostic and procedural codes, classifications, terminologies and nomenclatures with respect to variations of sex characteristics, many of which are pathologising. The formulations in WHO's ICD-11 have long contributed to this pathologisation and ensuing stigmatisation of intersex persons. Member States should thus initiate a review of ICD-11 focusing on a positive approach towards the provision of health care tailored to the specific needs of intersex persons. International and national medical classifications, clinical coding systems, protocols, guidelines and training curricula of healthcare professionals concerning intersex persons should be reviewed to be human rights based, non-discriminatory and non-stigmatising (Council of Europe Commissioner for Human Rights, 2015, Chapter 5.3; PACE Resolution 2191 (2017) § 7.4 – 7.6; European Parliament resolution on the rights of intersex people (2018/2878 (RSP) § 12-16).

117. At national level, this could be achieved by creating an independent interdisciplinary working group composed in equal measure of human rights experts, intersex persons, psychosocial professionals, and medical specialists in the care of intersex persons. The group would be tasked with reviewing and revising treatment protocols, not solely for updating purposes, but primarily to assess their continued relevance, given that many treatment protocols focus on normalisation.

118. In this context, the UN Human Rights Council has recommended in its concluding observations to several Council of Europe member States including Austria (§139.132), Ireland (§157.162) and Liechtenstein (§116.137) to develop and implement a rights-based healthcare protocol for intersex persons to guarantee that a human rights-based approach is followed. In 2019, Portugal published the Health Strategy Guideline for Lesbian, Gay, Bisexual, Trans and Intersex People and underlined the need for protocols that follow the international standards of care. The French National Plan for equality and the fight against LGBTI hatred and discrimination (2023-2026) includes a measure to "ensure access to depathologised health information for intersex people".

119. Others primarily set general consent standards for minors in medical settings. In some countries, such as Germany, the focus was on assessing a minor's capacity to consent on a case-by-case basis, particularly in distinguishing between procedures requiring parental authorisation and those where a minor might consent independently, such as routine medical tests versus more invasive procedures. Those practices can serve as inspiration for other member States and institutions to ensure that intersex persons, their legal representative(s), all prospective parents, and the general public receive positive and empowering information on intersex issues.

120. It is crucial that educational materials for healthcare professionals include practical information that is directly linked with practice, such as guidance on respectful behaviour towards intersex persons and the safeguarding of their privacy.

On paragraph 34:

121. In 2022, ECRI in its report on Greece included among the serious forms of discrimination and intolerance abortions of intersex foetuses that are recommended by medical professionals. Article 12 of the Oviedo Convention restricts the circumstances where prenatal testing is permissible. It states that 'tests which are predictive of genetic diseases, or which serve either to identify the subject as a carrier of a gene responsible for a disease or to detect a genetic predisposition or susceptibility to a disease may be performed only for health purposes […] and subject to appropriate genetic counselling". Article 4 of the PACE Resolution 1829 (2011) on Prenatal Sex selection condemns the practice of prenatal sex selection as a phenomenon which is contrary to the values upheld by the Council of Europe. Article 5 of the Resolution asserts that pressurising women not to pursue a pregnancy due to the sex of the embryo/foetus is contrary to Article 33 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210)). The Explanatory Memorandum to the PACE Report on Promoting the human rights of and eliminating discrimination against intersex people (No. 14404, 2017) refers to prenatal treatment on foetuses presenting intersex sex characteristics and states that "the prenatal, off-label administration of dexamethasone to reduce virilisation in girls at risk of congenital adrenal hyperplasia (CAH) – which is initiated early in pregnancy, before prenatal testing for CAH is possible – has also been strongly criticised on ethical grounds. This practice was discontinued in Sweden following a study demonstrating that it had adverse effects, notably impairing the verbal working memory of CAH-unaffected children exposed to the drug" (§ 28 of

the Explanatory Memorandum), as well as damage to the health of the pregnant person receiving such treatment. This remains one of the few mentions of the issue in international documents as official data on the prevalence of interventions on intersex foetuses in Europe is still lacking. Studies have shown however, that parental decisions regarding the continuation of pregnancies following a prenatal diagnosis of intersex traits are significantly influenced by the information, or lack thereof, provided by medical professionals. Research indicates that concerns over fertility and physical development are major factors in decisions to terminate pregnancies affected by sex chromosome variations. The role of healthcare professionals in shaping these decisions has been highlighted, raising concerns that inadequate or biased counselling may limit parental choice rather than ensure fully informed decision-making.[6]

