

Motion

tabled by the Members of the German Bundestag Monika Lazar, Volker Beck, Kai Gehring, Kerstin Andreae, Birgitt Bender, Katja Dörner, Ingrid Hönlinger, Memet Kilic, Sven-Christian Kindler, Maria Klein-Schmeink, Tom Koenigs, Agnes Krumwiede, Jerzy Montag, Dr Konstantin von Notz, Tabea Rößner, Claudia Roth, Krista Sager, Dr Gerhard Schick, Wolfgang Wieland, Josef Philip Winkler and the Alliance 90/The Greens parliamentary group

Safeguarding the rights of intersex people

The Bundestag is requested to adopt the following motion:

I. The German Bundestag notes:

Intersex people should be recognised as part of our diverse society, with equal rights. Their human and civil rights must not be restricted. The term “intersex” is used to describe individuals whose chromosomes and internal or external sex organs cannot be classified as clearly male or female, or are indeterminate. Scientific studies indicate that there are around 150-340 children born in Germany each year who can be classified as intersexual. According to the Federal Government, the total number of people affected by severe variance in sex development is around 8,000-10,000 (Bundestag Printed Paper 16/4786). However, according to organizations working on behalf of intersex people, the number of affected persons is much higher.

Despite these scientific findings, the German legal system ignores the existence of intersex people, who continue to be legally and socially excluded.

II. The German Bundestag therefore calls on the Federal Government,

- to amend the General Administrative Regulation to Implement the Civil Status Act (*Allgemeine Verwaltungsvorschrift zum Personenstandsgesetz*) so that the designation of gender on birth certificates can reflect the existence of intersex persons;
- to bring forward draft legislation to amend the legal basis for official statistical surveys, so that there are no longer only two options to designate gender;
- to put an end to the preventive surgical removal and alteration of the genital organs of intersex children;
- to work with Germany’s federal states (*Länder*) to establish independent advice and support services for affected children and their parents, affected adolescents and adults, and to include the advice and self-help services provided by organizations working on behalf of intersex people;

- to work with Germany's federal states (*Länder*) to establish advisory services for relevant health professionals (physicians, psychotherapists, midwives etc.) to raise their awareness of the medical, psychological and social aspects of intersexuality;
- to engage in dialogue with the competent federal and *Land* medical associations, associations of psychotherapists, and midwives' associations with a view to amending the curricula in the training and examination regulations for these professions to take account of intersexuality, also from the perspective of intersex people, and to incorporate the issue into further professional training and development to a greater extent;
- to encourage the *Länder* to include the issue of intersexuality as a regular topic in the school curriculum, for example in the teaching of biology, social science or ethics;
- to encourage the *Länder* to ensure that for surgical intervention on the genitalia, the deadlines for the retention of medical records are extended to 30 years from the time the patient reaches the age of majority;
- to promote further interdisciplinary scientific research on the issue of intersexuality with the participation of cultural studies specialists, social scientists and the organizations working on behalf of intersex persons.

Berlin, 12 April 2011

Renate Künast, Jürgen Trittin and parliamentary group

Explanatory Memorandum

Intersex people – i.e. individuals whose physical characteristics of sex determination and differentiation (e.g. chromosomes, genes, hormone balance, gonads, internal and external sex organs) cannot be classified as clearly male or female or are indeterminate – are part of our diverse society, with equal rights. There are around 150-340 children born in Germany each year who can be classified as intersexual (= 1 in every 2,000 – 4,500 births) (Woweries, *Frühe Kindheit*, 0310, p. 18). According to the Federal Government, the total number of people affected by severe variance in sex development is around 8,000-10,000 (Bundestag Printed Paper 16/4786). However, according to organizations working on behalf of intersex people, the number of affected persons is much higher.

Science has recognised the existence of intersex people for many years and conducts research on intersexuality. For example, since 2003, the Federal Ministry of Education and Research (BMBF) – as part of its “Rare Diseases” programme – has provided a total of 3.4 million euros in funding for a nationwide research network, known as Network DSD/Intersexuality, which focuses on atypical somatosexual differentiation and intersexuality. The German Ethics Council has also investigated this topic and on 23 June 2010, devoted its Bioethics Forum to the topic “Intersexuality – life between the sexes”. Various experts were involved in the discussion.

Intersexuality is also the subject of debate at the international political level, as intersex people are increasingly making their voices heard and protesting about the various methods which have been used to treat intersex persons during childhood. At the United Nations level, this came to light in 2008/2009 during the reporting process for the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) when a Shadow Report to the Federal Government's official National Report on CEDAW, compiled by Intersexuelle Menschen e.V. (Association of Intersexed People), described human rights violations against intersex persons. Similarly, a Shadow Report to the 5th National Report of the Federal Republic of Germany on the United Nations Covenant on Social, Economical, and Cultural Human Rights (ICESCR), compiled by Intersexuelle

Menschen e.V. (Association of Intersexed People) and the self-help group XY-Women, was recently presented to the Committee on Economic, Social and Cultural Rights (CESCR).

