



Towards an extension of the list of EU crimes to hate speech and hate crime

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OII Europe

OII Europe is the European intersex umbrella organisation with intersex-led member organisations in 20 Council of Europe member states. OII Europe advocates for the protection of intersex people's human rights, raises awareness of intersex issues in society, e.g., through campaigns during Intersex Awareness Weeks, and supports the growth of the European intersex community together with its growing number of member organisations and allies through measures like the annual OII Europe Community Event & Conference.

Since 2012 OII Europe has been regularly consulted on intersex issues by the Office of the United Nations High Commissioner for Human Rights, the Parliamentary Assembly of the Council of Europe, the Bioethics Committee of the Council of Europe, the European Parliament, the European Commission, the European Union Agency for Fundamental Rights, the European Network of Equality Bodies, the European Commission against Racism and Intolerance and national governments.

Since 2020 OII Europe is registered as an expert on sexual orientation, gender identity and gendered characteristics with the SOGI Unit of the Council of Europe. The NGO OII Europe was created in 2015, as an extension of a network of the same name set up in 2012, and is based in Berlin.

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0. Who are intersex people?

Intersex people are born with sex characteristics (sexual anatomy, reproductive organs, hormonal structure and/or levels and/or chromosomal patterns) that do not fit the typical definition of male or female.¹

The term “intersex” is an umbrella term for the spectrum of variations of sex characteristics that naturally occur within the human species. The term intersex acknowledges the fact that physically, sex is a spectrum and that people with variations of sex characteristics other than male or female exist. The fact that someone has an intersex body can become apparent at different times in their life: at birth, during childhood, in puberty or even in adulthood. Depending on the specific life circumstances and the degree of taboo in their environment, a person might learn that they have an intersex body at a very early age or later in life. Some intersex people never find out at all.

Up to 1,7 % of the global population is intersex, i.e., has a variation of sex characteristics, which equals, of this date, 132 million intersex people globally.²

Since 2009, United Nations Treaty Bodies have made 59 calls on Member States to stop human rights violations against intersex people.³ 17 Council of Europe Member States have received 39 UN Treaty Bodies recommendations, among which 14 European Union countries have received 31 recommendations.⁴ Many of these violations amount to hate crime or hate speech, as detailed in the following paragraphs.

¹ Ghattas, D. C. (2019). *Protecting Intersex people in Europe. A toolkit for law and policy makers. With digital Appendix and Checklist*. Ed. by ILGA-Europe and OII Europe, p.9, available at <<https://oiieurope.org/library-en/toolkit-cat/legal-toolkit/>>

² See the United Nations Office of the High Commissioner for Human Rights (2015). *Fact Sheet. Intersex*, available at <https://unfe.org/system/unfe-65-Intersex_Factsheet_ENGLISH.pdf>

³ The United Nations Committee on the Rights of the Child (CRC); The United Nations Committee against Torture (CAT); The United Nations Committee on the Elimination of Discrimination against Women (CEDAW); The United Nations Committee on the Rights of the People with Disabilities (CRPD). See OII Europe (2021, February). *Intersex Resources*, available at <https://oiieurope.org/wp-content/uploads/2018/05/International-intersex-human-rights-movement_Links-to-human-rights-documents-addressing-intersex-and-important-events_February-2021-1.pdf>

⁴ Country (Number of recommendations): Austria (2); Belgium (3); Bulgaria; Denmark (3); France (3); Germany (5); Ireland (2); Italy (3); Luxembourg; Malta; Netherlands (3); Portugal (2); Slovakia; Spain.

1. Introduction – Intersex people are among the most vulnerable and silenced victims of hate crimes and hate speech

Intersex persons are victims of hate crimes and hate speech specifically on the ground of sex characteristics when the perpetrators are driven by bias or prejudice towards variations of characteristics. This bias includes prejudice, disgust and hatred towards any primary and/or secondary sex characteristics or physical appearance which the perpetrators perceive as non-conforming to gender and societal norms.⁵

Bias and detestation against intersex people have been entrenched in society for a long time without being perceived or addressed as such, and, as a result, the lived reality of intersex people is full of incidents that easily qualify as hate speech and hate crime once put into the framework of the fundamental right of every person to non-discrimination and a safe life.

The range of settings in which these incidents take place and the group of perpetrators is diverse: the latter include colleagues at school attacking the intersex person physically and verbally, family members, who do not accept the intersex person as they are and even rape by medical doctors, who perceive the intersex person's body as deviant and not entitled to be respected.

In its LGBTIQ Equality Strategy 2020-2025 the European Commission re-confirms that everyone has the right to safety, be it at home, in public or online. The Strategy also highlights that LGBTIQ people suffer disproportionately from hate crime, hate speech and violence.⁶ The strategy also highlights that legal protection against anti-LGBTIQ hate crime and hate speech varies significantly between Member States with seven Member States not expressly including sexual orientation in hate speech and/or crime legislation as an aggravating factor, 15 not including gender identity and almost no EU Member States having a provision that explicitly aims at intersex people.:

Statistical data on the situation of intersex people is still scarce, with the 2019 FRA LGBTI Survey being the first ever survey collecting intersex relevant data on these matters on a European level. To our knowledge no quantitative data collection of a similar scope exists on the national level. The existing data, however, shows an urgent need to action. As the survey showed, the number of incidents of hate crimes and hate speech against intersex people ranks among the highest (together with trans people) within the LGBTIQ population.⁷ However, up to this date only three EU Member States (Malta,

⁵ Non-conforming gender expressions and/or appearances make individuals especially vulnerable in public, see, e.g.: Commissioner for Human Rights of the Council of Europe (2009): Human Rights and Gender Identity, p. 14 <https://rm.coe.int/16806da753>. The same is true for non-conforming intersex people, see D. C. Ghattas (2013), p. 15.

⁶ p. 12, https://ec.europa.eu/info/sites/info/files/lgbtiq_strategy_2020-2025_en.pdf

⁷ See European Union Agency for Fundamental Rights (2020). *A long way to go for LGBTI equality*, available at <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>>. Pages 39 and 42 of the report outline rates of hate-motivated physical/sexual attacks and harassment among the groups of respondents.

Greece, Belgium)⁸ offer protection against hate crime on the ground of sex characteristics and only two (Greece, Belgium)⁹ offer protection against hate speech on the ground of sex characteristics.

The seriousness and severeness of these individual incidents and their potential to incite similar actions becomes even more obvious when looking at the cross-border dimension. Due to the work of intersex activists and positive developments on EU and national level in the past 3-5 years, the existence of intersex people has become more visible to the general public. As a result, intersex people have become targets of the anti-gender movement and right wing as well as fundamental religious groups. The cross-border dimension of these groups¹⁰ and their actions highly increase the risk of incitement and spreading hatred against intersex people across the borders of the EU members states.

Including hate speech and hate crime in the list of EU crimes in Article 83(1) TFEU will not only allow to address the still prevailing lack of protection of a group that is, acc. to the 2019 FRA LGBTI Survey, among the most vulnerable groups in regards to hate speech and hate crime and one of the least protected ones as well. It is also the appropriate measure to recognize the particularly serious nature of those incidents and the fact that they are deeply rooted in a societal normative bias which is difficult to overcome unless in a unified cross-border manner.

Extending the list of EU crimes in Article 83(1) TFEU to include hate speech and hate crime will also acknowledge the fact that many of these incidents are or have become part of a broader strategy of the anti-gender movement, including right wing and fundamental religious groups, who operate across borders and strategically attack vulnerable minorities while incite their followers to do the same. This a strong call to the EU, as a cross national body, to take a firm stand against these activities and hence establish a cross-border protection. Last but not least, existing Eu law, like the Freedom of Movement Directive, require unified standards in protecting residents who are part of vulnerable minorities to enjoy their rights.

⁸ Malta: Gender Identity, Gender Expression and Sex Characteristics Act, 2015, Article 11(1-2) <<https://legislation.mt/eli/cap/540/eng/pdf>>; Greece, Criminal Code, Articles 81A and 361B <<https://www.kodiko.gr/nomothesia/document/140974/nomos-4356-2015>>; Belgium: 10 MAI 2007. - Loi tendant à lutter contre la discrimination entre les femmes et les hommes, amended by 4 FEVRIER 2020. - Loi modifiant la loi du 10 mai 2007 modifiant, en ce qui concerne l'interdiction de discrimination relative à la paternité ou à la comaternité, la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes, Articles 4,28,28/1,28/2,29 <http://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=2007002098&la=F>

⁹ Greece: Law 927/1979, as amended by article 7 of Law 4491/2017. Article 1; Belgium: 10 MAI 2007. - Loi tendant à lutter contre la discrimination entre les femmes et les hommes, amended by 4 FEVRIER 2020. - Loi modifiant la loi du 10 mai 2007 modifiant, en ce qui concerne l'interdiction de discrimination relative à la paternité ou à la comaternité, la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes, Articles 4,27 <http://www.ejustice.just.fgov.be/cgi_loi/change_lg_2.pl?language=fr&nm=2007002098&la=F>

¹⁰ See section *What gives hate speech and hate crime against intersex people a cross-border dimension?* and references given there.

2. Intersex people are victims of hate crime

Existing research and reports submitted to OII Europe by intersex individuals and OII Europe member organisations show that intersex people experience hate crimes on a regular basis, including physical and psychological intimidation, aggression and violence, physical or sexual assault, including rape, and verbal assault.

The 2019 FRA LGBTI survey,¹¹ the first and largest data set of its kind to this date, confirms these reports and gives an idea of the scale and seriousness of the kind and number of these incidents: in the five years before the survey 22% of intersex respondents experienced a physical and/or sexual attack for being LGBTI, being the most affected group among LGBTI people. 38% of intersex people at least once experienced violent in-person threats due to being LGBTI in the 12 months before the survey, and 27% even six or more times.¹²

Among all LGBTI respondents, intersex (42%) and trans (48%) people experienced the highest rates of harassment for being LGBTI in the year before the survey. Across the EU, intersex respondents indicated the highest rate (41%) for often or always avoiding certain locations.¹³

Data gets even more worrying when looking at the situation of young people. 14% of the young respondents (aged 15-17) stated they suffered from physical or sexual attacks due to being LGBTI in the 12 months before the survey. 79% of them reported physical attack, while 20% sexual attack or a combination of physical and sexual attack.¹⁴

This means that at least 14% of intersex youth experienced incidents that meet the criteria of a criminal offense and of bias motivation. The figures also show that intersex youth live in a societal environment where hate crime against intersex people can and does flourish: 50% of intersex respondents aged 15-17 said they experienced bullying at school/university and 39% identified school as the location of the last incident of hate-motivated harassment.¹⁵

Reports submitted by intersex people to OII Europe show that physical assault and verbal attacks are common incidents within the family of an intersex person and the high number of homeless intersex people, the highest among the respondents to the 2019 FRA LGBTI survey, confirms these reports: 29% of the intersex survey respondents stated facing housing difficulties and close to half of them, 41%, stated family or relationship problems as reason for the housing difficulties (20% had to stay with

¹¹ European Union Agency for Fundamental Rights (2020). *A long way to go for LGBTI equality*, available at <<https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>>. All figures quoted from here on are the result of our own research through the Data Explorer, unless otherwise specified.

¹² See OII Europe infographic based on LGBTI Survey Data Explorer available at <<https://oiieurope.org/physical-violence-and-harassment/>>

¹³ *Ibid.*

¹⁴ See OII Europe infographic based on LGBTI Survey Data Explorer available at <https://oiieurope.org/intersex-youth/>

¹⁵ *Ibid.*

friend or relatives temporarily, 6% had to stay in emergency or temporary accommodation, 8% had to stay in a place not intended as a permanent home, 5% had to ‘sleep rough’ or sleep in a public space).¹⁶

The negative impact of these incidents on the individual is severe:¹⁷ when asked about how the last hate-motivated violent incident affected their health and well-being, 59% stated they were afraid to go out or visit places, 56% said they had psychological problems (e.g., depression or anxiety), 9% said they needed medical assistance or hospitalisation.¹⁸

OII Europe and its member organisation have received many reports about such bias motivated incidents in the past years. Due to the deeply entrenched societal bias, which makes hate speech and crimes against intersex people still a widely “acceptable” behaviour among the general public, the setting where those incidents take place are diverse and so are the perpetrators.