C. Access to and provision of healthcare

On paragraph 35-36

122. Everyone has the right to the highest attainable standard of physical and mental health, without discrimination, and sexual and reproductive health is a fundamental aspect of this right (Article 3 of the Oviedo Convention, Articles 11 and 13 of the revised European Social Charter; Article 25 of the UDHR; Article 12 of the ICESCR, Articles 17, 23 and 24 of the CRC, Article 25 of the UNCRPD). For intersex persons, the right to health is two pronged, as it includes the prohibition of medical interventions and/or treatments without their consent and having access to general and specific health services that are appropriate, adequate, respectful of their bodily diversity and tailored to their needs (Council of Europe Commissioner for Human Rights, 2017; PACE Resolution 2191 (2017)). The UN Committee Against Torture, in its concluding observations, has urged several member States to ensure that all intersex persons receive the same level of specialised care, regardless of their conformity to the gender assigned at birth (e.g. CAT/C/DNK/CO/8, § 33, 2023). In addition, intersex persons who were subjected to interventions and treatments without their consent should

6. Meschede, D., Louwen, F., Nippert, I., et al. (1998) 'Low rates of pregnancy termination for prenatally diagnosed Klinefelter syndrome and other sex chromosome polysomies', American Journal of Medical Genetics, 80(4), pp. 330-334. Available at: https://pubmed.ncbi.nlm.nih.gov/9856559/Available at: https://pubmed.ncbi.nlm.nih.gov/9856559/Available at: https://pubmed.ncbi.nlm.nih.gov/9856559/; Marteau, T.M., Nippert, I., Hall, S., et al. (2002) 'Outcomes of pregnancies diagnosed with Klinefelter syndrome: the possible influence of health professionals', Prenatal Diagnosis, 22(7), pp. 562-566. Available at: https://pubmed.ncbi.nlm.nih.gov/12124688/

be able to access reparative medical and psychological treatment, which may include reconstructive surgery, trauma-informed counselling, or hormonal support, covered by health insurance or compensation mechanisms.

123. The invasive and discriminatory medical practices that many intersex persons have endured without their consent have profound and multifaceted impacts on their life that are linked to both their physical and mental health. These experiences often result in barriers to accessing healthcare that remain insufficiently explored and unaddressed. Such barriers may include the repeated and unnecessary examination of their sex characteristics motivated by inappropriate curiosity rather than medical necessity, which fosters mistrust and discomfort in clinical settings. According to the 2024 FRA EU LGBTIQ Survey III, 8% of intersex respondents reported having been refused medical treatment, and nearly one in five (approximately 20%) stated that they had to change their medical practitioner or specialist due to a negative reaction. Inappropriate curiosity or comments from healthcare providers were reported as a frequent issue by 24% of intersex respondents. As demonstrated by a study conducted in 2018 by the UK Equality Office, 25% of the intersex respondents had tried to access mental health services and a further 13% had tried but were unsuccessful (Government Equalities Office, *National LGBT Survey: Summary Report*, 2018, London: Government Equalities Office). To overcome those barriers, effective, lifelong and publicly funded access to adequate health care needs to be ensured, that is based on the individual's needs and not limited by the sex/gender marker in their official documents (ECRI General Policy Recommendation No. 17, 2023).

124. Provision of healthcare should include assistance and support mechanisms to intersex persons and their families, caregivers and legal representatives via counselling services including peer support and professional intersex peer counselling, psychosocial support that is not pathologising and human rights affirming, and support from civil society organisations. Support should be available to the person and their families, caregivers and legal representative(s) from the moment the variation is determined, including before birth, and throughout the person's life, if necessary. In addition, parents, including prospective ones, should have equal access to early diagnostic methods, as appropriate, to enable them to accompany their child effectively from the outset. Such methods may also serve to detect any life-threatening physiological conditions that require timely medical intervention, as well as to avoid any unnecessary medical intervention. Counselling should be provided in all different settings including, among others rural, regional, and remote

settings, detention facilities and care facilities that welcome intersex children or older persons.

125. Provision of adequate counselling and support should be intersectional to cover all intersex persons including older intersex persons and intersex persons with disabilities.

126. Intersex individuals face significant difficulties accessing healthcare in adulthood, partly due to medical practitioners' lack of knowledge about intersex variations, but also resulting from the characteristics, uniqueness, and number of surgeries and hormonal treatments they have undergone. These generate complications and conditions that are difficult to address, due to the scarcity of healthcare specialists for adult intersex persons and the inadequate transition from paediatric to adult care. Intersex persons should have access, based on their specific needs, to specialised, multidisciplinary teams that adopt a holistic and human rights-based approach. These could comprise not only medical professionals, but also other suitably knowledgeable professionals, such as counsellors, social workers, child advocates and human rights experts, as well as civil society organisations working on intersex matters, particularly intersex-led organisations. Their work should be based on guidelines developed together with intersex-led organisations. At all stages, counselling should be individually tailored and informed by both specialised expertise and a sensitive, rights-based understanding of the unique experiences and needs of intersex persons (see for example Malta's CAP 540 Gender Identity, Gender Expression and Sex Characteristics Act, § 15). This requires targeted education programmes for healthcare professionals to build their capacity for sensitive and competent care.

