Sex-selective abortions of intersex foetuses in Europe. Social, ethical and legal considerations*

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Abstract

In recent years, international human rights institutions such as the United Nations (UN) and the Council of Europe (CoE) have condemned many of the human rights violations that intersex people face. This has led to Member States introducing laws and policies that aim to tackle intersex rights violations and put an end to years of injustices against the intersex community. Nonetheless, there is an issue that often remains overlooked: sex-selective abortions that are performed even before intersex people are born. Some of the social, ethical and legal concerns surrounding these methods have been raised by intersex activists and intersex-led organisations over the years, yet the issue remains largely invisible. Recently, some parents of intersex children decided to speak up, and their testimonies have been published online stating that doctors advised them to abort the foetus upon discovering that it was intersex without providing any relevant medical justification. In this paper, we hope to contribute to the disentanglement of the said social, ethical and legal conundrum that exists around sex-selective abortions of intersex. Through the adoption of a human rights approach, we argue that the debate on the selection of intersex foetuses should form a part of the broader discussion concerning the discriminatory and harmful effects of sex-selection and should be explicitly and publicly addressed and condemned by human rights institutions in order to guarantee equal rights and gender equality for all.

Keywords:

sex-selection; abortions; intersex; international human rights.

1. Introduction

In 2023, the Office of the United Nations High Commissioner for Human Rights (OHCHR) published a technical note on the human rights of intersex people and stated explicitly that 'intersex persons, like all persons, are entitled to the protection, respect, and fulfilment of all of their human rights, as enshrined in the Universal Declaration of Human rights'. The technical note also set out the top priorities for the protection of the rights of intersex people including the prohibition of medical interventions such as non-emergency surgeries performed without full, free and informed consent on intersex persons, and of other forms of violence against intersex children such as infanticide; access to health care, medical records and justice; end of discrimination in education, employment, healthcare settings, sports and all aspects of cultural life, and access to services; and the legal recognition of gender identities. Prior to this note, the United Nations (UN) had highlighted the human rights violations that intersex people face in 2015 during the 'Free and Equal Campaign' that was launched by the Office of the High Commissioner and had prioritised, among others, the same issues. As part of its efforts to raise international awareness

of intersex rights, the campaign also sought to define the term 'intersex' itself. According to the UN Free & Equal factsheet, '[i]ntersex is an umbrella term which refers to people born with physical sex characteristics (such as sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that do not fit typical definitions for male or female bodies'.[1] In 2024, the Resolution adopted by the Human Rights Council (HRC) encouraged Member States to 'combat discrimination, violence and harmful practices against persons with innate variations in sex characteristics and to address their root causes, such as stereotypes, the spread of misconceptions and inaccurate information, stigma and taboo'.[2]

Orr, in the book *Cripping Intersex* refers to Miriam Van der Have, an intersex activist, who at the 'Public Consultation on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity' had already shed light on the issue stating that 'intersex is an undesirable outcome of pregnancy and is visible in medical technologies such as Preimplantation Genetic Diagnosis (PGD),[3] whose use may lead to the erasure of intersex society'.[4] Furthermore, StopIGM.org, an international Human Rights NGO based in Switzerland led by intersex persons, had filed a submission to the OHCHR titled "Submission for study on the right to sexual and reproductive health rights of girls with disabilities" and denounced that '[i]ndividual doctors, national and international medical bodies, public and private healthcare providers have traditionally been framing and "treating" intersex variations as a form of disability in need of being "cured" surgically, often with racist, eugenic and supremacist undertones'.[5] StopIGM.org based this argument on the World Health Organization (WHO) *World Atlas of Birth Defects*[6] where many intersex variations are listed, as 'birth defects'. Outside of Europe, OII Australia had made a submission in 2014 to the National Health and Medical Research Council 'on the ethics of genetic selection against intersex traits' where it was argued that being intersex is not a 'disorder' but a natural variation and therefore sex-selective abortions against intersex foetuses are similar to those against female

1 UN Free & Equal (2025).

2 UN Human Rights Council (2024), par. 3.

3 'Pre-implantation genetic diagnosis (PGD) is a laboratory procedure used in conjunction with in vitro fertilization (IVF) to reduce the risk of passing on inherited conditions. Some of the most common reasons for PGD are specific single-gene conditions (such as polycystic kidney disease, cystic fibrosis and sickle cell anemia) and structural changes of a parent's chromosomes. Families may also use PGD when a member of the family needs a bone marrow donor, as a way to have a child who can provide matching stem cells' (University of California San Francisco Health, Pre-Implantation Genetic Diagnosis).