At the same time, because of the deeply entrenched societal bias, intersex people almost never report these incidents to the police or another authority, out of fear and based on the experience that they will encounter the same disbelief, neglect, ridiculing or invasive curiosity about their body they are used to encounter in society. Furthermore, the prevailing lack of knowledge about intersex, the ongoing discrimination intersex people experience on the ground of their sex characteristics and last but not least shame, taboo and silencing made it often impossible for the respective intersex individuals to understand and, even less, to report, that they had become victim of a bias motivated crime, as the following representative examples show:¹⁹

Severe physical assault in educational facility

“The classmates laughed at me openly and often made me fall down the stairs. Twice I had broken bones. I was afraid to go to school. I still hear my father telling me that if I was bored, I should fight “like a man”. I experienced all this as deeply unfair. The truth is, I wasn’t allowed to be myself. I am still always afraid of what people think of me and afraid of how others look at me. When I have to go to the pool with my children, I often have to take an anxiolytic.” (Belgium, intersex person, age 40-45)²⁰

¹⁶ See OII Europe infographic based on LGBTI Survey Data Explorer available at <<https://oiieurope.org/housing-and-economic-difficulties/>>

¹⁷ On the negative impact of hate crime on the victims and the community, also see Equality and Diversity Forum / Aziz Foundation (2018). *Hate Crime: Cause and Effect. A research synthesis*, available at <<https://www.equallyours.org.uk/wp-content/uploads/2018/10/Hate-crime-cause-and-effect.pdf>>, p. 6. See also research referenced there.

¹⁸ *Ibid.*

¹⁹ OII Europe (2019): #MyIntersex Stories. Personal accounts by intersex people living in Europe. https://oiieurope.org/wp-content/uploads/2019/11/testimonial_broch_21-21cm_for_web.pdf We include all of these testimonies and the additional information (e.g., country, age) as consented to by the respective intersex individuals.

²⁰ *Ibid.* p. 16

Severe verbal attack and subsequent failure to render needed medical assistance

"[...] my first obstetric doctors in the local hospital were not that well-informed: they call us on a hospital counselling meeting (two of them) and insisted that the "standard procedure" was to terminate ANY XXY foetus, cause they will be "A freak! A monster! A nature's fault! Someone like with Down syndrome, a dump person incapable of living on its own! A boy with a so small phallus, so better not to be at all" (these were their exact words...) Since we were informed that all these was false and outdated, we insisted on keeping the baby and they refuse to deliver it, so they made us sign papers that we continue on our own responsibility and they send me to an Athens central hospital to find new doctors to carry on." (Greece, parent of an intersex child, born 2009)²¹

Rape in a medical setting (1):

"When I was 15 years old, I had a check-up, the first time my father had waited outside. He had always been present while the doctor and often students came to poke me and measure me, telling me how I look or don't look, whether I'm becoming a real boy or not, checking to see if I was growing feminine characteristics, breasts, if I had body hair or not, to see if my voice was breaking etc etc. The man who had been my surgeon since I was three months old decided to check if I could produce sperm this time. I had no idea that he didn't need to do this, that a simple test could be done, but this doctor decided to do it manually. I had no idea that it was inappropriate, or that it was sexually motivated, as an intersex male I was used to having no privacy over the part of my body that everyone calls our "private parts", they had never been private in my life, at the hospital it was a show for everyone to see, in my daily life it was a secret, my whole body was a shameful secret. How would I have ever known that a doctor shouldn't be manually doing a sperm test on me?! When he had finished measuring me, in different physical states, had injected me with viagra and taken photos of me, he congratulated me, he told me that I was developing very well, that I was a "normal" boy, that I "wasn't at the back of the queue when God was designing boys". What he actually did was masturbate me and when he had his sample he looked under a microscope at my sperm, I felt happy that I could be normal. It happened again when I was 17 years old, he was shocked that I didn't do those things myself at home, I was asexual, I never even thought about it, he told me that was part of my condition and I should practice, he showed me how to do it, and then he told me he could operate again just to correct those imperfections. I did not really understand, he did not tell me the real reason, that it was just aesthetic, he was trying to make my appearance like a "normal" guy.

After the surgery, and this molestation, for which I had no reference to know that it was molestation, I spent the last years of adolescence, and the beginning of my 20s, confused. I began to realise after I became a sexual person that what the doctor had done to me was sexual abuse. But he had told me it was a medical procedure, and as I was growing up, I had become accustomed to being touched and checked, being tested, so I did not know what the limit was.

²¹ *Ibid.*, p. 35

One day I turned on the television and saw that the doctor had been arrested, he was being tried for sexual abuse of underage patients, and I decided to go to the police and tell them that maybe I could help, to provide evidence, I needed answers and I wanted to know if what happened to me had been for medical reasons or not.

So, I think that as an intersex person, I was subjected to this lack of control of my sexuality ... my first sexual experience was in a context in which my body was violated. This violence happens to intersex people a lot... I do not know an intersex person who did not have to go through this.” (UK, intersex person)²²

Rape in a medical setting (2):

“The hormones my doctor chose for me meant I needed to come to the hospital regularly to have them administered. One day I came to the hospital and was told my doctor was sick and would be off work for a while. I was already feeling the symptoms of the menopause. No other doctor at the hospital would see me. I started calling every gynaecologist I could find in the phone book. Nobody would see me after I told them why I needed to see them, except one.

I came in and explained why I needed these hormones and he agreed to give me them.

He made me completely undress and lay under a sheet with my legs up in stirrups. My doctor never did that, I could just lay on a bench with my clothes on and expose the area needed. I was confused.

He put his hands on my butt and pulled me further down on the bench. He administered the hormones and they really hurt, a lot. I cried. It had never hurt before. He examined my genitals, his face was very close, I could feel his breathing on my genitals. My doctor never did that, even the one time I had needed a genital examination. I started panicking. I was frozen and could not move, it was hard to breathe and I started seeing black spots. Then he stuck his fingers inside of me and moved them back and forth. He asked me if I felt it, if I liked it... His smile was very creepy. I could not answer. I could not breathe. He stood up and told me to get up and get dressed. Then I had to pay him. It took me many years to realise that this was rape. No one ever talked about rape where I lived except about violent strangers that attacked women and forcibly and violently held them to rape them, rape always involved a penis. It was not until I met feminist groups later in my life that I realised that THIS WAS RAPE and I had paid someone after they raped me.

I still cannot talk about it. I might never be able to.” (intersex person)²³

²² *Ibid.*, p. 44-46

²³ *Ibid.*, p. 69-70

None of these hate crimes were reported to the authorities due to the lack of understanding of the respective individuals that they had actually been victims of a bias motivated crime and the high societal taboo and shame that intersex people have been raised with and that is still common for many intersex people across the EU.

3. Intersex people are victims of hate speech

More than 10 years ago, the European Union, under Article 1 of its Council Framework Decision 2008/913/JHA²⁴ took a crucial step and addressed hate speech as a serious crime. Five years ago, on Council of Europe level, the European Commission against Racism and Intolerance (ECRI), in its General Policy Recommendation (GPR) No. 15 'On Combating Hate Speech',²⁵ re-affirmed the fundamental importance of freedom of expression and opinion, tolerance and respect for the equal dignity of all human beings for a democratic and pluralistic society and defined hate speech as “the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatisation or threat in respect of such a person or group of persons”.

Intersex people experience both levels of hate speech, identified by the ECRI GRP: 1) harmful conducts that target the person or group of persons; 2) conducts that add a layer of incitement to hatred, violence or discrimination. Both of them are relevant to intersexphobic hate speech, as the following paragraphs will show.

3.1 Verbal assault against intersex individuals

Research has shown that, for decades, intersex people have been victims of intersex-related, derogatory language on a regular basis across Europe and the EU, while, at the same time, their actual existence was completely neglected and ignored by society.²⁶ In fact, derogatory language, together with pathologizing terminology, was, for a long time, the only language available to talk about the existence of intersex people.

Since 2012 OII Europe has regularly assessed the language situation through conversations with intersex activists and the growing number of intersex organisations in EU Member States, including in the frame of OII Europe’s translation program, which started in 2015. These assessment show that it

²⁴ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law <https://eur-lex.europa.eu/eli/dec_framw/2008/913/oj>

²⁵ ECRI General Policy Recommendation No. 15 on Combating Hate Speech, adopted on 8 December 2015, available at <<https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>>

²⁶ Ghattas, D. C. (2013). *Human Rights Between the Sexes. A preliminary study on the life situation of inter* individual*. Ed. by the Heinrich Böll Foundation, p. 58-59.

took an emerging intersex activism and community in the respective countries to create positive and empowering language for intersex people and intersex issues.²⁷ Despite all those efforts, OII Europe members organisations across the EU have reported that insults and swear words, used by the general public were and often still are the only (indirect) recognition that other than so-called male and female bodies exist.

This ongoing use of derogatory language and the lack of legal protection of intersex people against it perpetuate the notion that intersex individuals do not have the same human rights as everyone else.²⁸ Furthermore, with the increase of intersex visibility, hate speech that targets intersex people directly on the basis of their variation of sex characteristics has also increased: the 2019 FRA LGBTI survey report²⁹ revealed that 28% of intersex people experienced receiving offensive or threatening emails or text messages (SMS) six or more times, in the 12 months before the survey, due to being LGBTI. Even 39% of those aged 15-17 years old gave the same answer. 27% of intersex people experienced this at least once.³⁰

Among young intersex respondents, indication of verbal assault is widespread. 35% of them experienced offensive or threatening comments due to being LGBTI 6 or more times in the 12 months before the survey, 18% 3-5 times, 21% twice and 23% once³¹.

Some OII Europe member organisations, based in EU member states are monitoring hate speech in their country regularly and their reports are worrying as especially online hate speech against intersex people is already dramatically widespread and getting worse.³² Hateful comments to online articles as well as Facebook and Twitter posts target the victims explicitly on the ground of their sex characteristics, as the following examples show:

- *“Two sexes that’s all. Any variation from that are deformities. They are infertile right? So, on a species level they are not viable”* Twitter user, 22/11/2018
- *“I won’t hear anything from you, the “Inter-sex”. Unicorn with cocks, you are disgusting.”* Twitter user, 17/12/2018

²⁷ Unpublished interviews conducted by Dan Christian Ghattas in 2017 with intersex activist Pol Naidenov (Bulgaria) and Kristian Randjelovic (Serbia, Balkan Countries).

²⁸ This does not only add to their general vulnerability but the still prevailing lack of legal protection against this and other harmful behaviour also feed the false and discriminatory conviction that the only other way to “protect” intersex people is to alter intersex bodies through surgical and other medical interventions without their (or even their parents) consent (62% acc. to the 2019 FRA LGBTI survey, European Union Agency for Fundamental Rights (2020). A long way to go for LGBTI equality, available at <<https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>>). But clearly one violation of a fundamental right cannot be solved by another one.

²⁹ European Union Agency for Fundamental Rights (2020). *A long way to go for LGBTI equality*, available at <<https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>>

³⁰ See OII Europe infographic based on LGBTI Survey Data Explorer available at <<https://oiieurope.org/physical-violence-and-harassment/>>

³¹ See OII Europe infographic based on LGBTI Survey Data Explorer available at <<https://oiieurope.org/intersex-youth/>>

³² Please see Appendix II for the findings of the reports submitted to OII Europe

- *“We the dyadics don’t have a disgusting alien between our legs. You are f*cking human errors and we won’t stop talking like we do to include your atrocity into our normality.”* Curiouscat user, 2018³³.

In 2019, OII Europe’s member organisation Collectif Intersexes et Allié.e.s (C.I.A.) released an analysis of a compilation of online hate speech.³⁴ It uncovered that verbal online violence towards intersex individuals usually manifests in six different ways:

- talking about intersex people as ‘anomalies to eliminate’
- denial of intersex people’s existence
- data relativization and exclusion of intersex from discourse on human sex
- spreading of false definitions by fake experts
- strong defence of mutilations
- fetishization

Testimonials and reports by other organisations and individuals submitted to OII Europe from other EU Member States (see Appendix II for additional examples) confirm this analysis and show that this is not an isolated but a transnational phenomenon.