VI. Right to respect for private and family Life

A. Birth Registration

On paragraph 37-38:

127. Registration of new births in member States tends to take place within a few days after birth and generally involves assigning a sex or gender marker to the child. According to the 2015 FRA report "The Fundamental Rights Situation of Intersex People", birth registration legislation in many EU Member States tends to consider all individuals as either male or female. Based on information dating back to 2015, 18 EU member States allowed for a delay (up to a week) in the registration of a new birth and at least four EU member States

had allowed a sex-neutral identification to be registered in birth certificates, such as "unknown sex". In 2017, the Issue Paper "Human Rights and Intersex People" by the Commissioner for Human Rights showed that some countries allowed for the registration of the sex of the child to be delayed in the event that the sex of a newborn could not be immediately determined at birth, but this measure was usually temporary, including in the case of intersex children. The only country at that time that did not impose a time limit to declare the sex of a child when this could not be clearly defined was Portugal. Since 2018 it has also become possible to delay the registration in Germany.

128. The sex assigned at birth becomes both a legal and social fact for the newborn, that accompanies them throughout their life. This sex is often clearly marked on identification documents as either "F" or "M"; in some countries, it is indicated by an even or odd digit such as in relation to social security numbers. Gendered symbols determine which sex-segregated facilities such as schools, shelters, hospital wards, or changing rooms are accessible to that person. In some contexts, the choice of names and surnames may also depend on the sex assigned to the child. Various forms and documents throughout life require individuals to check 'F' or 'M' as part of the personal data gathered when accessing services or entitlements.

129. Most children born with variations of sex characteristics are easily assigned as "male" or "female" at birth, or after a relatively short period of testing (e.g., genetic testing, ultrasound, etc). Nevertheless, in some cases the legal obligation to assign a sex at birth can prove problematic. The resulting necessity for those involved in certifying and registering births, particularly parents or legal representative(s), to choose between "male" or "female" can sometimes trigger medical interventions, such as surgical procedures to modify the child's genitals to align with normative expectations of the registered sex, even when there is no compelling medical necessity, as outlined in paragraph 4 of the Appendix of this Recommendation. In some cases, the legal sex may be defined based on the genital surgeries that the medical team can technically perform. This reality leads to many intersex individuals growing up with a sex assigned at birth which is different from their actual gender identity and having to face significant difficulties in changing their legal sex. To avoid such pressure to proceed to treatment without a compelling medical necessity (§ 4a of the Recommendation), sex or gender assignment and registration should be decoupled from any alteration of a child's sex characteristics. In other words, the process of assigning and registering a sex or gender should not be used as a justification for surgical, hormonal, or mechanical interventions to modify a child's body.

130. In some member States, a birth certificate may be required in order to register a child for health insurance purposes and access the necessary health checks. The same may be true to access other social benefits or services. To guarantee the right of intersex persons to private life and self-determination under Article 8 of the Convention, it is necessary that member States review laws and practices regarding the registration of births and take inspiration from the recommendations made in PACE Resolution 2191 (2017), according to which "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" (PACE, Resolution 2191 (2017), §7.3.1). The non-disclosure of a child's variation of sex characteristic for birth registration purposes generally implies that provisions are available that allow for a delay in the registration of a sex or gender marker at birth, and which are not restricted only to intersex children. Involuntary disclosure should be avoided. The recommendation of non-disclosure is not intended to preclude Member States from allowing for third gender markers or for not recording a person's gender in official registries as long as these do not directly reveal a person being intersex or are mandatory for intersex persons. Likewise, this recommendation does not prevent Member States from requiring a new-born's status as intersex to be disclosed solely for internal administrative purposes leading up to the official birth registration.

131. In 2013, Germany introduced legislation requiring that the gender entry in the birth registry be left open in cases where a medical statement confirmed that the sex of the child could not be determined as either male or female. However, this legislation did not provide for a non-binary gender marker, a limitation that was later criticised in a Constitutional Court decision. In response, Germany amended its legislation in 2018, adding the option of choosing the gender marker "diverse". Intersex adults are able to change their gender markers and have the choice between the following: "diverse", "female", "male" or leaving the registry entry open. The 2017 study "Regulatory Needs to Strengthen and Protect the Rights of Intersex Children" by the German Institute for Human Rights found that only 4% of intersex children were not assigned a sex marker, i.a. due to lacking knowledge of the newly introduced legislation, technical difficulties or missing knowledge of medical classifications (2.2.3 Ergebnisse der Evaluation des § 22 Abs. 3 PStG). The 2017 Expert Opinion "Gender Diversity in Law: Status Quo and Development of Regulatory Models for the Recognition and Protection of Gender Diversity", published by the German Federal Ministry for Family Affairs, Senior Citizens, Women and

Youth also found that individuals with a blank gender marker faced additional legal issues throughout their lives that remained largely unaddressed. These include bureaucratic and administrative obstacles in processes that require gender specification, such as obtaining identification documents, enrolling in educational institutions, or accessing healthcare services, as well as legal uncertainties in areas where rights and obligations are gender-dependent, such as family law or entitlement regimes.

