

## Examples for missed opportunities and rights under attack:

- ▶ Austria & Germany, 3<sup>rd</sup> gender marker: Both governments did not follow the spirit and literal wording of the countries' highest national Court's binding decisions
- ▶ Iceland postpones legislating the PACE resolution despite a government coalition agreement to do so
- ▶ Denmark gave funding to an LGBT organisation to start intersex work instead to the Danish intersex organisation
- ▶ Bulgarian government and constitutional court declaring the Istanbul Convention against the Bulgarian Constitution and thereby discriminating and fostering human rights violations against all non-male individuals

NGO taking on a municipal / state obligation  
– Education on intersex at school

### Iceland

Samtökin 78 – The national queer organisation of Iceland has included intersex issues thoroughly within their queer education programme since 2014. All inclusion within the programme was intersex led and focuses on explaining what intersex issues are in an appropriate way for the level of training conducted. While some funding is available from municipalities the organisation has taken drastic steps to fulfil, what should be a state obligation.

### National Action Plan Luxembourg

The *Plan d'action national pour la promotion des droits des personnes lesbiennes, gays, bisexuelles, transgenres et intersexes (2018)* is a best practice example of a national action plan.

### Ethic Body Statement France

In 2018 the French Conseil d'Etat conducted a revision of the bioethics law: *What options for tomorrow? 2.4. Intersex children: the medical management of children with variations in genital development* which specifically addresses the mutilating nature of the current medical treatments.

### Legislation Malta

The *Maltese Gender Identity, Gender Expression and Sex Characteristics Act* is a best practice example on how to protect the bodily integrity and self-determination of intersex people.

LGBT NGO taking up action for intersex rights

### Denmark

In February 2018 Copenhagen Pride co-hosted the second OII-Europe Community Event and Public Conference with Intersex Danmark. As an allied organisation, Copenhagen Pride went above and beyond what could reasonably be expected to ensure that the second OII Europe community event was the largest gathering of Intersex human rights activists ever to be held in Europe.

### Funding Netherlands

Currently, the Dutch government is the only government providing an intersex led organisation with sustainable funding with grants of 5 and 3-year durations.

### Research Germany

Since 2014 the German Family Ministry has funded several studies on the life situation of intersex people and their families, including on counselling or the situation of parents. It also funded the first-ever study on feminising and masculinising genital surgeries carried out on intersex children under the age of 10. The study is a best practice example of how to conduct a retrospective statistical data assessment of surgeries on people with variations of sex characteristics.

### Litigation Austria

The Austrian Constitutional Court (2018) landmark decision on a 3<sup>rd</sup> gender marker establishes intersex human rights and expands it to all people.

## Legislation

# Malta

The **Maltese Gender Identity, Gender Expression and Sex Characteristics Act (2015)**<sup>1</sup> is a best practice example on how to protect the bodily integrity and self-determination of intersex people. The Act

- ▶ provides clear and human rights-based definitions of terminology (e.g. sex characteristics)
- ▶ distinguishes between actual health needs and interventions that are deferrable and performed for social reasons
- ▶ prohibits any sex-“normalizing” intervention on the sex characteristics of a minor that could be deferred until a time when they are able to make their own decision and provide informed consent
- ▶ allows for surgery and medical treatment in cases of immediate risk of life, provided that interventions driven by social factors are a violation of the law
- ▶ provides for legal consequences in case the law is breached
- ▶ allows a mature minor to seek treatment aiming to alter their sex characteristics, which shall be conducted if the minor gives informed consent
- ▶ establishes the right to expert-sensitive, lifelong psychological and psychosocial support for intersex individuals, their parents and their families

**Who else:** Portugal (2018) with certain nuances, that risk to limit the protection.

<sup>1</sup> ACT XI of 2015, as amended by Acts XX of 2015 and LVI of 2016 and XIII of 2018 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12312&l=1>

## National Action Plan

# Luxembourg

The **Plan d'action national pour la promotion des droits des personnes lesbiennes, gays, bisexuelles, transgenres et intersexes (2018)**<sup>2</sup> is a best practice example of a national action plan. The plan