3.2. Public incitement to hatred, violence or discrimination

Among the most serious forms of hate speech are the ones perpetrated in a public context, that are intended to - or can reasonably be expected to - incite acts of violence, intimidation, hostility or discrimination.³⁵ As ECRI has pointed out in its General Policy Recommendation, an expression should be considered to have been used in public where this occurred in any physical place or through any electronic form of communication to which the general public have access.³⁶ The capacity of the worldwide web to reach a big audience and to cross national borders - especially when expressed in common languages - makes it particularly pernicious.

VICE is a global media channel focusing on investigative journalism and videos covering an extended range of topics (incl. e.g., world news, travel, art, drugs, politics, sports, fashion, sex) with currently 8.3 million followers on Facebook and several news-website in different EU member State languages. With its 135 million unique visits per month to its channels globally, it is very popular among young people. It reaches twice as many 18-34-year-old people compared to other media channels.³⁷

Two recent incidents, which are exemplary, occurred in December 2020 and February 2021, in the context of an English article and a Dutch video on intersex published on Facebook by the news agency

³³ See 9. 2 Annex II - Examples for hate speech on national level. A) FRANCE

³⁴ See [³⁵ ECRI General Policy Recommendation No. 15 on Combating Hate Speech, p. 9](https://cia-oifrance.org/2019/02/06/lintersexophobie-sur-internet/#:~:text=Le%206%20f%C3%A9vrier%20est%20%C3%A0,le%20Collectif%20Intersexes%20et%20Alli%C3%A9.e.s.> and See 9. 2 Annex II - Examples for hate speech on national level. A) FRANCE</p></div><div data-bbox=)

³⁶ *Ibid.*, p. 19 para. 20

³⁷ See <<https://upload-assets.vice.com/files/2016/01/15/1452894236compressed.pdf>>

VICE.³⁸ The December 2020 article, which was first written in Dutch and published on the Dutch VICE website, and later made available in English on the VICE main page, is about a Dutch intersex person sharing their story. The English version attracted plenty of insulting expressions. Some of them were later deleted by the VICE editorial team, while others stayed, including:

- *“You don’t matter. Matter of fact in a few seconds you won’t even be matter”*
- *“[t]hat sucks. It’s like her reproductive system was made by toddlers who haven’t learned shapes yet.”³⁹*

In February 2021 a video by VICE on the same subject⁴⁰ interviewed a Dutch speaking intersex person; English subtitles were added. The video gained similar disturbing reactions: the intersex person was addressed as “abnormal” and a “birth defect”.

The translation and the fact that the derogatory and hate comments to the article and the video were written in English, shows the cross-border impact of online content, regardless of the language it is initially produced and published in. New technology, like the option for automatic subtitling on YouTube, allow for a cross-border dissemination and reception even without any editorial measure. With English being the lingua franca used and understood by many EU inhabitants and, according the 2016 Eurostat statistic more than 24% of the adult working-age population of the EU being proficient in at least one foreign language (with more 80% with a tertiary level education knowing at least one foreign language)⁴¹ the reach of VICE material published or subtitled in English reaches young people across all EU member states. In addition, language borders do not necessarily match national borders :e.g., Dutch/Flemish speaking people live in the Netherlands as well as in Belgium and are official languages in both countries; German, for example, is an official language in four EU Member States (Austria, Belgium, Germany, Luxembourg) and in a fifth, the Council of Europe Member State Switzerland.

Online hate speech can easily turn into incitement, especially when the wording is deeply offensive and implies that the targeted person or group do not even deserve to exist (beyond equal treatment). The intention of humiliating and eliciting others to humiliate is then clear. In some cases, the intention or effect of inciting other people to harm, abuse, commit violence against intersex people is even made explicit.

Between 2019-2021, OII Europe’s member organisation NNID, who serves Dutch speaking intersex people in the Netherlands and Belgium, collected a worrying number of hateful comments to its Facebook posts, a selection of 56 of which was sent to OII Europe as an example. All of them were deleted by NNID, after making screen-shots to prevent incitement and further victimisation of intersex people who would read the NNID Facebook page. All these comments target intersex individuals,

³⁸ <<https://www.facebook.com/VICE/posts/4234924019874157>> (last accessed 12 April 2021)

³⁹ See 9. 2 Annex II - Examples for hate speech on national level. C) NETHERLANDS

⁴⁰ <<https://www.facebook.com/VICE/posts/4396762333690324>> (last accessed 12 April 2021)

⁴¹ https://ec.europa.eu/eurostat/statistics-explained/index.php/Foreign_language_skills_statistics Accessed, 16.4.21

intersex people as a group and the organisation itself. As the facebook page is visited by Dutch and Flemish speaking persons from, among others, the Netherlands and Belgium, the hate speech has a transnational impact:

- *“A war against these criminals is needed. Left over NSB supporters [Dutch political Nazi party]. We are fully against these Nazi practices”.*
- *“Stop talking out of your arse [literal translation: dick]. You have already changed the entire constitution, scum.”*
- *“A session at a psychiatrist is recommended”*
- *“well done, some time in Siberia would do them well”*
- *“Support for the mentally handicapped can be found at a psychologist”⁴²*

The seriousness of these attacks not only lies in the highly offensive words used (like suggestions that intersex people are sent to Siberia, or are even “criminals” and “Nazis”), or in the explicit wish to start “a war” against them, but also in the fact that they were directed against the whole intersex community by targeting the official page of the only intersex-led organisation in the Netherlands. By trying to humiliate intersex people exactly in the online public space where education of society takes place and where society and intersex people are encouraged to more (self-)acceptance, the perpetrators intended to and did harm the entire community.

Intersex people and intersex organisations most often do not have the human resources or the possibility to report these ongoing incidents of hate speech. As an EU member state based intersex activist stated to OII Europe in regards to such comments:

“To increase the visibility of important news regarding intersex, we sometimes promote posts. This means that people who don't support us also see our post. As a result, we need to keep a close eye on all comments while the promotion is going on, also out of office hours. Because we need to protect our community from reading comments calling us attention-grabbing posers, Nazis, freaks and monsters for fighting for human rights. The only way I have to deal with it is to laugh at how strange and evil some of these comments are, to try to avoid feeling how much it stings when a stranger wishes me to be sent to a prison camp for wishing I had had the right to my autonomy and not wanting others to go through the pain I have gone through”.

Furthermore, in addition to online incidents targeting intersex spaces, in the past few years, while becoming more visible to the general public, intersex people have become a dedicated target group of racist, supremacist and sexist online forums, including the well-known neo-Nazi website Stormfront.org⁴³. A 2020 post by a forum member who claims 4th Reich as their location, wrote:

⁴² See 9. 2 Annex II - Examples for hate speech on national level. C) NETHERLANDS

⁴³ See 9.1 Annex I - Cross-border impact and transnational hate speech, b) Right-wing/ anti-gender movement transnational websites

"[...] The college SJW's [Social Justice Warrior] waste their time taking stupid classes like women's studies and complaining about white males instead of learning something useful. They champion negroes, illegal aliens, muslims, sexual deviants, and Intersex (a new word I just learned), which means freaks who are born with a genital problem, such as hermaphrodites, and congenital eunuchs, all horrible genetic mistakes of nature. They support all the garbage of society and blame their problems on white males. All these SJW's are either genetically inferior or they're mistakes of nature or both. It reminds me of the deformed freak in the movie "300" who turned traitor on the Greeks because he was an outcast. I like how the ancient Spartans took their sickly, weak, and/or deformed babies and threw them off a cliff. That's what all the white nations should be doing now [...]".⁴⁴ [emphasis added by OII Europe]

In another 2020 post, another Stormfront hater shared the image of the intersex flag and included it in the "13 flags that LGBTQ perverts use to announce their mental illness to the world".⁴⁵ In a 2018 post, a member claiming to be located in a "Jewish dystopia" quoted an article about the introduction of a third gender marker in Germany.⁴⁶ One perpetrator commented:

"A much better bill would be if you do not fit in the classification of male or female you may stay at the freak show zoo (if you want to go see them that's just fine but they must stay in your own environment) or get out".

While, in this case, the hate speech and aim to incite other members of the Forum and of this right-wing movement is very outspoken, in other cases, determining factors in making such abusive expressions forms of public incitement are rather the context, the position held by the speaker and the power relationship between the speaker and the listener/reader.

An example, provided to OII Europe by its member organisation Intersex Greece, is an article which appeared on the website <https://omofylofilia.gr/>⁴⁷. The transnational website claims to seek to provide help to LGBTQI+ people and offers "counselling" services by several priests in Greece and in Cyprus. Those in search of counselling can fill out an online platform indicating their email address and city/area where they live, and they will get in touch with a priest near to them.

The well-structured article (see Annex II for the text and the subsequent communication) identifies intersex people are "abnormal". In addition, it gives clear, religiously motivated and biased instructions on how an intersex person must act in order to align with the way that God made them; these instructions include the obligation for any faithful intersex individual to fix their outer appearance towards what the chromosomal make-up seemingly "tells". By that the article promotes non-vital surgical and other medical interventions – not on the basis of the intersex person's own

⁴⁴ <<https://www.stormfront.org/forum/t1304961/>> (last accessed 12 April 2021)

⁴⁵ <<https://www.stormfront.org/forum/t1308039/>> (last accessed 12 April 2021)

⁴⁶ <<https://www.stormfront.org/forum/t1266197/>> (last accessed 12 April 2021)

⁴⁷ <<https://omofylofilia.gr/%CF%83%CF%87%CE%B5%CF%84%CE%B9%CE%BA%CE%AC-%CE%BC%CE%B5-%CE%BC%CE%B1%CF%82/>> Source reported to us by Intersex Greece. For more details, see their attached contribution in 9. 2 Annex II - Examples for hate speech on national level. C) GREECE

wishes and desires but on the basis of what is required to live a life pleasing to God. Young intersex people or their parents may easily be misguided and manipulated, especially because the advice - to fix an abnormal body - comes from persons they trust (priests or people close to priests) and exercise power over them.

As a result, such biased, publicly available and disseminated information, perpetuate the notion about the lack of worthiness of intersex people and the bodies they are born with. This, on one hand, can pressure intersex people and their families into consenting to practices which, unless the consent is given personal, freely and fully informed, have been identified as harmful medical practices by the UN and other international human rights bodies as well as by the European Commission in the context of its LGBTI Equality Strategy and its Child Rights Strategy.

On the other hand, it carries the high risk to incite hatred and harmful behaviour in the general public and the congregation towards all intersex people who do not follow the instruction given by the religious leaders.

4. What are the effects of hate speech and hate crime on intersex victims and society?

Hate speech and crime incidents have an immediate and significant impact on the victim. Intersex people report that hate-motivated violence impacts their health and well-being, makes them afraid to go out or visit places, triggers psychological problems (including depression and anxiety) and in some cases the need of medical assistance or hospitalisation.⁴⁸

Hatred and biased harmful behaviour intersex people experience as individuals and as a group increase the discrimination and stigma already surrounding intersex people in the society. This has consequences for their access to education and work.