B. Legal gender recognition

On paragraph 39-40:

132. According to the case-law of the Court, member States have an obligation to provide quick, transparent and accessible procedures for legal gender recognition, as a constituent part of the right to respect for private and family life under Article 8 of the Convention (*Van Oosterwijck v Belgium* Application No. 7654/76, 6 November 1980; *Y.T. v Bulgaria*, Application No. 41701/16, 9 July2020, § 73). The Court has also repeatedly stated that procedures for legal gender recognition should respect the principles of self-determination and personal autonomy (See for example *Christine Goodwin v. the United Kingdom*, Application No. 28957/95, 11 July 2002; *Van Kück v. Germany*, Application No. 35968/97, 12 September 2003). Administrative or legal procedures for accessing legal gender recognition have been introduced by 39 member States with 12 member States basing such access on the principle of self-determination.

133. Intersex people may need to amend their legal gender for a number of reasons including that the sex assigned to them at birth does not correspond to their gender identity or that the variation of their sex characteristics was not immediately obvious at birth and consequently the marker on the register is incorrect (Council of Europe Commissioner for Human Rights, Issue Paper: Human Rights and Gender Identity and Expression, 2024, § 2.3.5). As of now, the Court has so far dealt with one case of legal gender recognition of an intersex person (*Y v. France, cited above, § 33)*. The Court reaffirmed that gender identity is an essential part of individual intimate identity that is protected by Article 8 and acknowledged that the gap between identity and legal gender recognition could cause Y, the applicant, suffering and anxiety. Indeed, research has shown that a gender marker in official documents that reflects and recognises the person's gender identity has a positive impact on an individual's mental and emotional health; and access to legal gender recognition improves a person's life when it comes to social inclusion while

reducing the risk of discrimination. These issues also raise concerns regarding the protection of personal data. In *Deldits v. Hungary*, (C-247/23, 2025) the Court of Justice of the European Union (CJEU) established that under the General Data Protection Regulation (Regulation (EU) 2016/679), every person has the right to have their personal gendered data changed upon presentation of relevant evidence demonstrating that such data is inaccurate and where the purpose of the data is to identify a person, the lived gender identity of the person is relevant and not the sex assigned at birth. Moreover, it found that requiring proof of gender reassignment surgery to amend official records violated the right to rectify personal data under the General Data Protection Regulation (Regulation (EU) 2016/679) and infringed on the right to private life, highlighting that gender identity data must be handled with strict respect for privacy, proportionality, and personal integrity.

134. Intersex persons face additional obstacles in countries where access to complementary medical studies (such as imaging, laboratory tests, and others) is contingent upon legal sex or legal gender. In such cases, they encounter significant barriers to receiving necessary medical examinations. For instance, intersex persons with a legally female sex or gender may face difficulties when requiring tests typically associated with male physiology, such as semen analysis or testicular ultrasound, particularly when the testes are located in the abdomen.

135. Legal gender recognition procedures for all documents that include gender markers should be accessible to all intersex persons, including refugees and, where feasible, other non-citizens with legal residence status, in accordance with national laws, and should be based on the right to self-determination. These procedures should be simple, quick, transparent, respectful, affordable, accessible several times, and without requiring medical certificates. Requiring intersex persons to provide their medical records as a prerequisite to a change of legal gender, may prove problematic where access to such medical records is lacking. Legal gender recognition should be respected in all spheres of life, including for example, in education, employment, sport and detention settings. When designing or reforming legal gender recognition procedures, it is essential to involve relevant stakeholders, including intersex-led organisations, at all stages of the process (Council of Europe Commissioner for Human Rights, Issue Paper: Human Rights and Gender Identity and Expression, 2024). In providing legal gender recognition procedures, Member states have a margin of appreciation with regard to timeframes, age and other procedural aspects under which a person may request a subsequent change.

136. In the same Issue Paper mentioned in § 133, the Council of Europe Commissioner for Human Rights highlights that across the Council of Europe area many of the debates on legal gender recognition have focused primarily on the needs of trans persons, even though such procedures also impact significantly the rights of intersex persons. To allow intersex persons the freedom to define their gender identity, several member States have reviewed their laws on gender recognition or introduced new ones. For example, in 2015 Malta simplified legal gender recognition procedures and introduced the possibility for a non-declaration of gender at birth. In 2024 Malta also introduced a third gender marker option. The State is furthermore required to recognise gender markers other than male or female, or their absence if they have been lawfully recognised by foreign courts or authorities in identity documents. Other member States with access to legal gender recognition based on self-determination include Belgium, Denmark, Finland, Germany, Iceland, Ireland, Luxembourg, Norway, Portugal, Spain and Switzerland.

137. In Germany, identity cards do not display the legal sex/gender marker of the individual and similar policies are envisaged also in other member States. It is worth noting that while a common practice, data on the sex or gender of a person in identity documents is not always strictly necessary, nor is access to specific services or entitlements always contingent upon knowing this information. Under the General Data Protection Regulation (Regulation (EU) 2016/679), personal data collection must be limited to what is adequate, relevant and necessary for the specified purpose (Article 5(1)(c)). This principle was reaffirmed by the CJEU in *Mousse v. CNIL and SNCF Connect* (Case C-394/23, 2024), which held that collecting sex markers without a justified purpose violates data protection obligations. It is therefore appropriate for member States and private actors to review the need for the inclusion of such data in forms and procedures, and to mandate them only where they serve a legitimate and proportionate aim.