- ▶ provides definitions and language that is compliant with current human rights standards
- ▶ addresses the challenges and human rights violations intersex people face comprehensively and from a human rights perspective
- ▶ references the current human rights standards, including the PACE resolution on intersex (2017) and recommendations of UN treaty bodies and other human rights bodies
- ▶ acknowledges the need for immediate action
- ▶ establishes clear and human rights-based objectives in the area of protection of bodily autonomy and self-determination, anti-discrimination, legal recognition, support and education of the general public
- ▶ includes concrete, detailed and measurable actions for each objective, that show a clear understanding of the single steps that need to be taken to ensure the protection of intersex people in Luxembourg

<sup>2</sup> [https://mfamigr.gouvernement.lu/dam-assets/campagnes/personnes\\_intersexes/PAN-LGBTI-web-update.pdf](https://mfamigr.gouvernement.lu/dam-assets/campagnes/personnes_intersexes/PAN-LGBTI-web-update.pdf)

## Litigation

# Austria

The **Austrian Constitutional Court (2018)**<sup>3</sup> landmark decision on a 3<sup>rd</sup> gender marker establishes intersex human rights and expands it to all people. The decision

- ▶ confirms that the general personality rights, as laid down in the constitution, do apply to all individuals
- ▶ confirms that these rights include the right to self-determination of one's gender identity
- ▶ confirms that the State has the right to uphold the public order; but that restricting the legal sex/gender to “male” or “female” does not comply with the principles of proportionality
- ▶ establishes the right to have a non-male, non-female gender identity reflected in all official documents
- ▶ establishes the right to leave the sex/gender marker entry open
- ▶ establishes the right to have the sex/gender marker changed or deleted on the basis of self-declaration
- ▶ confirms the obligation of the State to protect a person's general personality rights by taking legal precautions to ensure that these rights can be accessed in a self-determined manner
- ▶ confirms that all these rights apply to minors alike
- ▶ emphasises the need to strengthen protection against medical intervention on intersex individuals

**Who else:** The German Federal Constitutional Court (2017)<sup>4</sup> was the first in Europe to oblige a government to establish a positive 3<sup>rd</sup> gender marker.

<sup>3</sup> VfGH G77/2018 [www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT\\_20180615\\_18G00077\\_00](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20180615_18G00077_00)

<sup>4</sup> 1 BvR 2019/16 [www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/10/rs20171010\\_1bvr201916.html](http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2017/10/rs20171010_1bvr201916.html)

## Ethic Body Statement

# France

In 2018 the French Conseil d'Etat conducted a revision of the bioethics law: **What options for tomorrow? 2.4. Intersex children: the medical management of children with variations in genital development.**<sup>5</sup>

The revision discusses the serious nature of surgical interventions performed on intersex infants and minors based on cosmetic and psychosocial grounds. The revision specifically addresses the mutilating nature of the current medical treatments carried out that are based on the aforementioned grounds. The Conseil d'Etat

- ▶ finds that common rationale of better surgical outcomes in infancy and lesser psychological impact when performed at a young age could not be established with certainty
- ▶ states that only interventions required to avoid jeopardy to a person's life or to alleviate physical suffering can be carried out without personal consent
- ▶ concludes that if the sole reason of medical interventions was to normalise the appearance of a child's genitals towards male or female in order to promote the psychological and social development of a child the intervention must wait until the person concerned can express their wishes and participate in the decision making process

<sup>5</sup> *Revision de la loi bioéthique: quelles option pour demain? 2.4. Les enfants dits « intersexes » : la prise en charge médicale des enfants présentant des variations du développement genital* [www.ladocumentationfrancaise.fr/var/storage/rapports-publics/184000450.pdf](http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/184000450.pdf)

## Research

# Germany

Since 2014 the German Family Ministry has funded several studies on the life situation of intersex people and their families, including on counselling or the situation of parents. It also funded the first-ever study on feminising and masculinising genital surgeries carried out on intersex children under the age of 10.<sup>6</sup> The study is a best practice example of how to conduct a retrospective statistical data assessment of surgeries on people with variations of sex characteristics. It

- ▶ covers 10 years (2005-2014), hence allowing for a statistically valid analysis of changes
- ▶ uses the DRG hospital statistics, which is an annual complete survey of the hospitals obliged to transmit data and the services they provide; the statistics include, among other information like age, the diagnoses (via ICD-Codes) and the performed surgeries (via OPS-Codes, the German surgeries and procedures code)
- ▶ includes all relevant ICD-Codes
- ▶ is a full study, i.e. includes all relevant cases for the chosen time-frame
- ▶ was conducted by a sociologist with in-depth knowledge about the medicalisation of intersex people and statistical expertise
- ▶ included consultations with intersex human rights experts
- ▶ was followed by a second study, equally funded by the Ministry, covering the years 2015-16, to ensure continuous monitoring<sup>7</sup>