4 Orr (2022), 211.

5 StopIGM.org (2017), 2.

6 WHO (2003).

foetuses as they are based on social biases, and should be considered unethical[7] – and illegal as we will argue in this paper.

Notably, despite the efforts of intersex organisations to highlight the human rights violations linked with practices that are being performed even before intersex people are born, such practices have not yet been publicly denounced by international human rights organisations, including the UN. A similar gap is also observed in academic bibliography as stated by Orr who explains that in 2013 Sparrow had flagged that there are very few sources on intersex de-selection, i.e. abortions performed after detection of intersex traits, and this is still the case especially compared to other intersex rights violations such as intersex genital mutilation (IGM).[8] To address all these gaps, this paper aims to collect and present various sources, such as scientific sources, legal and policy documents, country reports issued by human rights organisations and institutions as well as testimonies published online by parents denouncing medical practices that very often lead to sex-selective abortions, to shed light on the actual situation regarding sex-selection and intersex foetuses. The authors will adopt a human rights approach and stress the legal, social and ethical considerations that emanate from sex-selection practices particularly in Europe. Furthermore, they will argue that abortions that are taking place after the detection of an intersex variation constitute 'selective abortions based on sex' and should be publicly denounced by international human rights organisations and legally regulated in a way that mirrors the prohibitions already established in various European countries against sex-selection practices targeting female foetuses.

2. Sex-selective abortions of female foetuses

Sex selection can take place at different stages and in different forms: before pregnancy, with parents deciding the sex of the embryo before it is implanted;[9] during pregnancy, through prenatal sex detection, when the foetus is determined as female and the pregnancy is terminated; following birth, through infanticide, discrimination and/or child neglect.[10, 11] The UN agencies and WHO have characterised sex-selective abortions of female foetuses as 'a symptom of pervasive social, cultural, political and economic injustices against women, and a manifest violation of women's human rights'.[12]

Recent research shows that the practice of sex selection has led to significant societal problems especially in China and India. According to Mei and Jiang, China in our days faces severe demographic and public policy problems that

7 OII Australia (2014).

8 Orr (2022), 212.

9 This also happens in the case of PGD.

10 OHCHR, UNFPA, UNICEF, UN Women, WHO (2011), V.

11 UNFPA (2025).

12 OHCHR, UNFPA, UNICEF, UN Women, WHO (2011), 4.

have resulted from four decades of sex-selective abortions.[13] Even though the practice has been legally prohibited, it is still taking place: 'the long-standing preference for sons, easy access to sex-selective technologies, and the spontaneous fertility decline have led to the continued practice of selectively aborting female foetuses, despite its prohibition. As a result, the imbalanced sex ratio may take years to normalize'.[14] Dimri, Gille and Ketz have analysed data from India and found evidence of 'repeated sex-selective abortions at birth order 2 when the first child is a girl, and strong evidence at birth order 3 when the first two children are girls (...)'.[15] This has resulted in 'significant heterogeneity across birth orders, sibling compositions, and socio-demographic and geographic groups'.[16]

The Commissioner of Human Rights of the Council of Europe, in a comment published in 2014, stated that selective abortions of female foetuses might be 'well known from China and India, but they are common in some parts of Europe, too. (...) In Council of Europe Member States, skewed sex ratios at birth have been documented in Armenia, Azerbaijan and Georgia, but also in some countries in the Balkans, most commonly in Albania and to a lesser extent Montenegro, Kosovo, and parts of Northern Macedonia'.[17] This section will focus on sex-selective abortions of female foetuses in Europe and examine the ethical, social and legal implications that emanate from their performance. The findings will serve as a useful basis to later argue that sex-selective abortions performed after the detection of an intersex variation are driven by the same motives that lead to the performance of sex-selective abortions of female foetuses.