138. It should be clarified that intersex persons, as for all other persons, can have any gender identity. In the FRA LGBTIQ Survey III (2024), the majority of intersex respondents identified as male or female while 41% of intersex respondents defined themselves as non-binary and 2.5% of them as "other". According to the Council of Europe Commissioner for Human Rights, it is important not to assume that all intersex persons want or require a non-binary legal gender and therefore rather than focusing on sex characteristics or bodies, access to non-binary legal gender recognition should cover all individuals and prioritise their gender identity, lived experiences and self-determination (Council

of Europe Commissioner for Human Rights, Issue Paper: Human Rights and Gender Identity and Expression, 2024, § 2.3.5). To achieve this, member States should provide the possibility for optional additional sex or gender markers other than male or female, of non-declaration of sex or gender on identity documents, and the recognition of gender-neutral first and family names for all.

139. When travelling, intersex persons may encounter problems linked to the requirements of gendered documents as well as gendered screening, and restrictions on travel with pharmaceutical prescription documents. In this context, co-operation between the member States and with international regulators is necessary to tackle those issues (Opinion of the European Economic and Social Committee, C 286/128, 3.1.10). To facilitate cross border recognition of non-specified gender or gender neutral civil documents such as birth certificates, acts of recognition, marriage certificates, registered partnership certificates, certificates of matrimonial capacity and capacity to enter into a registered partnership, States could consider ratifying the International Commission on Civil Status (ICCS) "Convention (No. 34) on the issue of multilingual and coded certificates and extracts from civil-status records" (March 2014) and "Convention (No. 35) on the issue of certificates of matrimonial capacity and capacity to enter into a registered partnership" (September 2024). These instruments foresee that States recognise such multilingual documents without the need for legalisation or equivalent formality, and Convention (No. 35) provides not only for the gender categories "male" and "female," but also "other," designated respectively by "M," "F," and "X" (in this case, the issuing authority may specify the designation employed, e.g. "X diverse"). The annexes to the convention (No. 34) are currently being adapted in the same vein.

C. Protection of family life

On paragraph 41-44:

140. Effective protections against discrimination on the ground of "sex characteristics" should be in place also in the area of family law. In light of Articles 8 and 12 of the Convention, member States should ensure, as highlighted by PACE Resolution 2191 (2017) that, in accordance with the right to respect for private life, intersex persons 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. The ECtHR has been especially active on the right to family life. In particular it has repeatedly emphasised the right of access to family life for transgender individuals and same-sex couples, extending equality protections for same-sex couples in several areas

of life including health insurance, residence permits, and adoption (the Court, Guide on the case-law of the European Convention on Human Rights: Rights of LGBTI Persons, 2024, Part IV Discrimination). In line with this jurisprudence, member States should ensure that their legal frameworks on marriage, civil partnership and cohabitation are accessible to and inclusive also of intersex persons and provide them with equal rights and benefits as others in legally recognised relationships, including property, maintenance and inheritance rights. An effective legal framework should also provide for the recognition of intersex persons' partnerships and other family ties in cross-border situations.

141. With regard to the legal relationships between parents and their children, the best interests of the child should be a primary consideration in policymaking and in administrative and judicial decisions regarding the access of intersex persons to parenthood. Intersex persons should not have to adopt their own child in order to have their relationship with their child legally recognised. Protecting the privacy of intersex parents would also require that member States have in place birth registration procedures that allow for the recognition in the birth certificate of the current legal gender or legal sex marker of the intersex parent.

142. In addition, member States should maintain or consider introducing intra and inter country adoption protocols that allow intersex persons with a non-binary or an alternative gender marker to adopt children without additional restrictions. Furthermore, intersex persons should not face discrimination in access to adoption or foster care opportunities on the basis of their medical history, including past or ongoing treatment related to variations of sex characteristics (see also §19 of ECRI GPR No. 17).

143. In line with § 20 of ECRI GPR No. 17, member States should prohibit discrimination based on sex characteristics also where they permit the use of assisted reproductive technologies. To ensure equal access to assisted reproductive technologies, specific variations of sex characteristics impacting fertility and reproductive function should be taken into account. Assisted reproductive technologies and fertility counselling should be available to all intersex persons with protection of their reproductive autonomy and regardless of whether their capacity for fertility is in line with their registered sex or gender, and it should be ensured that such treatments are covered by health care insurance schemes. Where such treatment is not available in a member State, persons should be able to receive adequate assisted reproductive treatment abroad (See also PACE Resolution 2239 (2018) on Private and family life: achieving equality regardless of sexual orientation).