Discrimination also causes difficulties in finding a job or problems in the workplace. 27% of intersex respondents to the 2019 FRA LGBTI survey felt discriminated against due to being LGBTI when looking for a job in the past 12 months.⁴⁹ Discrimination at work was reported by 32% of intersex respondents to the 2019 FRA LGBTI survey.⁵⁰ Once they secure employment, intersex people have reported intrusive curiosity about their bodies from their co-workers, or, when they opened up, disbelief and rejection.⁵¹

⁴⁸ See figures from the 2019 FRA LGBTI survey, reported above in section 2

⁴⁹ European Union Agency for Fundamental Rights (2020). A long way to go for LGBTI equality, available at <<https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>>

⁵⁰ *Ibid.*

⁵¹ The Netherlands Institute for Social Research (2014). *Living with intersex/DSD: An exploratory study of the social situation of persons with intersex/DSD*, p. 56, available at

In education, the strain of discrimination and stigmatisation may lead to higher absence rates. In the context of a French research thesis, out of 13 participants in an online questionnaire, 10 mentioned difficulties at school: 8 specified it was due to “mental disturbance, unease or depression, linked to the consciousness of being ‘different’”, 5 to “harassment from my school mates about my sexual characteristics” and/or “avoiding some classes (like PE) because or in fear of teasing or harassment from other students”.⁵²

Recurring absence from school is known to have a negative effect on educational attainment⁵³ and physical and psychological strain often prevents intersex people from developing their full potential. As mentioned in section 2 of this submission, 39% of intersex youth age 15-17, who had suffered from being victim of a hate-motivated harassment identified school as the location of the last incident.⁵⁴

Intersex individuals of the 2019 FRA LGBTI Survey also experience economic difficulties at a higher incidence, compared to LGBT respondents: 51% of intersex respondents stated that their household’s total income makes ends meet difficult, 26% with some difficulty, 13% with difficulty and 12% with great difficulty. Additionally, 6% of respondents are unable to work due to long-standing health problems.⁵⁵ 29% of the intersex respondents even faced severe housing difficulties; 37% stated that this was due to financial problems / insufficient income.⁵⁶

Hate crimes and hate speech impact not only on direct victims, but also on everyone who experiences them indirectly - be it through the media, in person or online. Direct and indirect victims suffer from increased feelings of vulnerability, anxiety, anger, and sometimes shame, and become more security conscious, avoidant, and more active within the community.⁵⁷ Parents and family members of intersex people can be indirect victims of hate speech and hate crimes their children and siblings suffer from. In addition, they often are direct targets of hatred and harmful behaviour, especially but not limited to situations where they defend their intersex family member, as the following examples show:

Three parents of babies (born with mild to moderate hypospadias), reported to Intersex Greece, an OII Europe member organisation, that 3 different child-urologists insisted that their intersex children need urgently the normalizing operation, otherwise they would “*never feel men enough*”. The parents also heard from these doctors that

https://www.researchgate.net/publication/290446986_Living_with_intersexDSD_An_exploratory_study_of_the_social_situation_of_persons_with_intersexDSD

⁵² See 2018 thesis referenced in CIA-OII France attached contribution, see 9. Appendix, Annex 9.2.B

⁵³ Monro, S., Crocetti, D., Yeadon-Lee, T., Garland, F., & Travis, M. (2017). *Intersex, Variations of Sex Characteristics, and DSD: The Need for Change*, p. 50, available at <http://eprints.hud.ac.uk/id/eprint/33535/>

⁵⁴ *Ibid.*

⁵⁵ See OII Europe infographic based on LGBTI Survey Data Explorer available at <https://oiieurope.org/housing-and-economic-difficulties/>

⁵⁶ See OII Europe infographic based on LGBTI Survey Data Explorer available at <https://oiieurope.org/housing-and-economic-difficulties/>; 20% had to stay with friend or relatives temporarily, 6% had to stay in emergency or temporary accommodation, 8% had to stay in a place not intended as a permanent home, 5% had to ‘sleep rough’ or sleep in a public space; see also section 2 of this submission about other hate induced reasons for intersex homelessness;

⁵⁷ Equality and Diversity Forum / Aziz Foundation (2018). *Hate Crime: Cause and Effect*. A research synthesis, available at <https://www.equallyours.org.uk/wp-content/uploads/2018/10/Hate-crime-cause-and-effect.pdf>, p. 6. See also research referenced there.

- *“A man that can’t urinate standing is half of a man”*

Future-parents of unborn intersex foetuses (diagnosed during pregnancy) have reported, repeatedly in the last decade, that some public and well-known (obstetric) doctors tried to terrify them and get their consent for the termination of their (otherwise healthy and wanted) foetuses, by calling the intersex foetus *“A Freak and a nature’s mistake that don’t deserve to live”* or (insultingly) *“future homosexuals”*. A doctor has told a future-parent (a father) that

- *“In case, like you now, I knew beforehand that my boy will have a small penis, I would have definitely killed them at birth.”*

These hate speech incidents do not only affect the parents and family of the infant or to-be born child: they directly encourage parents to consent to a violation of the child’s bodily integrity and a termination of child on the basis that they are not worthy to live.

This extends to the well documented fact that even non-vital surgical and other medical interventions have been and still are performed without the individuals but also not even their parent’s consent; according to the 2019 FRA LGBTI Survey 62% of individuals that were subjected to such an intervention reported that neither them nor their parents had consented to such a surgery:

- *“When I said ‘clitoridectomy’, my father started to cry, he told me that they never gave their consent for the clitoridectomy.”* Gabrielle, 28 years old, when she reads her medical file with her parents in 2017.

These surgeries, that do not serve to save a life or treat actual physical danger, have been identified as harmful medical practices and intersex genital mutilation by UN and other human rights bodies, as well as the European Commission in its LGBTIQ Equality Strategy 2020-2025 and its Strategy on Children's Rights 2021-2024 and are considered harmful medical practices. The EU Charter of Fundamental Rights protects the right to integrity of all persons, and provides that, in the field of medicine, the free and informed consent of the person concerned is needed (Article 3.2).

While this right is limited for individuals below the age of maturity in many EU Member States,⁵⁸ they still require a substitute parental consent to a non-vital, non-emergency medical intervention.⁵⁹ Without consent such non-vital interventions should legally constitute a criminal offense. In addition,

⁵⁸ Acc. to FRA in 10 EU Member States (Bulgaria, Cyprus, Finland, France, Greece, Hungary, Italy, Malta, Romania and Slovakia) children do not have the right to make autonomous decisions about their medical treatments until they reach the age of majority, which means that parents must always give their consent. In some cases – for example, in France – the parents’ final decision must take into account the opinion of the child, if the child is able to express his/her will.

<https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/consent-medical-treatments>

⁵⁹ *Ibid.*

depending on the country, some medical interventions, including some medical interventions performed on intersex children are even illegal with an existing parental consent.⁶⁰

As the hate speech examples expressed by medical practitioner show, a profession in the field of health care does not immunize a person from bias and bias motivated harmful behaviour. Non-vital, deferrable medical interventions are based and performed on the basis of a bias towards a limited and normative societal notion of a binary of sexes and this bias itself incites thoughts and feelings of disgust and abhorrence towards a person with a variation of sex characteristics, which then can directly lead to acts and expressions of hatred as described above.

From this perspective, such acts should be considered a specific form of hate crime and clearly biased and harmful expressions need to clearly be identified as hate speech. The strong role the societal entrenched bias plays become even more evident in cases where interventions were performed on adult intersex people without their consent or where intersex individuals who seek a way back to their original physical status quo are rejected and their wishes ridiculed.

- *“When I had an emergency surgery, they thought that they should make me a vagina, so without asking me they cut the opening of a vagina. I woke up from the anaesthesia with*

⁶⁰ In 2019, for example, during the discussions around the bioethics law, French Health Minister Agnès Buzyn declared that early, unnecessary and non-vital surgical interventions were already illegal: “‘En effet, comme M. le rapporteur l’a indiqué, le cadre législatif actuel interdit déjà les opérations chirurgicales et les traitements irréversibles pratiqués de manière précoce sur un enfant quand il n’y a pas de nécessité médicale”, see minutes of the National Assembly’s session on 8 October 2019 available at <https://www.assemblee-nationale.fr/dyn/15/comptes-rendus/seance/session-ordinaire-de-2019-2020/deuxieme-seance-du-mardi-08-octobre-2019>. However, as research shows, these bans do not include intersex infants and children. In 2014 the 24th Conference Equality and Women Ministers and Senators of the German Länder (GMFK) therefore called for a ban of cosmetic surgeries on intersex minors and pointed to the need to clearly regulate by law the conditions for surgeries and medical treatment on intersex minors. The GMFK pointed out that while “family law already prohibits guardians from consenting to the sterilisation of a child (§ 1631c BGB)” and while, “in the case of girls, parents cannot give effective consent to the removal or circumcision of the clitoris, as this is punishable as female mutilation (§ 226a StGB)”, intersex minors were “in fact often denied this protection by carrying out procedures that have a sterilizing effect or that alter the genitals of intersex minor’s without their consent and without compelling medical indication”. Therefore, as the GMFK continued, a “corresponding standard of protection must also be implemented or intersex children who are equally worthy of protection, especially since the interventions usually concern the core area of identity, are predominantly irreversible and are justified as a supposedly preventive measure (in regards to a presumed later psychosocial burden and ‘need for adaptation’ to without their consent and without compelling medical indication”. [quotes translated by D.C. Ghattas], see for the original German text: 24th Conference of the Equality and Women Ministers and Senators of the German Länder (2014): Tagesordnungspunkt 8.1: Rechte intersexueller Menschen wahren und Diskriminierung beenden – insbesondere Schutz der körperlichen Unversehrtheit (Agenda item 8.1: Safeguarding the rights of intersex persons and ending discrimination – in particular the protection of physical integrity), https://www.gleichstellungsministerkonferenz.de/documents/2014_10_13_beschluesse_gesamt_extern_2_1510227377.pdf; a similar situation exists, e.g., in Austria where § 90 StGB of the Criminal Code together with § 85 StGB of the criminal code explicitly makes any kind of (genital) mutilation illegal, while IGM is still ongoing, see <https://www.jusline.at/gesetz/stgb/paragraf/90> and <https://www.jusline.at/gesetz/stgb/paragraf/85>; in four European countries, IGM is explicitly banned (under several conditions): Malta - Gender Identity, Gender Expression And Sex Characteristics Act, 14th April 2015; Portugal - Lei n.º 38/2018 de 7 de agosto, Direito à autodeterminação da identidade de género e expressão de género e à proteção das características sexuais de cada pessoa; Germany - Entwurf eines Gesetzes zum Schutz von Kindern mit Varianten der Geschlechtsentwicklung (19/24686); Iceland - Lög um kynrænt sjálfræði, 2019 nr. 80 1. júlí

something stuffed inside me, when there was nothing before. I started to scream, to tear everything off.” Pierrette, France, 56 years old.

- *“When I was 12, I asked them to remove the genitalia I never asked for [and that had been constructed earlier in their life my surgical means]. Their only answer was ‘you will see, you will fall in love with a man and want children with him’. I never wanted to have babies and I never fell in love with a man. I kept asking to have these terrible and forced genitals removed but the answer shifted to ‘nature doesn’t like emptiness’.” Anonymous, from payetonintersexuation.tumblr.fr⁶¹*

However, the adverse consequences of hate speech and crime are not limited to the victim’s personal sphere, but come at a high price for the society as a whole.⁶² They first extend to the circle of friends and family members, making them suffer from the pain affecting their beloved ones (when they are not perpetrators themselves), and then affect the community at large. From a socio-economic perspective, if a group of people has less chances to develop their full potential, this causes a loss for society.

5. Intersex victims most often do not report incidents of hate crime and hate speech

In regards to reporting hate crimes the still prevailing lack of a specific protective ground (sex characteristic) in most countries (except for Malta, Greece and Belgium) puts obstacles in the way of reporting those incidents, as does the lack of education of public servants (e.g., the police) about the existence of intersex people and about intersex issues.

As the 2019 FRA LGBTI survey shows, of all intersex respondents who experienced an incident of harassment or physical or sexual attack within the 12 months prior to the survey, only 25% reported the incident to any authority or organisation (incl. police, National human rights institutions/equality bodies/ombudspersons, LGBTI organisation, general victim support organisation, hospital or other medical service, someone in organisation/institution where it happened, the media or other) and even less, 16%, reported the hate crime to the police.⁶³

The most common reasons include former experience or fear that:

- the police would not or could not do anything

⁶¹ 9. 2 Annex II - Examples for hate speech on national level. C) FRANCE

⁶² The World Bank, UNDP (2016). *Investing in a Research Revolution for LGBTI Inclusion*, p. 12, available at <https://www.worldbank.org/en/topic/socialsustainability/publication/investing-in-a-research-revolution-for-lgbti-inclusion>>

⁶³ European Union Agency for Fundamental Rights (2020). *A long way to go for LGBTI equality*, p. 47 available at <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>>

- not trusting the police
- fear of a homo-phobic and/or transphobic reaction if they reported to the police.⁶⁴

On average, 25 % of all EU LGBTI respondents mentioned fear of a homophobic and/or transphobic reaction from police as the reason for not reporting a physical or sexual attack.⁶⁵

Individuals are victims of hate crimes because of their actual or perceived belonging to a particular group, whether or not they actually belong to this group. For intersex people this often includes being perceived by the perpetrator but also by a recording authority or organisation as an LGB person, a trans person, a person with a non-normative gender expression or appearance. In addition, intersex people have intersectional identities and life experiences, including but not limited to being gay, lesbian or bi, being trans or having a trans experience, having diverse gender identities, including trans and non-binary identities. As a result, they may be part of groups which reportedly, face a higher risk to become a victim of hate crime and hate speech.⁶⁶ Any data collection focussing on these grounds, without including sex characteristics as an additional ground, will still include intersex people as victims, including as victims of bias motivated hate crimes on the basis of sex characteristics, but without recording them as such.