2.1 Ethical and social considerations

The issue of sex-selective abortions can be placed within the frame of a broader set of practices that to this day raise serious ethical concerns, sometimes brought together under the label 'selection of offspring characteristics'.[18] Such selection can be either positive or negative, and the reasons behind it are manifold.

Positive selection implies actively seeking, with the means at one's disposal, that the child will possess a given characteristic. The ethical debate on the permissibility of positive selection of future children's traits peaked in the 90s, together with rapid developments in the area of human genetics. The idea of selecting certain traits of future generations is highly controversial in bioethics,

13 Mei/Jiang (2025), 14.

14 Mei/Jiang (2025), 1.

15 Dimri/Gille/Ketz (2024), 1.

16 Dimri/Gille/Ketz (2024), 1.

17 Commissioner for Human Rights (2014).

18 See e.g. Robertson (1996).

with both advocates[19] and fierce opponents.[20] However, the focus of this paper is on negative selection.

Negative selection involves opting against begetting children with a specific trait, say X, which manifests itself by taking preventive measures (e.g. by terminating pregnancies if prenatal screening points towards the foetus displaying the X characteristic), or even by eliminating newborns who happen to possess the unwanted trait. Leaving infanticide aside, practices such as forced sterilisation and selective abortions are still morally controversial, and the 'long shadow of XX-century eugenics' can be said to permeate the public discourse to this day.[21] At the same time, the emergence of assisted reproductive technologies (ART) forced us to rethink at least some of our strong ethical convictions shaped by recent history. The emphasis shifted from coercive state policies, which we now regard as atrocious, to an individualistic perspective of the right to self-determination and procreative liberty. In the context of negative selection, an appeal is made to the freedom to not reproduce, which constitutes a core concept of reproductive rights. The ethical question arises: 'Are the interests that support protecting the freedom to avoid reproduction present when that freedom is exercised selectively?'.[22]

The current debate over the ethical permissibility of foetal sex selection began in the 80s with the development of medical techniques of preimplantation genetic diagnosis (PGD), prenatal screening and sperm sorting.[23] PGD and sperm sorting allow for sex determination in the course of medically assisted reproduction procedures, such as *in vitro* fertilisation and artificial insemination, either before the embryo is transferred to the womb for implantation or before its conception. Prenatal screening, on the other hand, makes it possible for physicians to identify the sex of a foetus by ultrasound examination. Knowledge of foetal sex can then influence decisions to terminate the pregnancy: 'by revealing fetal sex, prenatal diagnosis presents prospective parents with a new and troubling possibility: choosing their children's sex through selective abortion'.[24]

It must be stressed that the reasons behind selecting offspring characteristics significantly impact the moral assessment of these practices. Selection for medical reasons is usually regarded as less ethically problematic than selection driven by social reasons. In 1999 the Ethics Committee of the American Society of Reproductive Medicine (EC-ASRM) issued the following statement: 'Preimplantation genetic diagnosis used for sex selection to prevent the transmission of serious genetic disease is ethically acceptable. It is not inherently gender biased, bears little risk of consequences detrimental to individuals or

19 Savulescu (2001). Savulescu/Kahane (2009). Agar (2004). Harris (2007). Persson/Savulescu (2012).

20 Most notably Habermas (2014). Sandel (2007).

21 We borrow this metaphor from Buchanan et al. (2000), 9.

22 Robertson (1994), 27.

23 See, among many others, Asch (1999) and Botkin (2002).

24 Wertz/Fletcher (1989), 21.

to society, and represents a use of medical resources for reasons of human health.'.[25] In this case, the well-being of a future child prevails over other moral considerations, and the decision itself has an ethically valid aim: to avoid disease and suffering. The moral assessment of selective practices is radically different, however, when the reasons guiding the selection are social or psychological in nature.[26] The ethical permissibility of selecting foetal sex for non-medical reasons has been a matter of fervent debate, sometimes portrayed as a conflict between the parental (or women's) right to reproductive choice and the principle of non-discrimination; between reproductive autonomy and gender equality;[27] or, in the broadest terms, 'between individual desires and the larger common good'.[28]