VII. Public authorities

On paragraph 45-47:

144. ECRI GPR No. 17 restates the major role of authorities in the protection of persons who experience discrimination and intolerance based on the ground of sex characteristics as well as their duty to promote the equal treatment of LGBTI people in carrying out their functions. It calls on authorities to ensure that anti-discrimination legislation extends to all LGBTI persons, persons perceived as being LGBTI, and to persons who experience discrimination because of their association with LGBTI people or groups. With regard to regional and local authorities, Resolution 471(2021) of the Congress of Local and Regional Authorities of the Council of Europe called on local and regional authorities to mainstream LGBTI equality and human rights in local and regional public policies and monitor the implementation of existing legislation on anti-discrimination in the fields of education, employment and culture. The ground of "sex characteristics" is also referred to several times in the Congress Resolution extending the scope of Resolution 380/2015 on Guaranteeing Lesbian, Gay, Bisexual and Transgender (LGBT) Peoples' Rights: A Responsibility for Europe's Towns and Regions. Efforts to enhance intersex visibility should include the meaningful participation of intersex community representatives and human rights institutions in decision making processes.

145. In relation to the role of equality bodies, member States should incorporate the ground of "sex characteristics" covering intersex persons in the mandates of those bodies or alternatively ensure that sex characteristics are effectively covered under the grounds of "sex", "gender", "other", or unspecified grounds to protect intersex persons.

146. The FRA LGBTIQ Survey III found that in the 12 months prior to the survey, 25% of intersex respondents from EU member States reported encountering or seeing online calls for violence against LGBTIQ people (e.g., threats of death, rape, beating, slapping etc.); 24% reported encountering or seeing online references to LGBTIQ people posing a sexual threat (e.g. in the context of access to toilets or changing rooms); and 17% reported encountering or seeing online portrayals considering LGBTIQ people to be "unnatural" or mentally ill. Given the lack of societal understanding of intersex persons, the role of the media is particularly important in promoting awareness and dialogue in a manner that is free from stereotypes and does not lead to further stigmatisation and hatred in line with §§ 38 et seq. of Recommendation CM/Rec(2022)16. The way that the media reports on athletes perceived to be intersex, for example, can

negatively impact the safety and well-being of intersex persons more broadly in virtual as well as physical spaces.

VIII. Transversal Concerns

A. Data Collection and Evaluation

On paragraph 48-51:

147. There is a shortage of data regarding the prevalence, personal situations, intersectional characteristics, and lived experiences of LGBTI persons and the question of visibility and reliable data is particularly pressing in the context of intersex persons (ECRI GPR No. 17, 2023, §§ 25-28). The UN Committee against Torture has also called for enhanced data collection on issues concerning intersex persons (CAT/C/LUX/CO/8, 2023, §§ 35-36). In-depth research is a prerequisite to ensure that discrimination and other human rights breaches experienced by intersex people are adequately addressed through legislative and policy frameworks (Council of Europe Commissioner for Human Rights Issue paper, 2015 Section 1.3). The research gaps needing to be urgently addressed, include: the experiences of normalising practices; ill-treatment and violence in medical settings; statistical data on the number, the type of intersex-related medical interventions and treatments in infancy and childhood; the quality of life of intersex adults, including intersex seniors; statistical data on the long-term health effects (including impairments, trauma and mental health) of medical interventions and treatments in infancy and childhood, as well as their prevalence; experiences with supportive environments and/or services in all areas of life; and school dropout, bullying, stigma and harassment in everyday life, at school and in work (Ghattas, D.C. Protecting Intersex People in Europe: A Toolkit for Law and Policymakers with Digital Appendix and Checklist, ILGA-Europe and OII Europe, 2019). As quantitative data may vary significantly depending on coding practices in specific settings, it is important to adapt routine clinical diagnostic and intervention coding to enable sufficiently detailed documentation of medical interventions related to sex characteristics in minors. This is particularly relevant for recording surgical interventions and their cost, ensuring that comprehensive and disaggregated data are available to inform policy and safeguard intersex persons' rights (see also §§ 114-118 that refer to § 33 of this Recommendation).

148. The development of evidence based public policy to address inequalities should be informed by equality data which requires that member States also capture the needs, lived realities and experiences of intersex persons in

relevant research and surveys, including the census, provided they are confidential and elective or there is no obligation to disclose having a variation of sex characteristics. Member States should collect and analyse both qualitative and quantitative data. Relevant stakeholders, including research bodies, private and public universities and institutions that conduct this research should adopt a sociological and human rights perspective rather than just a medical one (See also European Parliament Resolution on the rights of intersex people (2018/2878(RSP)). Intersex persons should be involved in such research and special attention should be given to ethical safeguards, for example issues of confidentiality and data protection at all stages. Researchers including those conducting medical research projects should take cognisance of the harm done to intersex persons in the past and ensure the human rights centred approach is adopted in all phases of design, implementation, analysis and reporting, for example using respectful and non-medicalised terminology and by engaging with intersex persons as co-designers rather than simply as participants. The 2023 EU Guidance note on the collection and use of data for LGBTIQ equality can be useful to member States in ensuring that such data is collected voluntarily and in respect of the privacy of data subjects. Member States should support and fund research on the human rights situation of intersex persons and make sure that public funds do not support research or medical projects that do not respect their human rights.