<sup>6</sup> Ulrike Klöppel: *Zur Aktualität kosmetischer Operationen „uneindeutiger“ Genitalien im Kindesalter*. Berlin 2016, [www.gender.hu-berlin.de/de/publikationen/gender-bulletins/texte-42/kloepfel-2016\\_zur-aktualitaet-kosmetischer-genitaloperationen](http://www.gender.hu-berlin.de/de/publikationen/gender-bulletins/texte-42/kloepfel-2016_zur-aktualitaet-kosmetischer-genitaloperationen)

<sup>7</sup> Josch Hoenes, Eugen Januschke, Ulrike Klöppel: *Häufigkeit normangleichender Operationen „uneindeutiger“ Genitalien im Kindesalter*. Buchum 2019 <https://omp.ub.rub.de/index.php/RUB/catalog/view/113/99/604-4>

## Funding

# Netherlands

In 2015 and 2016 1.4 % of European and Central Asian LGBTI funding went to intersex issues and not in its entirety to organisations that have intersex representation or are intersex led.<sup>8</sup>

In a landscape where intersex led organisations receive almost no funding from governments, the Netherlands is a glimmer of hope that the European funding situation can change. Currently, the Dutch government is the only government providing an intersex led organisation with sustainable funding with grants of 5 and 3-year durations. The Ministry of Education, Culture and Science provide NNID Foundation with a 5-year grant to advance the rights of intersex people in the Netherlands and to raise institutional and public awareness on intersex issues. The Ministry of Foreign Affairs provides a 3-year grant for work at an international level outside of Europe. This funding enables NNID to employ 5 staff members and to work on a national and international programme.

<sup>8</sup> *Funders for LGBTQ Issues, Global Philanthropy Project (2018): 2015/2016 Global Resources Report, Government and Philanthropic Support for Lesbian, Gay, Bisexual, Transgender, and Intersex Communities*, p. 44 and 79 <https://lgbtfunders.org/research-item/2015-2016-global-resources-report/>

## NGO taking on a municipal / state obligation

### – Education on intersex at school

# Iceland

**Samtökin 78** – The national queer organisation of Iceland has included intersex issues thoroughly within their queer education programme since 2014. All inclusion within the programme was intersex led and focuses on explaining what intersex issues are in an appropriate way for the level of training conducted. While some funding is available from municipalities the organisation has taken drastic steps to fulfil, what should be a state obligation. All training materials

- ▶ take a clear depathologising stand
- ▶ embrace biological diversity as an important part of understanding the full spectrum of human diversity
- ▶ do not conflate trans and intersex issues while also acknowledging that some intersex people have multiple intersections under the LGBTIQAP umbrella

Other highlights include:

- ▶ an education officer that is thoroughly trained on multiple aspects of intersex realities
- ▶ a large team of peer educators is trained regularly on intersex issues
- ▶ peer educators receive feedback on training that is delivered
- ▶ multiple packages of education exist covering for example education for children of primary school age and upwards, school staff and police
- ▶ full intersex inclusion in the creation of all relevant training materials
- ▶ clear human rights focus

## LGBT NGO taking up action for intersex rights

# Denmark

In February 2018 Copenhagen Pride co-hosted the second OII-Europe Community Event and Public Conference with Intersex Danmark. As an allied organisation, Copenhagen Pride went above and beyond what could reasonably be expected to ensure that the second OII Europe community event was the largest gathering of intersex human rights activists ever to be held in Europe. In addition to general logistical support,

- ▶ they obtained generous funding for the community event itself covering a large portion of associated costs
- ▶ they also obtained funding for international participation at the community event with the first representation from East Africa at an OII Europe event
- ▶ with a difficult situation in Denmark relating to visas from Turkey Copenhagen Pride diligently followed up on all visas applied for
- ▶ they were instrumental in organising a large scale, high-level conference in Folketinget (i.e. the Danish Parliament) with representation from the Danish health board, the Minister for Health and the Minister for gender equality. This was the first time that intersex issues were heavily debated within the Danish parliament