The prohibition of sex selection obviously limits the range of the woman's reproductive choices, and thus some liberal thinkers argued that it curtails the hard-won reproductive autonomy. In his seminal works on procreative ethics, Robertson laid down the principle that 'procreative liberty should enjoy presumptive primacy when conflicts about its exercise arise because control over whether one reproduces or not is central to personal identity, to dignity, and to the meaning of one's life'.[29] This view imposes rigorous standards on arguing for any restrictions of reproductive autonomy: 'those who would limit procreative choice have the burden of showing that the reproductive actions at issue would create such substantial harm that they could justifiably be limited'.[30] In a similar vein, Savulescu and Dahl defended the parental right to choose the sex of their offspring, treating it as a logical extension of the right to reproductive autonomy, and emphasising the weakness of arguments against its permissibility.[31] The issue of selecting foetal sex also proved quite divisive within feminist thought. As Dena S. Davis explains with striking clarity: '[s]ex selection – the use of abortion or some other strategy to make sure that one's baby is of the desired sex – is a challenging ethical issue, especially for pro-choice feminists. Because they are pro-choice, they want to defend the pregnant woman's right to make reproductive decisions based on her own values, not on those of some doctor or lawmaker. But because they are feminist, they want to condemn a practice that historically has been used to prefer boys over girls'.[32]

Several important moral considerations have been presented against the liberal line of reasoning. Those who oppose genetic manipulation and the selection of offspring characteristics typically point to the immoral nature of

25 EC-ASRM (1999), 596. These reasons mainly involve preventing X-linked disorders, such as hemophilia A and B, Lesch-Nyhan syndrome, Hunter syndrome, or Duchenne's muscular dystrophy.

26 De Melo-Martin (2014), 91.

27 Toebes (2008), 199.

28 Robertson (2001), 3.

29 Robertson (1999), 24.

30 Robertson (1999), 24.

31 Savulescu (1999). Savulescu/Dahl (2001). Dahl (2003).

32 Davis (2011), 125.

the selective practices as such. This 'intrinsic critique', i.e. one focusing on the activity itself, and not its consequences, often derives from familiar and more general concerns about human nature and the risks involved in 'playing God'.[33] It focuses on the immorality of 'choosing babies' based on their non-essential characteristics, e.g. gender or eye colour, sometimes labelling such choices as 'eugenic' in nature.[34] Some worry that once we allow parents to choose non-essential traits of their offspring, the slope towards creating 'designer babies' will inevitably become much more slippery.[35]

But much of the criticism relies not on the inherent immorality of the practice, but on the principles of justice and the possible harm that sex selection could bring to women and society at large. If widely available, sex selection is argued to risk distorting sex ratio in the society and destabilising social structure. Furthermore, it would exacerbate the already existing injustices faced by women.[36] Indeed, some feminist opponents frame it as 'complicity with patriarchalism and the sexist oppression of women',[37] referring to it as 'gynocide',[38] 'gendercide'[39] or even the 'original sexist sin'.[40] They are joined by bioethicists who claim that any reason for actually making the selective choice 'is premised upon the existence of a sexist society'.[41] In its 2011 Resolution 1829, the Parliamentary Assembly of the Council of Europe (PACE) stressed that '[p]renatal sex selection calls into question the core values upheld by the Council of Europe, such as equality and dignity of human beings, non-discrimination and the protection of the individual's dignity and fundamental rights with regard to the applications of biology and medicine'.[42]

In spite of the widespread appeal to the procreative autonomy framework and frequent calls for moderation in moral assessment of individual reproductive decisions,[43] a uniformly sceptical moral stance on sex selection is endorsed by professional ethical bodies worldwide, and by most legislations in Europe. As noted by De Wert and Dondorp, 'it may seem that the sheer weight of this prohibitive consensus between jurisdictions, at least in Europe, has brought the

33 For a recent examination of the claims pertaining to human nature see Liao (2014), 111-115. The 'playing God' argument is discussed i.a. by Young (1991), 580-581.