With a view to encourage reporting, along with introducing a specific protective ground and improving education of law enforcement officials, Member States and the Union should increase efforts to publish and disseminate data on hate speech and crime. As the FRA 2018 *Hate crime recording and data collection practice across the EU* report shows,⁶⁷ publication and dissemination of, and easy access to, this data helps to reassure individuals who suffer from hate-motivated violence and the whole community that such attacks are taken seriously. It also sends a message to the society that hate crime is a proven serious problem which needs specific action, including a cultural change. To this aim, uniform recording practices across Europe and the EU, which include the ground of sex characteristics would be of great importance.⁶⁸

⁶⁴ European Union Agency for Fundamental Rights (2020). *A long way to go for LGBTI equality*, p. 47 available at <<https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>>

⁶⁵ Ibid., report, p. 48

⁶⁶ According to FRA, respondents who self-identify as gay, lesbian, bisexual or 'other' face a higher rate of physical violence than heterosexuals (19 % and 9 %, respectively). See European Union Agency for Fundamental Rights (2021). *Crime, safety and victims' rights. Fundamental Rights Survey* available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-crime-safety-victims-rights_en.pdf, p. 40.

⁶⁷ European Union Agency for Fundamental Rights (2018). *Hate crime recording and data collection practice across the EU*, available at <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-hate-crime-recording_en.pdf>, p. 23

⁶⁸ European countries that report hate crimes to the OSCE/ODIHR reporting system use the category "Bias against other groups - Sexual orientation or gender identity" (Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Finland, Georgia, Germany, Iceland, Ireland, Italy, Lithuania, Netherlands, Norway, Poland, Spain, Ukraine, United Kingdom). Reporting practices vary, with only some States including crimes against intersex people within this category. See <<https://hatecrime.osce.org/what-hate-crime/bias-against-other-groups-sexual-orientation-or-gender-identity>>

6. What gives hate speech and hate crime against intersex people a cross-border dimension?

Although national measures to counter hate speech and crime are essential, the cross-border dimension of hate crime and hate speech against intersex people makes them insufficient, if not accompanied by robust action at EU level.

On one hand, existing EU legislation already establishes the need to combat hate speech and crime on a common basis: The EU Directive 2004/38/EC EU on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States recognises the right of all EU citizens and their family members to move and reside freely in the EU.⁶⁹ With three Member States in the EU having established hate crime (Belgium, Greece, Malta) and two having included hate speech legislation (Belgium, Greece) this right is at risk of being violated if the EU country of destination of an intersex person who moves from those countries to another EU country does not address adequately hate-motivated violence.

On the other hand, the nature of many of these crimes itself determines the cross-border dimension. Online hate speech⁷⁰ - including hateful comments on social media, articles, forums etc. - is transnational and has a cross-border impact, especially, but not only, when expressed in widespread languages. With English being the lingua franca used and understood by many EU inhabitants and, according the 2016 Eurostat statistic more than 24% of the adult working-age population of the EU being proficient in at least one foreign language (with more 80% with a tertiary level education knowing at least one foreign language)⁷¹ it is obvious that people living in the EU have the possibility to access information outside of their national context with ease. The cross-border range of big social media agencies like VICE or online platforms like Facebook, as well as the benefit of the worldwide web to allow cross-country connections and conversations allows for a quick and easy dissemination of hate speech which cannot be contained through national law alone. Hate speech expressed online and originating in one EU members state has the high potential to incite hate speech and hate crime in another EU member state.

In addition, the very nature of the online medium requires a common legal basis. The EU already recognized the cross-border nature of online communication in its 2016 General Data Protection Regulation (GDPR) and research shows that the need for cross-border protection and legislation is equally important in regards to crimes committed online: As a 2017 analysis on *Cybercrime, Evidence and Territoriality* highlights, online platforms make it almost impossible to persecute crimes committed through the worldwide web on a national basis:

⁶⁹ <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0038>>; as recently reaffirmed by the as the European Commission LGBTIQ Equality Strategy 2020-2025, p. 16 <https://ec.europa.eu/info/sites/info/files/lgbtiq_strategy_2020-2025_en.pdf>

⁷⁰ See section 3

⁷¹ https://ec.europa.eu/eurostat/statistics-explained/index.php/Foreign_language_skills_statistics Accessed, 16.4.21

“The difference with other forms of crime, for example ‘ordinary’ crimes or transnational crimes, may be found in the specifics of cybercrime, which can be performed from a distance, using different methods to hide IP addresses or electronic traces, and may not be detected for a long time. [...] A major problem is that electronic evidence is often not located in the territory of the investigating criminal justice authority. Data is increasingly stored on, mirrored on, or fragmented or moving between servers ‘somewhere in the cloud’, in possibly multiple or unknown jurisdictions while criminal justice authorities are normally limited by the principle of territoriality.”⁷²

The special need to intervene at EU level also derives from the transnational and cross-border activities of one of the main drivers of hate speech and hate crime against LGBTI people to date: the anti-gender movement.⁷³ Research shows that it is a “highly organised (but not centralised), well-funded, transnational movement working to undermine women’s rights, LGBTQI* rights, and civil society. These efforts are not about ‘gender’ as such, but it is about power and about maintaining or promoting social and political hierarchies in the face of their (perceived) decline. These efforts take place in the streets across the world, in local and national governments and at the international level”.⁷⁴

Old actors of this movement include religious groups and institutions as well as ultra-conservative and far-right-wing think tanks and groups. Newer actors mainly are groups of so-called “concerned parents” or “concerned citizens initiatives” which – across the globe – show significant overlap in terms of the visual identity, branding, and message.⁷⁵ Those newer groups organise, often online, around the fight against what they call “gender ideology”. Many of them target trans and intersex people and are based on a defamation of their sex characteristics and gender identity.

One of the most active groups is the Spanish anti-gender group HazteOir (Make Yourself Heard) with its headquarters in Madrid. In 2020 the National Court of Spain confirmed the Interior Ministry’s decision to revoke the status of a ‘public utility’ of HazteOir, based on a public hate speech campaign on Spanish buses with the slogan «*Los niños tienen pene. Las niñas tienen vulva*» (“Boys have a penis; girls have a vulva”). However, while making the strong point that such a campaign does not benefit the “general interest, in one of its aspects, that of tolerance” and revoked all economic benefits connected to such a “public utility” status, the national authority’s penalty was not effective in reducing or limiting the harm, that had been done as it did not (and could not by lack of respective legislation) address its hate speech nature directly.⁷⁶

⁷² Jan Kleijssen and Pierluigi Perri (2016): Cybercrime, Evidence and Territoriality: Issues and Options. In: Netherlands Yearbook of International Law 2016. The Changing Nature of Territoriality in International Law, p. 147-173, here p. 148-150 <https://www.springerprofessional.de/netherlands-yearbook-of-international-law-2016/15303708>; the quoted chapter is also hosted on <https://rm.coe.int/cybercrime-evidence-and-territoriality-issues-and-options/168077fa98>

⁷³ For a definition of the expression anti-gender movement, see Denkovski, D., Bernarding, N., and Lunz, K. (2021). *Power Over Rights: Understanding and countering the transnational anti-gender movement. Volume I*. A study by the Centre for Feminist Foreign Policy, supported by the German Federal Foreign Office and the Ministry for Foreign Affairs of Finland, p. 18, available at <<https://centreforfeministforeignpolicy.org/power-over-rights-understanding-and-countering-the-antigender-campaigns>>

⁷⁴ Denkovski, D. et al. (2021). *Power Over Rights. Volume I*, p. 10

⁷⁵ *Ibid.*, p. 11

⁷⁶ As reported by Gayles, accessed 16.4.2021 the ruling of the National High Court confirms the decision of the Ministry of the Interior to withdraw HazteOir’s status as an association of “public utility” as it “failed to comply with its duty to promote

In addition, the decision was based on the part of the campaign that was directly located in Spain (Spanish buses). Already in 2013, however, HazteOir (Make Yourself Heard) had launched the online platform CitizenGo (citizengo.org). As of 2021, this platform has been translated into over ten languages and, according to a report published by the German Gunda Werner Institute, is recognised as an essential tool in the running of anti-gender campaigns in various European countries, such as Hungary, Italy and Poland.⁷⁷

Another actor that plays a role in the multiplication of so-called “concerned citizens” grassroots protests in Europe is La Manif pour Tous (lamanifpourtous.fr). Since its first emergence in France in the early 2010s, it has “inspired” activists all over Europe including Germany (“Demo für Alle”) and Finland (“Aito avioliitto”),⁷⁸ proving the cross-border impact of the platform and their actions.

In addition, parties like the AfD in Germany and VOX in Spain have embraced anti-gender discourse and are embedding it within the mainstream political discourse.⁷⁹ The party entered the Spanish parliament for the first time in April 2019 and became the country's third political force after the November 2019 Spanish general election that same year, in which it secured 3.6 million votes and 52 seats in the Congress of Deputies. This far-right party has been found to have deep connections with HazteOir/CitizenGo.⁸⁰ VOX representatives opposed governmental LGBTI equality programmes, which they accuse of introducing “the gender monster”.⁸¹

The German AfD has used intersexphobic rhetoric in the process of the establishment of the recently adopted 2021 German law, which bans IGM on intersex infants and children; the party rejected the law and criticised it as a “bureaucratic monster” that would harm the best interests of the child.⁸² As of 2021 the AfD has 11 seats in the EU Parliament and is a member of the right-wing to far-right Identity and Democracy (ID) group.

the general interest”. In a ruling dated 19 February, the judges of the Administrative Chamber concluded that HazteOir's bus advertising campaign with the slogan “Boys have penises. Girls have vulvas” failed to comply with the duty to promote the general interest, in one of its aspects, that of tolerance, provided for in the law regulating the right of association and the declaration of public utility. The ruling explains that it is incompatible to carry out these activities with the granting of aid and subsidies by the different public administrations to an association “which identifies the promotion of the general interest with that of its ideology”. The Court recalls that the difference between an ordinary association and one recognised under the L.O. 1/2002 “is precisely that “plus” of its “participation” in activities of general interest” and therefore the declaration of public utility entails a series of economic benefits, see <https://gayles.tv/en/tag/hazte-oir/>

⁷⁷ Marcel Obst, M. (2020, December 7). *How Opposition to Gender and Feminism Emerged in Spain*. Gunda Werner Institute. <<https://www.gwi-boell.de/en/node/10395>>

⁷⁸ Denkovski, D. et al. (2021). *Power Over Rights. Volume I*, p. 30

⁷⁹ *Ibid.*, p. 51.

⁸⁰ See openDemocracy (2019, April 25). *Revealed: the Trump-linked ‘Super PAC’ working behind the scenes to drive Europe’s voters to the far right* <<https://www.opendemocracy.net/en/5050/revealed-the-trump-linked-super-pac-working-behind-the-scenes-to-drive-europes-voters-to-the-far-right/>> Speaking to an undercover reporter posing as a potential donor, CitizenGo’s director described plans to run attack ads against Vox’s political opponents, and talked about how to get around campaign finance laws.

