EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

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04/2015

The fundamental rights situation of intersex people

FRA Focus

Most European societies recognise people as either male or female. However, this does not account for all variations in sex characteristics. As a result, intersex people experience fundamental rights violations ranging from discrimination to medical interventions without their consent.

This paper examines the legal situation of intersex people from a fundamental rights perspective. It draws on evidence from the Agency's updated legal analysis on homophobia, transphobia, and discrimination on grounds of sexual orientation and gender identity, which now includes a section on intersex issues.

Key facts

- Many Member States legally require births to be certified and registered as either male or female.
- In at least 21 Member States, sex 'normalising' surgery is carried out on intersex children.
- In 8 Member States, a legal representative can consent to sex 'normalising' medical interventions independently of the child's ability to decide.
- 18 Member States require patient consent provided the child has the ability to decide.
- Intersex discrimination is better covered by sex discrimination rather than discrimination on the basis of sexual orientation and/or gender identity as it concerns physical (sex) characteristics.

Key conclusions

- Legal and medical professionals should be better informed of the fundamental rights of intersex people, particularly children.
- Gender markers in identity documents and birth registries should be reviewed to better protect intersex people.
- Member States should avoid non-consensual 'sex-normalising' medical treatments on intersex people.