34 Holmes (1985), 62.

35 Wertz/Fletcher (1989), 24. Andreae (2004), 376. Further discussed i.a. by De Wert/Dondorp (2010), 273.

36 E.g. the American College of Obstetricians and Gynecologists Committee on Ethics (2007): 'opposes meeting requests for sex selection for personal and family reasons, including family balancing, because of the concern that such requests may ultimately support sexist practices'.

37 Young (1991), 578.

38 Raymond (1993), as quoted by Dahl (2003), 380.

39 Warren (1985).

40 Powledge (1981), 196.

41 Wertz/Fletcher (1989), 22.

42 PACE (2011b), par. 2.

43 See e.g. Steinbock (2002), 27. Dickens et al. (2005), 176.

debate about allowing sex selection for non-medical reasons to a closure'.[44] In Section 3 we examine how this seemingly ubiquitous negative attitude towards sex selection becomes blurred as soon as the decision makers and health professionals step outside the binary model of 'male' and 'female'.

2.2 Legal considerations

The main trend of international human rights law seems to be towards the prohibition of sex-selection, as it enhances discrimination against women. The right to choose the sex of one's child is not covered by the right to reproductive choice, since in that case this right is limited to the choice of the number and spacing of one's children, not their sex.[45] Indeed, already in 1994, at the International Conference on Population and Development (ICPD), it was clarified that it is essential to 'eliminate all forms of discrimination against the girl child and the root causes of son preference, which result in harmful and unethical practices regarding female infanticide and prenatal sex selection'.[46] The Fourth World Conference on Women,[47] held in Beijing in 1995, described prenatal sex-selection as 'an act of violence against women' and the UN General Assembly resolution on the girl child[48] urged States to 'enact and enforce legislation' to tackle this issue. States have an obligation to safeguard the rights of girls and women and protect them against discrimination under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). When it comes to discriminatory practices rooted in social and cultural prejudice, Article 5(a) of CEDAW, established in 1979, obliges States to 'modify social and cultural patterns of conduct with a view to achieving the elimination of prejudices and customary (...) practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'.

At the Council of Europe level, Article 14 of the Convention on Human Rights and Biomedicine (Oviedo Convention) states that 'the use of techniques of medically assisted procreation shall not be allowed for the purpose of choosing a future child's sex, except where serious hereditary sex-related disease is to be avoided'. The Commissioner for Human Rights has stressed that even though the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) does not contain any explicit reference to sex-selective abortion, it requires State Parties to criminalise the performance of 'an abortion on a woman without her prior and

44 De Wert/Dondorp (2010), 267-268.

45 Toebes (2008), 209.

46 UN (1994), par. 4.16.

47 UN (1995), par. 115 bis.

48 UN General Assembly (2003), par. 8.

informed consent' (Article 39).[49] When psychological violence is involved regarding the performance of the abortion (Article 33), women are often under psychological and physical pressure to undergo a sex-selective abortion. Therefore, the interpretation of these provisions of the Convention should be extended to cover the case of sex-selective abortions.[50] This pressure that women experience is confirmed in Resolution 1829/2011 of the Parliamentary Assembly of the Council of Europe on 'Prenatal sex selection' under paragraph 5: 'the social and family pressure placed on women not to pursue their pregnancy because of the sex of the embryo/foetus is to be considered as a form of psychological violence and that the practice of forced abortions is to be criminalised'.[51]

At national level, the Council of Europe Expert Group on Action against Violence against Women and Domestic Violence (GREVIO) has referred to sex-selective abortions of female foetuses in certain Member States. For instance, the GREVIO Baseline Evaluation Report on Albania, published in 2017, stated that 'available reports point to the issue of sex-selective abortion as a source of concern in Albania. In 2011 the Parliamentary Assembly of the Council of Europe highlighted alarming levels of skewed sex ratio at birth in several Council of Europe Member States, including Albania, where the rate stood at 112/100 compared to a normal sex ratio at birth of 102-106 males to 100 females. (...) Regardless of whether they qualify as violence, sex-selective abortions are in any case discriminatory and stem from the disadvantaged status of women in society'.[52] In 2023, the Baseline Evaluation Report on North Macedonia stated that 'GREVIO has taken note of statistics which indicate that that sex-selective abortions may be practised in North Macedonia'[53] and reiterated that sex-selective abortions should be considered discriminatory, as in the report on Albania.