⁸¹ See <<https://www.voxespana.es/noticias/vox-acusa-al-botanico-de-fanatismo-de-derrochar-el-dinero-de-los-valencianos-y-de-querer-comprar-votos-20200715>>

⁸² https://www.zeit.de/politik/2021-03/intersexualitaet-bundestag-geschlechtsveraenderung-operation-verbot-kinder?utm_referrer=https%3A%2F%2Fwww.google.com

While these groups are quite outspoken and transparent in their bias against and rejection of LGBTI people, other groups use seemingly compassionate language, while, at the same time, reaffirming and spreading intersexphobic beliefs and opinions, to undermine intersex people's rights as the two following examples of ultra-conservative and religious values groups show:

- The cross-national website <https://omofylofilia.gr/>⁸³

The website claims to provide help to LGBTIQ+ people and also cross-border services of “counselling” by several priests in Greece and in Cyprus. The “About us” section draws on a recurring narrative that apparently shows compassion for LGBTI while in fact reprimanding their own identity as sinful and against the will of God. It commends people “who decide to fight their sinful desires in order to be pleasing to Christ”.

- Cross-national activities of “Agenda Europe”, an ultra-conservative network.

Created in 2013, Agenda Europe convenes an annual secretive “Summit” in different European capitals gathering between 100 and 150 individuals and organizations from the main anti-choice (for them “pro-life”) and homophobic (for them “pro-family”) movements across 30 countries of the continent.⁸⁴ The above mentioned HazteOir and CitizenGo cooperate with Agenda Europe on various levels. Their founder and president Ignacio Arsuaga,⁸⁵ advises Agenda Europe on issues such as crowdfunding and mass mobilization⁸⁶ and his organisation HazteOir implements Agenda Europe's directives in the local context.⁸⁷ Cooperation further involves the reliance on the same “experts”.⁸⁸

Agenda Europe mobilises people and resources across Europe. A 2019 research, published by the Heinrich-Böll-Foundation, shows that it has been the source of at least 18 policy initiatives at a national level, the European Union and the Council of Europe, all of which aiming to undermining women's rights to abortion and LGBTIQ rights. Its petitions and citizens' initiatives often lead to a referendum or other formal reaction from decision-makers. This took place in Croatia, Slovenia, Slovakia, Romania and at EU level with the failed European Citizens initiative “Mum, Dad, and Kids”. Its members in Spain and Poland wrote and promoted the draft laws to restrict abortion in Spain severely in 2014 and the complete ban on abortion proposed in Poland in 2016.⁸⁹

⁸³ (in English: [homosexuality.gr](https://omofylofilia.gr/), also see the case of an intersex article published on the website in section 3

⁸⁴ See Datta, N. (2019, April 29). ‘Agenda Europe’: an extremist Christian network in the heart of Europe. Gunda Werner Institute. <<https://www.gwi-boell.de/en/2019/04/29/agenda-europe-extremist-christian-network-heart-europe>>

⁸⁵ See Ellen Rivera (2019). *Unraveling the Anti-Choice Supergroup Agenda Europe in Spain. A case study of CitizenGo and HazteOir*, Institute for European, Russian and Eurasian Studies, available at <<https://cpb-us-e1.wpmucdn.com/blogs.gwu.edu/dist/b/3076/files/2019/10/IERES-papers-4-Oct-2019.pdf>>, p. 7

⁸⁶ *Ibid.*, p. 24

⁸⁷ *Ibid.*, p. 25

⁸⁸ *Ibid.*, p. 25

⁸⁹ Datta, N. (2019, April 29). ‘Agenda Europe’: an extremist Christian network in the heart of Europe. Gunda Werner Institute. <<https://www.gwi-boell.de/en/2019/04/29/agenda-europe-extremist-christian-network-heart-europe>>

In 2019 Agenda Europe posted a manifesto with the eloquent title "Restoring the natural order".⁹⁰ Along claims against the rights of women and LGBT persons, the document also addresses intersex people in a dedicated paragraph:

*"Another minority group that is much spoken of recently are "intersex persons". Contrary to transgender persons, intersex persons **do have a physical problem**: their biological sex cannot be identified. They are neither clearly male nor clearly female, but, due to genetic anomalies, may have biological characteristics of both the male and the female sexes.*

*Given that a person's sex is an important part of his/her identity, intersex persons are in a **pitiable situation** where it is difficult for them to accept their own identity and, hence, to form relationships with other people. One can imagine that they are very often the object of mockery and discrimination. Society has the obligation to protect these individuals, and to enable them to live a life in dignity. Wherever possible, assistance and counselling should be offered to them, and **efforts should be made to find therapies**.*

*However, **the hypothesis of providing intersex persons with a right to marriage, or with the possibility of adopting children, seems inappropriate**. In order to marry, one must be, and accept to be, a man or a woman.*

Concerning adoption rights, we refer to what has been said above with regard to homosexual adoption". (p. 54) [emphasis added by OII Europe]

In addition to portraying intersex variations as a "problem" and a "pitiable situation", to encouraging efforts "to find therapies", the authors argue that intersex persons should be denied to right to have a family, to marry and have children. They do so by deliberately manipulating human rights language, in order to make their position appear acceptable and even in defence of intersex, while subtly leading the reader to embrace anti-equality positions. Even in cases where its actors are not direct perpetrators of hate speech or hate crimes towards intersex people, the movement facilitates those acts by fuelling fear, intolerance and discrimination.

Another strategy the anti-gender movement has been using for advancing its political agenda is establishing its role in international fora. As the 2021 *Power over Rights* report points out, in many cases its actors succeeded in gaining consultative status at various UN agencies and some are directly part of State delegations. Outside of the main plenaries, they organise side-events, high-level meetings or even disrupt official meetings. Anti-gender organisations also conduct training and education on understanding (and exploiting) the UN and EU system for their peers. They also often move their headquarters to New York City and Geneva to facilitate their international advocacy activities.⁹¹ In contexts where anti-gender actors are influential or in power, the effects for equality can be severe:

⁹⁰ See <<https://agendaueurope.wordpress.com/2019/05/21/and-here-it-is-at-last-the-full-and-unabridged-top-secret-strategy-document-that-sets-an-agenda-for-europe/>>

⁹¹ Ibid., p. 52.

- In **Croatia**, following a successful referendum, a constitutional change was made defining marriage as a union “between a man and a woman”. A similar amendment was approved to the Constitution of Slovakia.
- In **Slovenia**, a legislative change to bring a more inclusive definition of family and recognise the rights to marry and to adopt children to same-sex couples was rejected following two public referenda.
- In **Hungary**, the Constitution was amended to only recognise “traditional families”⁹². Hungary de facto banned legal gender recognition for trans and intersex persons, exposing them to discrimination and infringing their right to privacy.
- Over 100 regions, counties and municipalities across **Poland** have adopted resolutions declaring themselves free from so-called LGBTI ideology or have adopted ‘Regional Charters of Family Rights’.⁹³
- The **Polish** Government announced its intention to withdraw from the Istanbul Convention and the **Slovak** Parliament voted against the ratification of the Convention. The **Bulgarian** Constitutional Court ruled that the Convention contradicted the Bulgarian Constitution, noting, “the lack of a common understanding of the concept of gender is illustrated by the active social and political discussion ‘for’ and ‘against’ the gender ideology that has been ongoing in dozens of countries around the world for two decades”.⁹⁴

All these activities reinforce the bias of the binary of sexes and thereby not only neglect the fact that intersex individuals, i.e., individuals with variations of sex characteristics, exist. They also support and aggravate a climate of shame and taboo that has proven to incite hatred and fear which leads to the above reported hate crimes and hate speech against intersex individuals and the whole LGBTIQ community.

The disruptive consequences of the rising of the anti-gender movement will easily be seen at EU level, unless common action is taken. As the 2021 *Power over Rights* report states, the efforts of its actors are already targeting EU policy processes and funding, the appointment of EU officials, and the work of human rights advocates in Brussels.⁹⁵

⁹² Denkovski, D., Bernarding, N., and Lunz, K. (2021). *Power Over Rights: Understanding and countering the transnational anti-gender movement. Volume II: Case Studies*, p. 57, available at <<https://centrefor feministforeignpolicy.org/power-over-rights-understanding-and-countering-the-antigender-campaigns>>

⁹³ European Parliament resolution of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone (2021/2557(RSP)), available at <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0089_EN.html#def_1_6>

⁹⁴ Denkovski et al. (2021). *Power Over Rights. Volume II*, p. 60.

⁹⁵ *Ibid.*, p. 60; Anti-gender actors have further used participatory means to bring forward their agenda, especially the mechanism of the European Citizens’ Initiative. In 2012, the initiative *One of Us* was launched aiming at interrupting EU funding for activities involving “the destruction of human embryos”, especially in the areas of research, development aid and public health. It was subsequently rejected by the European Commission and the General Court. In 2015 the initiative *Mum, Dad & Kids* sought to introduce a binding definition of marriage and family by EU law, but failed to collect the minimum number of signatures, *Ibid.* p. 61

8. Conclusion

Evidence and research show that intersex people are regularly victims of hate speech and crime. The seriousness of these crimes, their severe impact and the lack of awareness among the society, the lack of education among law enforcement officials as well as the reluctance of the public authorities to collect and publish accessible data reveal the need to

- establish protective legislation with proportionate and effective legislative measures which includes intersex people on the ground of sex characteristics or explicitly under the ground of sex
- educate the general public as well as law enforcing authorities about the nature of these crimes

The only EU legal instrument which, to a certain limited extent, protects LGBTQ and intersex victims is the EU's Victims' Rights Directive.⁹⁶ However, as the 2020 European Commission report on its implementation shows the directive is still not implemented to the full extent across EU Member States; the report also showed severe shortcomings in the transposition of several of its articles were identified in several Member State.⁹⁷

Article 22 of the Directive obliges EU Member States to identify specific protection needs of the victims who have suffered a crime committed with a bias or discriminatory motive. This, up to this date, has clearly not been the case for intersex people. But even for vulnerable groups who have been more on the radar of authorities and national monitoring bodies, the situation has not become better but worse: As the European Commission has pointed out in its EU Strategy on victims' rights (2020-2025), despite EU Member States efforts, hate crime in the EU is increasing.⁹⁸

Research and reports presented in this submission show that intersex people, as all LGBTIQ people, are clearly among the most vulnerable groups in regards to becoming victims of hate crime and hate speech. The European Commission has highlighted this fact in its Victim's Rights Strategy and points out that hate crime disproportionately affects certain communities, including LGBTI+ people. The strategy therefore emphasizes the need to harmonise EU rules and the need of both transnational action and targeted measures to meet special needs of the more vulnerable groups.⁹⁹

⁹⁶ FRA (2018): Handbook on European non-discrimination law – 2018 edition https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-handbook-non-discrimination-law-2018_en.pdf

⁹⁷ See European Commission COM(2020) 188 final, Brussels, 11.5.2020 (Report from the European Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA) <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0188&from=EN>>

⁹⁸ See European Commission COM(2020) 258 final, Brussels 24.6.202 (EU Strategy on victims' rights (2020-2025)), <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0258&from=EN>>

⁹⁹ *Ibid.*

Including hate speech and hate crime in the list of EU crimes in Article 83(1) TFEU will not only allow to address the still prevailing lack of protection of intersex people. It will also allow to address the particularly serious nature of hate speech and hate crime and their cross-border nature requires common cross-border standards.

The cross-border dimension of these crimes stems from

- the application of existing EU law, i.e., the Freedom of Movement Directive, which entitles every resident of an EU Member State, including every intersex person living in the EU, to enjoy freedom of movement between EU members states without having to fear and be at risk that the protection against hate speech and crimes end at the border
- the cross-border dimension of the anti-gender movement, including ultra-right-wing and fundamental religious groups who reach out to a cross-border audience and train their members across borders while particularly targeting LGBTIQ people, which is a strong call to the EU, as a cross national body, to take a firm stand against these activities and hence establish a cross-border protection
- the nature of the crimes itself in an age where online communication has become universal and information is easily accessible and can easily be distributed across national borders

If one minority is discriminated against in the EU, all minorities are at risk of exclusion and persecution. Intolerance and hatred towards a minority endanger peaceful coexistence¹⁰⁰ and are able to make society as a whole, and this includes the European Union in its totality and not only its members states, more unstable.