149. Member States should ensure that medical classifications, clinical coding systems, and procedural codes for genital surgeries on minors are revised (see also §§ 114-118 that refer to § 33 of this Recommendation) to allow for more granular coding, including distinctions between partial and complete interventions. This revision is crucial to enhance the monitoring of surgical interventions, as it provides detailed data on the nature and extent of procedures performed. Avoiding vague or non-specific codes in clinical documentation ensures clearer, more accurate records, which supports better monitoring, accountability, and informed policymaking. Furthermore, these revisions should be reflected in the training curricula for healthcare professionals, ensuring that they understand the importance of detailed coding and adhere to updated, non-discriminatory, and human rights-respecting practices.

B. Training and awareness raising

On paragraph 52-53:

150. During the last years, public awareness on intersex issues has been growing due to several initiatives. Already in 2014, the Council of Europe

Commissioner for Human Rights called on member States to raise awareness on the situation of intersex persons in society and the discrimination and prejudice they encounter throughout their lives. Intersex Awareness Day (26 October) has been used by international organisations to inform the public on intersex issues and focus on recommendations for the protection of the human rights of intersex persons. At national or regional level, member States have introduced measures to boost awareness on intersex issues. In Belgium for example, the Chamber of Representatives adopted the Resolution to Recognise the Right to Bodily Integrity of Intersex Minors No. 0043/008 (2021), which urges the government to take several measures for the protection of intersex rights and among others to raise awareness with the aim to destigmatise intersex people. In 2018, Valencia adopted the Law on LGBTI people (Ley 23/2018) and called on the Valencia Generalitat to prepare guides, manuals, and information brochures, and implement other measures to support the visibility and social awareness on intersex persons. Such efforts may have contributed to the finding of the last report of the Special Eurobarometer 535 on Discrimination in the EU in 2023 that public perception of discrimination against intersex persons had increased by eight points compared to 2019 to reach a high level of 47%. At the same time, the World Bank Group published the results of a survey regarding Southeastern Europe, according to which LGBTI people are hardly visible in public life in this region, and positive measures to improve their lives are rare especially in relation to intersex persons.

151. Against this background, member States should continue to promote, conduct, and support efforts to increase awareness and understanding among the public of intersex issues including through adequate budget allocations, awareness-raising activities and/or training programmes, that should be carried out in co-operation with civil society, equality bodies and intersex persons. Activities such as capacity-building and mandatory trainings should be introduced and addressed to professionals in all relevant sectors. All undertaken activities should ensure the inclusion of comprehensive, affirmative, accurate, human-rights based information about the specific needs of intersex persons (See Council of Europe Commissioner for Human Rights Issue paper, 2015; PACE Resolution 2191 (2017); ECRI GPR No. 17, 2023; EP Resolution on the rights of intersex people (2018/2878(RSP); CAT e.g. CAT/C/CHE/CO/8, § 38, 2023). Human rights-based training on intersex persons and intersex issues is essential for professionals working in the areas of health, and should be integrated from the undergraduate level onwards to raise awareness of the human rights violations that certain interventions may entail. This should include general practitioners who play a crucial role in navigating patients through healthcare

systems, as well as paediatricians and key paediatric subspecialists, such as paediatric surgeons, paediatric urologists, paediatric gynaecologists, and paediatric endocrinologists. Additionally, training should extend to medical officers and company physicians, midwives, fertility treatment specialists, practitioners engaged in gender affirming health care, mental health professionals and other persons working in health settings (e.g., reception desk staff, security personnel). Such training is also important for counselling professionals, elderly care staff, child carers in nurseries, education professionals such as teachers, school psychosocial professionals and school administrators, law enforcement professionals, youth workers, social workers, representatives of workers organisations, and staff of consultative bodies, coaches and sport administrators, and other relevant state and non-state actors.

152. Public media regulatory bodies and private actors should, while respecting the independence of the media, organise training sessions for media professionals and the staff of internet intermediaries on legal and other standards pertaining to intersex rights, on increasing positive representation in all fields of media including social media, films, tv shows, books, magazine articles and on combating hate speech against intersex persons, with a view to implementing relevant standards (Recommendation CM/Rec(2022)16).

153. The existence of cross-sectoral dialogue with diverse stakeholders is important, including the member States, businesses, media, professionals working on intersex issues and with intersex persons, to raise awareness and encourage inclusivity in all relevant actions and procedures.