When it comes to the legal regulation of sex selection, an overview of 36 countries published by Darnovsky in 2009, which included 25 European countries, found that none of these allowed sex-selection for non-medical reasons.[54] Dondorp et al., in a paper published in 2013, stated that some Asian countries have enacted specific legislation also forbidding the use of prenatal diagnosis for sex determination without a medical reason, while in other countries this is addressed through professional regulations and guidelines.[55] The study found that when legislation was available, it prohibited sex selection, with a clause allowing it only for medical reasons, meaning the prohibition applied primarily to the use of ART.[56]

49 Commissioner for Human Rights (2014).

50 Commissioner for Human Rights (2014).

51 PACE (2011a), par. 5.

52 GREVIO (2017), 50.

53 GREVIO (2023), 70.

54 See Darnovsky (2009), as quoted by Dondorp et al. (2013), 1450.

55 Dondorp et al. (2013), 1450.

56 Dondorp et al. (2013), 1450. Countries where sex selective abortions are regulated as of 2024 can be found in WHO (2025).

Despite legal bans on sex-selective abortions of female foetuses, literature has shown that such bans have proven inefficient. Kumar and Sinha argue that such bans could potentially deteriorate women's rights instead of protecting them: '[b]ans can make access to legal reproductive healthcare services difficult, and can push couples with strong son preference to use postnatal discrimination as a substitute. Having unwanted girls can also worsen the treatment of mothers in the household.'.[57] On the other hand, studies performed in India after the legal ban found that the birth of females increased but broader issues of gender equity were not solved.[58] In Europe, Dondorp et al. argue that the ban on sex selection for non-medical reasons has ended up being of 'symbolic value', as in most countries the ban applies only to ART, and does not specifically address sex-selective abortions.[59] Another issue is that these bans do not prevent individuals from travelling to other countries with more flexible regulations. For example, there is evidence that Montenegro's ban prompted people seeking sex-selective practices to travel to Serbia.[60]

Furthermore, Dondorp et al., criticised the Council of Europe's recommendations for additional legal measures on the matter, as such interventions might interfere with women's rights to seek abortion.[61] Taking all of the above into consideration, a more holistic approach might be needed – one that addresses gender equality and discrimination against women in a broader way, as United Nations Population Fund (UNFPA) recommended in 2015: 'review gender equity laws to prevent direct or indirect discrimination against daughters, married wives, divorcees, and widows in property rights, access to education and employment, health and social insurance, pension benefits, and inheritance'.[62]

3. Sex-selective abortions of intersex foetuses

In 2014, the organisation StopIGM.org published the text 'Selective Intersex Abortions: XXY 74%, Indeterminate Sex 47%, Hypospadias 2%'[63] and referred to a publication from Girardin and Vliet, titled 'Counselling of a couple faced with a prenatal diagnosis of Klinefelter syndrome' in *Acta Paediatrica* in 2011, where it was mentioned that 'pregnancy termination following a prenatal diagnosis of Klinefelter syndrome' is very common in Europe, with Switzerland's termination rate being at 74%, Denmark's rate at 70%, Finland and the UK at 66% and Germany at 17%. They then referred to the *World Atlas of Birth Defects,* published in 2003 by the WHO, which collected data from 1993 until 1998. Under the entry 'indeterminate sex', 'Zurich shows

57 See Kumar/Sinha (2020), 115.

58 Nandi/Deolalikar (2013), 222; and Rastogi/Sharma (2022), 1510.

59 Dondorp et al. (2013), 1452.

60 Dubrovska (2021).

61 Dondorp et al. (2013), 1452.

62 UNFPA (2015).

63 StopIGM.org (2014).

an overall termination rate of 47%, and in 1998 scores second with 67% – after Glasgow in Scotland (100%), and before Finland, Barcelona in Spain and Saxony-Anhalt in Germany 3rd (50% each)'.[64] Under the entry 'hypospadias', 'Zurich (Switzerland) shows a termination rate of 1.58% for the period 1992-1998, and in 1995 scored rank 2 with 6.90%, after Barcelona (Spain) with 10%. #1 scores for the other years: 1993 Tomsk (Russia) 75%, 1994 Glasgow (Scotland) 12.50%; 1996 Antwerp (Belgium) 20.00%; 1997 Basque Country (Spain) 14.29%; 1998 Hainaut (Belgium) 5.56%'.[65]