¹⁰⁰ See PRISM Project (2015). *Report Hate Crime and Hate Speech in Europe: Comprehensive Analysis of International Law Principles, EU-wide Study and National Assessments* available at <https://ec.europa.eu/migrant-integration/librarydoc/hate-crime-and-hate-speech-in-europe-comprehensive-analysis-of-international-law-principles-eu-wide-study-and-national-assessments>, p. 17; see also European Parliament resolution of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone (2021/2557(RSP)), para. L, available at <https://www.europarl.europa.eu/doceo/document/TA-9-2021-0089_EN.html#def_1_6>

9. Appendix

9.1 Annex I - Cross-border impact and transnational hate speech

a) Examples of common Facebook/Youtube comments to videos/articles informing about intersex

These examples are only a small selection of regularly occurring incidents. While we get notice about these incidents on a regular basis from all across the EU, neither OII Europe nor its member organisations have the financial or human resource capacity for proper data collection. National monitoring bodies yet need to include data collection of hate speech incidents on the basis of sex characteristics.

Comments to a video published by VICE, February 2021

<https://www.facebook.com/VICE/posts/4396762333690324> (last accessed 12/04/21)

Comments

- “So, you're abnormal? Thanks for the clarification.”
- “You are a birth defect.”
- “So, they want to change 99.9% of the rules to allow for this 1%. That allows a lot of miscreants & weirdos to commit unspeakable deeds under the guise of these rules. Something has to be worked out, but there's no way we should put 99%, or the masses in danger for 1%.”
- “CLOWN WORLD”

Comments to an article published by VICE, December 2020

<https://www.facebook.com/VICE/posts/4234924019874157> (last accessed 12/04/21)

Comments

- “I also identify as not existing.”
- “You don't matter. Matter of fact in a few seconds you won't even be matter.”
- “That sucks. It's like her reproductive system was made by toddlers who haven't learned shapes yet.”
- “How is intersex different from Hermaphrodite? Or are the waste of sperms creating words like latinx again?”.
- “I identify as an apple”

b) Right-wing/ anti-gender movement transnational websites

Stormfront

Stormfront is a Neo-Nazi Internet forum, and the Web's first major racial hate site, with a transnational audience and hence a cross-border impact. The forum has recently started to disseminate harmful information and hate speech about intersex people. Again, the following quotes only show the tip of the iceberg.

Forum, May 2020 <https://www.stormfront.org/forum/t1308039/> (last accessed 12 April 2021)

“The 13 flags that LGBTQ perverts use to announce their mental illness to the world
If you see any of these, run in the opposite direction. All of these flags are proof of the selfish individual
"look at me I'm a special snowflake" mindset. These sodomites don't even want to associate with each
other.” [Intersex flag is included]

Forum, April 2020 <https://www.stormfront.org/forum/t1304961/> (last accessed 12 April 2021)

“[...] I think the whole SJW [Social Justice Warrior] thing is about inferior people trying to gain
supremacy and advantages over good white people. They call it fighting inequality, but it's really about
trying to get ahead by taking from people who are better than them, because SJW's and the people
they represent are too inferior to succeed on their own merits and talents, because they don't have
any! The reason they are un-equal is because they are genetically inferior scum, but they blame their
problems on white males. And the Jews use them as a weapon against the white race. The college
SJW's waste their time taking stupid classes like women's studies and complaining about white males
instead of learning something useful.

*They champion negroes, illegal aliens, Muslims, sexual deviants, and Intersex (a new word I just
learned), which means freaks who are born with a genital problem, such as hermaphrodites, and
congenital eunuchs, all horrible genetic mistakes of nature.*

They support all the garbage of society and blame their problems on white males. All these SJW's are
either genetically inferior or they're mistakes of nature or both. It reminds me of the deformed freak
in the movie "300" who turned traitor on the Greeks because he was an outcast.

*I like how the ancient Spartans took their sickly, weak, and/or deformed babies and threw them off a
cliff. That's what all the white nations should be doing now [...]* [emphasis added by OII Europe]

Forum, December 2018 <https://www.stormfront.org/forum/t1266197/> (last accessed 12 April 2021)

Germany introduces 3rd gender - LGBT groups say it's not enough

“A much better bill would be if you do not fit in the classification of male or female you may stay at
the freak show zoo (if you want to go see them that's just fine but they must stay in your own
environment) or get out”.

9. 2 Annex II - Examples for hate speech on national level

A) FRANCE

Authored by the Collectif Intersexes et Allié.e.s (OII France)

April 2021

In France, intersexophobia manifests itself mainly by the numerous and ongoing mutilations and violations of bodily integrity that intersex people undergo. Besides those crimes, intersex people experience discriminations on a large scale: mutilations and rape, physical and sexual assault, verbal violence and harassment. These experiences have many negative consequences on intersex people's lives and health, be it physical or mental.

A.1 Hate crimes: Physical and sexual assault

The strong binary that codifies gender and sex norms in France tends to make its general population feel entitled to reject and assault people that fall outside this binary. Testimonies show that intersex people experience a kind of oppression only based on their sexual characteristics. Bias around what a man, a woman or even an intersex person should look like leads people to discriminate and sexually or physically assault intersex people.

- *"I was assaulted because of my physical appearance from the beginning of 6th grade, and throughout middle school."* Pierrette, 56-year-old.
- *"I told my 50-year-old endocrinologist that I didn't feel comfortable in my body. When he examined my breasts [sic!], he said 'if you ask me, I see a very pretty young woman'."* Anonymous, from payetonintersexuation.tumblr.fr [comment: intersex people visit an endocrinologist for, e.g., hormone level blood testing or hormone substitute therapy prescriptions; the work of an endocrinologist does not include physical examinations of external sex characteristics]
- *"A casual partner made me believe that I should feel lucky to be in their bed, given my appearance. They made me feel like I should accept to do anything with them even if I didn't want to."* Anonymous, from payetonintersexuation.tumblr.fr

A.2 Hate crimes: Mutilations and rape

While female genital mutilations (FGM) are considered torture and punished by the French law, the existence of intersex genital mutilations (IGM) is still not recognized nor explicitly condemned by the same law. Indeed, in 2019, during the discussions around the bioethics law, French Health Minister

Agnès Buzyn declared that early, unnecessary and non-vital surgical interventions were already illegal.¹⁰¹

Yet these interventions are still practiced in public hospitals and are explicitly encouraged by national health protocols. While doctors are legally encouraged to seek consent from their patients, a study conducted by the CIA-OII France in 2019 on 69 French intersex people shows that 86% of the participants didn't give their fully informed consent to every medical intervention made on their variation.

Intersex genital mutilations are hate crimes committed by health professionals, encouraged by the heteronormative and cis-normative ideology that wants women and men to have different and specific sex characteristics in order to engage in heterosexual intercourse. According to them and to French societal standards, any deviation from this norm is to be pathologized and therefore corrected. Furthermore, when doctors introduce medical equipment inside their patient and do not ask for consent, those mutilations and forced interventions become rapes.

The Collectif Intersexes et Allié.e.s-OII France (CIA-OII France) has gathered testimonies from academic research, open hours and online testimonies that show what kind of interventions are practiced and their consequences:

- *“When I said ‘clitoridectomy’, my father started to cry, he told me that they never gave their consent for the clitoridectomy.”* Gabrielle, 28 years old, when she reads her medical file with her parents in 2017.
- *“When I had an emergency surgery, they thought that they should make me a vagina, so without asking me they cut the opening of a vagina. I woke up from the anaesthesia with something stuffed inside me, when there was nothing before. I started to scream, to tear everything off.”* Pierrette, 56 years old.
- *“I’m 20-year-old and when I discussed sexuality with my friends, I realized that because of mutilating surgeries, some areas of my sex were much less sensitive than others.”* Anonymous from payetonintersexuation.tumblr.fr
- *“When I was 12, I asked them to remove the genitalia I never asked for [and that had been constructed earlier in their life my surgical means]. Their only answer was ‘you will see, you will fall in love with a man and want children with him’. I never wanted to have babies and I never fell in love with a man. I kept asking to have these terrible and forced genitals removed but the answer shifted to ‘nature doesn’t like emptiness’.”* Anonymous, from payetonintersexuation.tumblr.fr

¹⁰¹ See minutes of the National Assembly's session on 8 October 2019 available at <<https://www.assemblee-nationale.fr/dyn/15/comptes-rendus/seance/session-ordinaire-de-2019-2020/deuxieme-seance-du-mardi-08-octobre-2019>>

A.3 Hate speech: Verbal violence and harassment

Intersex people have for a long time been hidden, thus unable to build a community due to the taboo around their variations created by health professionals and families. The word 'intersexe' has only been used for a few decades in France and many people still don't know what it means. On the other hand, many know the term 'hermaphrodite' which is an offensive word when used by non-intersex people.

If ignorance can explain a misuse of vocabulary, verbal violence and harassment are offences that come from the same mechanisms that brings citizens to assault intersex people: the rejection of everyone who falls outside of the socially constructed sex binary. The CIA-OII France has identified that hate speech can come from multiple spheres of life: on social media, from health professionals, from family and friends, at school or at work.

Online hate speech

In 2019, the CIA-OII France did a report and an analysis of a compilation of online hate speech. It uncovered that verbal violence can manifest in six different ways: talking about intersex people as 'anomalies to eliminate', denial of intersex people's existences, data relativization and exclusion from discussions around human sex characteristics, spreading of false definitions by fake experts, strong defence of mutilations and fetishization. Here are a few examples of online messages received by intersex people in 2018:

- *"2 sexes that's all. Any variation from that are deformities. They are infertile right? So on a species level they are not viable"* Twitter user, 22/11/2018
- *"I won't hear anything from you, the "Inter-sexe". Unicorn with cocks, you are disgusting."* Twitter user, 17/12/2018
- *"We the dyadics don't have a disgusting alien between our legs. You are f*cking human errors and we won't stop talking like we do to include your atrocity into our normality."* Curiouscat user, 2018.
- *"Is it bad to fantasize about the intersex?"* Curiouscat user, 2018

Hate Speech from partners and family

With family and partners, intersex people have communicated experiences of harassment and verbal violence:

- *"I met my first boyfriend online. He commented on the fact that I had no body hair in front of his mates. If you don't know, my intersexuation is invisible: he made me understand that I absolutely had to hide it and that nobody should see it. He said that as long as I hid my anomaly, I could have fun in bed with whoever I wanted. Once, he was drunk and told me he had to dump me because I was infertile and that it was monstrous to be infertile and that he couldn't stand it. He made me understand that I was a monster that nobody would ever want."* Alyx, 26-year-old, they.

- *“My mom and other adults repeatedly and regularly told me: ‘It’s crazy how hairy you are/You are hairy everywhere!’”* Anonymous, from payetonintersexuation.tumblr.fr

Hate Speech at school

In France, health professionals may legitimate medical treatments of intersex youth to their parents with the threat of school bullying. But Loé Petit’s thesis on French intersex life stories shows that medical intervention didn’t prevent harassment. Indeed, when intersex kids had to miss school to attend medical appointments, it excluded them from the other students. It even contributed to academic failure for some of them. Loé Petit noted that out of 13 participants in an online questionnaire, 10 mentioned difficulties at school: 8 specified it was due to “mental disturbance, unease or depression, linked to the consciousness of being ‘different’”, 5 to “harassment from my school mates about my sexual characteristics” and/or “avoiding some classes (like PE) because or in fear of teasing or harassment from other students”. One participant, Tasha, 29-year-old, mentions:

- *“At first, I was going to school, but at some point, I couldn’t anymore because I was spending too much time at the hospital. So, I dropped out of school and I had to redo my tenth grade.”*

Hate speech from health professionals

Health professionals can participate in verbal violence. The CIA-Oii France 2019’s study on intersex people’s health showed that 59% of participants met health professionals that were using stigmatizing and depreciatory vocabulary to talk about their intersex status. There are countless examples of verbal violence from health professionals:

- *“After my gonadectomy, the surgeon entered my room with every intern he could find, pointed his finger towards me and said ‘Look at it, it looks normal but it’s a biological aberration. Look at it closely, you won’t see it any other day!’”* Alyx, 26-year-old, they.
- *“In 2016, I met an endocrinologist that wanted me to do a genetic test. When I asked why, she said that it was for my sister, who is not intersex, to make to right decision if she gets pregnant. I refused and for an hour long she kept saying ‘You see, some people are normal, some aren’t, you have to accept your disease’. She told me that my sister should get an abortion if she was pregnant with a child like me.”* Charlotte, 25-year-old, she.