C. Empowerment of intersex communities

On paragraphs 54-56:

154. As documented by ECRI, in the last years, there has been a rise in hate against LGBTI people in Europe. According to the 2024 PACE Report 15953, attacks such as bans on LGBTI events, non-existent or inadequate protection against attacks on gatherings, harassment, intimidation, physical attacks, online attacks, threats, the adoption of "anti-LGBTI propaganda" laws and censorship are intended to deny LGBTI persons the right to freedom of expression and association, which are protected under Articles 10 and 11 of the Convention. Those attacks contribute to stigmatisation and invisibilisation and make LGBTI persons more vulnerable to human rights violations. The Court has found violations of Articles 10 and 11 of the Convention in several cases that involved LGBTI organisations including cases involving violence (for example *Identoba*

and Others v. Georgia, 2015; *Karter v. Ukraine*, 2024; *Genderdoc-M and M.D. v. the Republic of Moldova*, 2021). Other cases have concerned homophobic verbal abuse and intimidation (such as during a film screening in *Association ACCEPT and Others v. Romania*, 2021).

155. To tackle these phenomena, PACE Resolution 2417 (2022) called on member States to ensure that provisions and measures are in place to protect the human rights of LGBTI persons, not only with regard to the right to bodily integrity of intersex people, but also regarding the exercise of civil rights such as freedom of expression, association and assembly. For the preparation and introduction of such provisions and measures, the active participation, involvement and empowerment of intersex civil society are a prerequisite (Council of Europe Commissioner forHuman Rights Issue Paper , 2015; PACE Resolution 2191 (2017); GPR No. 17; European Parliament Resolution on the rights of intersex people (2018/2878(RSP)).

156. Data shows that LGBTI organisations are generally under-resourced in comparison to other civil society sectors. The latest Global Resources Report 2021/2022 (Global Philanthropy Project, 2024) mentions that across 10 years, 71% of grants by NGO intermediaries for LGBTI related initiatives were awarded to LGBTI-focused grantees, but among them intersex groups were the most underfunded within LGBTI organisations receiving only 1% of such allocations (p. 54). Ensuring adequate funding of civil society focussing on intersex persons is therefore an important element for their empowerment. It also allows for the effective provision of peer support and counselling to intersex persons as well as their families and friends, including those who may suspect but are not yet certain on whether they are intersex.

IX. International Cooperation

On paragraph 57-59:

157. To effectively ensure the protection of the human rights of intersex persons at international and national level, and in particular in cross-border situations, member States should co-operate among themselves and promote and adopt a human rights-based approach regarding intersex matters in international organisations and networks. Issues to be covered through cooperation between member States and intergovernmental institutions comprise, for example, cross border legal gender recognition through the mutual recognition of birth certificates, passports and other documents that may include sex/gender markers, in particular non-binary gender/sex markers;

and, the introduction of a clear, inclusive, non-discriminatory approach of the notions of "family" and "parenthood" in cross-border situations (see also the International Commission on Civil Status Convention (No. 34) on the issue of multilingual and coded extracts from civil-status records and multilingual and coded civil-status certificates and Convention (No. 35) on the issue of certificates of matrimonial capacity and capacity to enter into a registered partnership with the aim of promoting international cooperation in civil status matters and to improve the functioning of national civil status services). This may require the facilitation of registration of kinship for intersex parents according to their legally recognised gender identity to protect their families against unwanted disclosure of their variation of sex characteristics, discrimination and violence (Opinion of the European Economic and Social Committee, C 286/128, § 3.3.3).

158. Intersex persons may encounter challenges when travelling, particularly in going through border checks including airport security procedures such as passport checks and body scans. In some cases, this may result in a refusal to allow entry to the individual. These difficulties are compounded when sex or gender markers in official documents, including in passports and identification papers, are not recognised, potentially preventing travel altogether. Ensuring the international recognition and validity of travel documents is therefore essential to safeguard the freedom of movement and legal rights of intersex persons. To address these challenges, member States should, as already outlined, actively engage in international cooperation to ensure that travel documents issued to their citizens are recognised within and beyond the Council of Europe region. Additionally, training on European-wide standards should be funded for border guards, lawyers, professionals working in immigration services, and interpreters, prosecutors and judges. Such training should aim to promote understanding of those practitioners for the specific needs of intersex travellers, migrants and applicants for international protection, including with respect to access to healthcare that responds to their needs, and access to health insurance coverage (Opinion of the European Economic and Social Committee C 286/128, § 1.8).

159. Furthermore, as already stated in § 147 above, member States should also encourage the competent international bodies and networks to review international medical classifications which pathologise variations of sex characteristics with a view to eliminate obstacles to the effective enjoyment of intersex persons' human and social rights, including the right to the highest attainable standard of health (Council of Europe Commissioner for Human Rights Issue Paper, 2015; PACE Resolution 2191 (2017); European Parliament

resolution on the rights of intersex people (2018/2878(RSP)). These bodies include medical societies that issue clinical guidelines (e.g. European Society of Paediatric Urology), or subject-matter technical guidance (WHO/EURO), as well as professional regulatory and representative groups (e.g. European Medical Association; European Federation of Nurses Associations), and cross-border healthcare networks (such as European Reference Networks for Rare Diseases – ERNs). Alongside the revision of those classifications, member States should also ensure that clinical practice guidelines are changed.

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