In 2022, Intersex Greece posted a report on '[h]ate speech against intersex people in Greece' that included testimonies of parents of intersex children who were forced to terminate their pregnancy for motives that were interphobic and not medical. According to the first testimony '[t]wo of them (the doctors) called us in for a consultation meeting at the hospital and both insisted that the "standard procedure" was to terminate any XXY foetuses because it would be "[a] freak! A monster! A mistake of Nature! A stupid person, incapable of living on his own! A boy with such a small phallus that he'd better not live at all, besides, he'll most likely be gay"'.[66] In the second testimony, the parents mentioned that 'in 2018, our doctor suggested we terminate our healthy embryo as a "mistake of nature" because it had two X chromosomes and one Y chromosome ... We felt very sad, lost, and confused at first'.[67] Other testimonies from the United States have been published over the last years and the same narrative appears by the doctors. According to Ashley Fox, the doctor:

> 'dramatically said, "I don't want to give you this news over the phone. I hate to tell you this, but your son has something called Klinefelter syndrome. He has an extra chromosome". The doctor's blunt delivery of the unexpected information filled the couple with dread. They had never heard of Klinefelter syndrome and had no idea what that meant for their baby. They were filled with sadness while they tried to wrap their minds around the unexpected news (...). The doctor went on to say their son would "most likely be aggressive [and have] a lot of developmental issues". He then said, "I've been doing this for 30 years, and I have never delivered a Klinefelter baby"'.[68]

This section focuses on sex-selective abortions of intersex foetuses and raises the alarming social and ethical considerations surrounding them, which remain invisible. The authors argue that the performance of such practices may be presented as a medical emergency, but it is instead deeply discriminatory and harmful. Therefore, it is essential to take into account all legal considerations

64 StopIGM.org (2014).

65 StopIGM.org (2014).

66 Intersex Greece (2023), 20.

67 Intersex Greece (2023), 21.

68 Castonguay (2022).

and strive for a legal regulation that will end the repeated and unaddressed human rights violations that intersex people face even before they are born.

3.1 Social and ethical considerations

Although the bioethical discourse surrounding the de-selection of intersex traits predominantly centres on the use of PGD, the arguments advanced in this context apply *a fortiori* to selective abortions of intersex foetuses. Strikingly, many of the ethical motifs that recur in this debate closely parallel those previously identified as central to the more widely discussed issue of sex selection. It is therefore noteworthy – and somewhat perplexing – that critics of the negative selection of intersex characteristics tend to frame their opposition in terms of sex-based eugenics, drawing analogies with the selection of sexual orientation or race, rather than engaging with the more immediately pertinent comparison with foetal sex selection.[69] While we seek to avoid entanglement in the broader controversies surrounding eugenics, our goal is to make a case that selective abortions of intersex foetuses should be regarded as being on equal ethical footing with selective practices based on foetal sex. In our view, the growing legal and social recognition of intersex variations as part of the natural spectrum of sex characteristics, together with fundamental principles of justice, offers a compelling ethical basis for a consistent approach to both practices.