A.4 Consequences for intersex people

These acts of violence and discriminations have a serious impact on intersex people’s health and well-being. In the 2019 study on intersex people health, 64% of participants declared that the surgical

interventions had negative consequences on their physical health and 83% on their mental health. Loé Petit's thesis gathers many testimonies of these consequences:

Alyx (26-year-old) said that when they learned about their variation, they were completely shattered. After any medical appointment related to it, they would go to their bedroom and inflict self-harm. Pierrette (56-year-old) is legally recognized as a disabled worker due to her post-traumatic stress disorder (PTSD). She declares

- *"I wanted to kill myself, I had a nervous breakdown. What killed me was the secrecy, the clandestinity and concealment. I have hate for myself."*
-

Naïma (39-year-old) says

- *"I quickly understood that I was monstrous, that I was a monster, from others' gaze. My parents were either uncomfortable or crying, with all their love."*

References:

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B) GREECE

Authored by Dr Nikoletta Pikramenou and Irene (Rinio) Simeonidou

Organisation: Intersex Greece

April 2021

B.1 Legal situation

Article 1 of Law 927/1979 (as amended by article 7 of Law 4491/2017) states that:

1. Anyone who intentionally, publicly, orally or through the press, through the Internet or by any other means or ways, incites, provokes, stimulates, or encourage acts or actions that may provoke discrimination, hatred or violence against a person or group of persons, identified on the basis of race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, **sex characteristics** or disability in such a way that endangers public order or poses a threat to life, liberty or physical integrity of the above persons, is punished (...).

Further, the law stipulates that the act is punishable “**only if** this incitement occurs in a way that endangers public order or if it includes a threat against the life, the liberty or the physical integrity” of the intersex people.

B.2 Hate speech incidents as reported to Intersex Greece

An intersex activist and founding member of Intersex Greece reported a hate speech incident few months ago (that happened with a public doctor, during his evaluation for qualifying for disability percentage & pension):

- *For the first time in my life, I experienced such intense bullying from a doctor and an ophthalmologist (working at public health). They told me "and if you have a tumor on your head you will not die, after all, the XXY is a permanent disability and if the doctors had discovered it during the prenatal examination, they would have killed you since you (intersex people like Lakis) are perpetuating permanent disabilities and you are an anomaly of nature".*

A 15y-o XY female adolescent report to us that, during a biology lesson in Gymnasium: Her (female) biology teacher presented XY men & XX women as “the only possible options in human nature”. When the adolescent stood up to claim that there are some more natural variations sometimes, like XY women & XX men, her teacher shouted insultingly that

- *“This is all nonsense you are talking about! People like that just don’t exist!”.*

Three parents of babies (born with mild to moderate hypospadias), reported to us that 3 different child-urologists insisted their children need urgently the normalizing operation, otherwise “*They will never feel men enough*”. The parents also heard from these doctors that

- *“A man that can’t urinate standing is half of a man”*
- *“Your boy won’t be able to impregnate his future wife”.*

When these parents denied to give their consent, they were almost accused for *“neglecting”* their child’s benefit and for *“bad parenting”*.

Future-parents of unborn intersex foetuses (diagnosed during pregnancy) have report to us repeatedly in the last decade, that some public and well-known (obstetric) doctors have tried terrifying them and get their consent for the termination of their (otherwise healthy and wanted) foetuses, by calling the intersex foetus *“A Freak and a nature’s mistake that don’t deserve to live”* or (insultingly) *“future homosexuals”*. A doctor has told a future-parent (a father) that

- *“In case, like you now, I knew beforehand that my boy will have a small penis, I would have definitely killed them at birth.”*

B.3 Online websites harming intersex individuals and intersex people as a group by promoting a very reductive and pathologizing perspective and limiting choices of intersex people through a religious interpretation of what is considered “right” and “wrong”

The website omofylofilia.gr (in English: homosexuality.gr)¹⁰² exists since 2015 and is presented as “the biggest selection of articles and sources on homosexuality and Orthodox Religion”. Furthermore, on the section “About us” it is stated that: “This site is an attempt to express an invisible part of our society: those people who, while sexually attracted to the same sex, at the same time believe in Jesus Christ and want to live with Him. This is a group of people who do not fit into the established narratives on homosexuality. The LGBTQI+ community is often aggressive towards them, while the Church rarely speaks about these believers, standing indifferent or even hostile”. Thus, it is presented as a website that seeks to provide help to LGBTQI+ people and also provides services of “counselling” by several priests in Greece and in Cyprus. Those in search of counselling services by a priest can fill out an online platform indicating their email address and city/area they live and they will get in touch with a priest near them.

On 2/5/2020, the website uploaded an article [“My intersex friend”](#)¹⁰³ written by the author Vassilis Eustathiou. The narrative is based on a dialogue (probably fictional) among two friends (Stelios and Ioannis) and one of them (Stelios) reveals that he is intersex. The article presents what is intersex in a very detailed manner and explains why the term “hermaphrodite” is outdated. Even though Stelios mentions that he has “female chromosomes” and that “he was not operated at birth”, the dialogue continues:

¹⁰² <<https://omofylofilia.gr/%CF%83%CF%87%CE%B5%CF%84%CE%B9%CE%BA%CE%AC-%CE%BC%CE%B5-%CE%BC%CE%B1%CF%82/>> The selected content has been translated from Greek to English by the authors of this document.

¹⁰³ <<https://omofylofilia.gr/2020/o-intersex-filos-mou/>> The selected content has been translated from Greek to English by the authors of this document.

-Stelios: Didn't I explain to you that my chromosomes are female? This is what God has decided for me to be, am I going to become something different? Chromosomes are selected once, during conception. Physical characteristics, nowadays, if we want, we change them. And if we change them, we should do it, when there is a defect of nature to correct it, and not to change something that is normal and natural.

-Ioannis: You are right, because you speak with faith. And where there is faith, there alone can be true love. Because we can have true love with someone only when we have God between us, as God is love ("God is love", 1 John 4: 8). But how can we have God near us, and truly love Him, if we do not do His will? What if He gives us male chromosomes and we say to Him, "No, we want to be women," or vice versa? It is of course impossible. Therefore, "no" to gender reassignment, but "yes" to its correction. In the correction of the phenotype based on the genotype. Depending on the chromosomes, the physical, anatomical characteristics of sex should be corrected (especially in XXY, if the male characteristics prevail, all corrections should be made to the male character, while in cases of mosaics, corrections should be made to the genotype of the excess cells, based on two or more kinds of genotype-mosaic cells).

-Stelios: This is not always necessary. When we need it, we fix them (meaning anatomical characteristics). We can perceive our problem as a test in our lives from God, in which we can be patient and become better and to embrace the problem we were born with and to change nothing, except to correct our inner self.

-Ioannis: Everything you say is very important, and it benefits me that I listen to you. But listen to what I have to say. If you want to start a family -even if you cannot bring children into the world-, then make sure that you have an external appearance similar to what you revealed to me that it exists inside you, in your body, even your cells. If you do this, it will eventually help you find yourself as a companion, which is what you need. And then you will find your partner...

-Stelios: Will we be friends until then?

-Ioannis: Of course!

It is obvious that this a very well-structured text than can mislead the audience and could incite hate crimes since the meaning is that intersex people are “abnormal” and need to “be fixed” in order to align with the way that God made them. The article does not focus on the self-determined choice of the individual person, but gives clear, religiously motivated and biased instructions on how an intersex person must act in order to live a life pleasing to God; these instructions include surgical and other medical interventions that are not based on the person's wishes but on their chromosomal make-up; these are the practices that are common to this day and that have been identified as harmful medical practices by the UN and other international human rights bodies as well as by the European Commission in the context of its LGBTIQ Equality Strategy and its Child Rights Strategy.

Intersex Greece wrote public comments under the article explaining that it is misleading and that it harms and pathologizes intersex people. In particular, Intersex Greece wrote:

“I would not like to get into the awkward process of imagining the confusion your article could cause to a religious intersex child or teenager. It seems that the inadequate and inhuman treatment of the intersex community by a large part of the medical community is not enough and that intersex individuals have to go through additional torture while reading this completely distorting article about themselves? (...) On our end, we, as Intersex Greece, call you, because we deeply want to believe that you published the article with good intentions to withdraw your article, and If you really want to inform your audience about intersex people, post in its place the guide that is already available in Greek by IGLYO, OII EUROPE and EPA entitled "Supporting your intersex child".”

The website responded to Intersex Greece saying:

“The terminology of the original title "My middlesex friend" was not a choice of the author and therefore we changed it to the appropriate term (intersex). As we note in the introduction, the dialogue captures a real story, i.e, the experiences and feelings of a specific intersex person, Stelios. Any different religious choices and interpretations of Stelios by another person or by a group of intersex persons do not invalidate Stelios' experience. Therefore, the article will remain online with the belief that some people will consider it useful.”

Then, the author responded, without acknowledging the fact that the piece does not give the intersex person any option other than “fixing” their body if they want to live a good-pleasing life:

“My text may not express you as an Intersex community, but how can you speak on behalf of all Intersex brothers? There are people like you who have different choices in life and disagree with what you support and write. You cannot completely deprive someone of the right to choose something different from you. And so as not to be misunderstood again, we are talking here about choices, which must be completely free, and not about rights or value of the person. We are all completely equal as human beings, even if the society around us has never understood this. (...) Alas if everything that the international campaigns and the European Parliament support is strictly accepted as correct and authoritative (the instructions you sent me to study, you should know that I have studied them carefully, but although I agree with many practices, I cannot embrace their points, in particular their interpretations). (...) prove to me if you want, based on the bible any mistake of mine and I will accept it. As a human being with many weaknesses, I may have erred somewhere in the way I expressed a true event before the post I made. Thank you in advance and I wish you good luck.”

The post remains online, stigmatising, pathologising intersex people while misleading them (and their families). At the same time, it misleads whoever reads it and portrays intersex individuals in a negative and discriminatory way that could incite hate speech incidents in the future.

C) NETHERLANDS

Comment to a video published by Spuiten en Slikken, September 2020

<https://www.youtube.com/watch?v=888hOmfql1o>

[translated from Dutch]

- *“Does she have a dick or not”*

Comment to a video published by Spuiten en Slikken, September 2020

<https://www.facebook.com/SpuitenenSlikken/posts/3248554631865165>)

[translated from Dutch]

- *“Yeah, I wanted to be a German shepherd, but they haven’t found anything for that I think”*
- *“I wanted to be a penguin, but the doctor refused to cut off my legs”*

Comment to posts on NNID’s Facebook page

NNID is a OII Europe member organisation and the only intersex-led organisation working for intersex rights from a human and fundamental rights perspective in the Netherlands. NNID’s website and their Facebook page are go-to pages for Dutch and Flemish speaking intersex people the Netherlands and the Flemish part of Belgium, who want to learn more about their rights.

Comments to posts aiming at disseminating information and educating on intersex people and their rights (selection from 2019-21, translated from Dutch; NNID deleted the comments after taking screenshots, to protect the visitors of the page from hate speech)

- *“A war against these criminals is needed. Left over NSB supporters [dutch political nazi party]. We are fully against these nazi practices”.*
- *“Stop talking out of your arse [literal translation: dick]. You have already changed the entire constitution, scum.”*
- *“A session at a psychiatrist is recommended”*
- *“I am who I am, and if you don’t go along with my fantasy I will scream and shout, as long as it takes for you to see I can’t choose, man, woman or a special combination of both”*
- *“As far as I am concerned that whole rainbow legislations should go straight to the bin. What in god’s name are you doing. You have brainwashed the whole society. Stop with this nonsense. We do not need this, we need a new government that looks at society instead of just at themselves. We need to take some responsibility for ourselves instead of such idiotic supply mouting.”*
- *“well done, some time in Siberia would do them well”*
- *“Support for the mentally handicapped can be found at a psychologist”*
- *“Oh, fuck off [literally: get pleurisy] with your ‘self-identification. Ok, then I ‘identify’ myself as someone who has the right to 2 billion from the Dutch banks...I want my money...where is it? Do you see? Discrimination!! Oh, and I will also ‘identify’ as someone who doesn’t agree with*

you, as someone who can do whatever they please without legal punishment AND I identify myself as Harry Potter so Actus Normalus and please...you are biologically male or female, nothing more...and yes, it is as simple as that.”