Despite the body of biological and medical knowledge, German law only takes account of the existence of intersexuality in the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*), where it is mentioned only in the explanatory notes of the Act in the context of sexual identity. And yet even General Prussian Land Law (*Allgemeines Landrecht für die Preußischen Staaten*) (Sections 19-23) of 5 February 1794 recognised the existence of “hermaphrodites”. Similarly, the Federal Constitutional Court, in its judgment relating to the case of a transsexual in 1978, made the distinction between transsexuality and intersexuality clear (BVerfGE 49, 286, 304).

By contrast, the law relating to the civil status of persons ignores this variant of biological diversity. According to Section 21 of the Civil Status Act (*Personenstandsgesetz*), the sex of a child must be entered in the register of births (and Section 59 requires it to be entered on the birth certificate), but no further clarification is provided. The General Administrative Regulation to Implement the Civil Status Act, however, clearly states in No. 21.4.3 that: “The sex of the child must be entered as ‘male’ or ‘female’” (here, the Regulation goes further than the General Service Regulations for Registrars and their Supervisory Authorities previously in force). The sexes are not defined, however. The courts at two levels of jurisdiction have quashed efforts to introduce a category which would take account of intersexuality at birth (Munich Local Court, FamRZ 2002, 955-957 and Munich Regional Court I, FamRZ 2004, 269-271). This gap in the law means that midwives or doctors are forced to enter details which are factually incorrect (Plett, Konstanze: *Intersex und Menschenrechte*. In: Lohrenscheit, Claudia (ed.) *Sexuelle Selbstbestimmung als Menschenrecht*. Deutsches Institut für Menschenrechte. Nomos, 2009). The unconstitutionality of this situation was recently demonstrated in an academic thesis about relevant aspects of the law (Angela Kolbe, *Intersexualität, Zweigeschlechtlichkeit und Verfassungsrecht*, 2010).

In official statistical surveys, too, only two options are offered for the designation of gender. As a consequence, the statistical legislation currently in force ignores the gender identity of intersex people, who cannot class themselves as male or female, thus compelling them to commit the administrative offence of providing false information.

Moreover, intersex persons, who have generally undergone numerous operations, especially in infancy and childhood, report that they regard themselves as victims of mutilation and continue to experience very intense feelings of rage, hatred and trauma for decades afterwards (Woweries, *Frühe Kindheit*, 0310, p. 20).

Scientific follow-up studies also paint a depressing picture (Schweizer, Katinka / Richter-Appelt, Hertha: *Leben mit Intersexualität. Behandlungserfahrungen, Geschlechtsidentität und Lebensqualität*. Psychotherapie im Dialog, 10. 2009(1): 19-24). Well over half of the participants in the Hamburg Intersex Study showed clinically relevant psychological distress; 47 per cent had suicidal tendencies; and 13.5 per cent reported that they had engaged in self-harming behaviour. A large number of participants regarded themselves as asexual as a result of their traumatic experiences of surgery and treatment, which had robbed them of any interest in sex and the ability to fall in love. A parent-child bonding is also subject to great stress.

Another clinical evaluation study carried out in 2008 by Network DSD/Intersexuality also revealed a very high level of dissatisfaction among affected persons following surgery and hormone treatment (<http://www.netzwerk-dsd.uk-sh.de>). Adults in particular were very dissatisfied with the massive psychological and physical effects of genital surgery. 25 per cent of participants in the study who had undergone surgery experienced complications, and 28 per cent of all adults complained that they found it difficult to access specialist treatment for subsequent problems. Among the adult subjects of the study, 45 per cent scored much worse in terms of mental health than a control group. The children participating in the study also reported adverse effects on their quality of life in almost every area. For that reason, no preventive surgical removal and alteration of genital organs of intersex children should be undertaken unless there are recognised medical indications for surgery.

There is also an urgent need to establish independent advice and support services for affected children and their parents, affected adolescents and adults, which should include the provision of support for their own advisory and self-help services.

Intersex people also report that they are denied access to their medical records. Often, they only become aware of the surgery performed on them in infancy and childhood once they have reached adulthood, when the medical records no longer exist. It is therefore essential to introduce a special arrangement so that for surgical intervention on the genitalia, the deadlines for the retention of medical records are extended to 30 years from the time the patient reaches the age of majority (cf. *Ethische Grundsätze und Empfehlungen bei DSD*. – Arbeitsgruppe Ethik im Netzwerk Intersexualität: „*Besonderheiten der Geschlechtsentwicklung*“. Monatschrift für Kinderheilkunde, 2008 (156), p. 245).

Finally, the hitherto taboo subject of intersexuality must be incorporated into professional training and development for members of the relevant health professions. It should also become a regular topic in the school curriculum, for example in the teaching of biology, social science or ethics, as prejudices can arise and stigmatization of intersex people begins at school. There should also be further, and wherever possible interdisciplinary, scientific research on the issue of intersexuality with the participation of cultural studies specialists, social scientists and the organizations working on behalf of intersex persons, for intersexuality is not a purely medical phenomenon but requires society as a whole to consider this form of diversity, instead of assuming that intersex people will undergo medical treatment to make them fit into a rigid two-gender system.