The first group of arguments that recur in both contexts pertains to the widespread worry about the balance of the social structure. With regard to intersex, the emphasis moves from sex ratio to the question of society's sex diversity. It is argued that a general legitimisation of selecting against intersex 'would eventually lead to an obliteration of a community whose members take pride in their bodies and identities',[70] a community that makes a full and active contribution to society.[71] Even Sparrow, who concludes that the parental choice to select against intersex might be justifiable, admits that society has an interest in diversity that policymakers are obliged to protect. This means promoting 'an inclusive society, in which individuals with nonstandard anatomies are able to participate in social, political, and economic life without suffering from discrimination'.[72] A weakness that Sparrow's adversaries exposed in his argument is that he 'chooses to ignore' the existence of a vibrant and vocal intersex community.[73]

Closely related are the concerns about sex discrimination, parallel to the intrinsic critique of sex selection which derives from its inherently sexist motivation. If sex selection is ultimately premised upon the existence of a sexist society, and – in the case of son preference – entails complicity in the oppression of

69 Sparrow (2013). Davis (2013), 51. The language of eugenics is further exposed in Dykerman (2015).

70 Davis (2013), 51.

71 OII Australia (2014), 2.

72 Sparrow (2013), 36.

73 Davis (2013), 51.

women, then there are solid reasons to condemn selection against intersex on a similar basis. As Haramia puts it, '[d]iscouraging the birth of intersex children can exacerbate the injustice and harm of sex and gender stereotyping'.[74] To allow such negative selection would mean reinforcing the existing biases about "normality" and gender nonconformity,[75] protecting 'binary ideologies about sex and its presumed correlation with gender' under the guise of protecting individuals from harm.[76] This false rationale stems from a medically questionable tendency to pathologise intersex traits while remaining blind to the experience of intersex people, many of whom enjoy full and happy lives.[77] Given the lack of compelling empirical evidence on the severity of health consequences associated with intersex, Sparrow's justification of the selective choices of the parents becomes even more questionable. Few would accept that parents could be justified in choosing to have a boy simply in order 'to spare their child the social consequences' of being born a girl.[78] It is difficult to see why considerations of this sort should permit abortion when an intersex child is considered.

Pervasive sex discrimination and harmful stereotypes within society also play an important role when the moral force of informed decision-making is being considered as a justification for selective reproductive choices. In the sex selection debate, critics highlight the influence that prejudice and a discriminatory social environment have on women deliberating on pregnancy termination. Culturally ingrained biases and external pressures, such as those exerted by family members, raise serious concerns about whether such decisions can truly be regarded as free and informed.[79] As illustrated by the testimonies cited earlier, worries relating to informed consent are even more pronounced in cases involving the selective abortion of intersex foetuses. In fact, directive counselling, particularly offered by non-geneticists,[80] as well as parental anxiety, have been identified as important factors in decisions to terminate a pregnancy following 'a diagnosis of Klinefelter syndrome'.[81] Some authors point to the fact that it is precisely the medicalisation by health professionals that is the root cause of the social stigma experienced by intersex people.[82] Behrmann and Ravitsky predict that 'as bias, stigma, and overt hostility are reduced, and as social barriers and

74 Haramia (2013), 51.

75 Behrmann/Ravitsky (2013), 39.

76 Davis (2013), 51.

77 For the discussion of medical classifications of intersex, see: Griffiths (2018). Their pathologising effect is discussed by Crocetti et al. (2021).

78 Sparrow (2013), 36: '(...) it is difficult to see what would be wrong with parents deciding to spare their children the social consequences of being born with a nonstandard sexual anatomy'.

79 Nisker (2013), 47.

80 See Marteau et al. (2002), 565.

81 Jeon et al. (2012), 28.

82 Davis (2013), 52.

discrimination no longer affect intersex individuals life prospects, parental motivation to select against intersex may dissipate'.[83]

In light of the striking similarities in the argumentative patterns that characterise discussions of selective abortion in both binary and intersex contexts, we align ourselves with the positions articulated by intersex communities in advocating that policies governing the selective termination of intersex foetuses should reflect the normative frameworks applied to sex selection. The shift of perspective from public policy to individual choice seems not to have affected the negative stance on the permissibility of sex-selective abortions, at least in Europe. As long as the reasons underpinning this prohibitory approach to selection against the female sex are treated seriously, the principles of formal justice, which call for the equal treatment of groups that are similar in relevant respects, demand a uniform ethical approach to all variations on the spectrum of sex.

3.2 Legal considerations

Often intersex persons are presented as 'disordered' and/or 'disabled' by the medical community to prospective parent(s) to justify sex-selective abortions based on the concept of 'medical emergency'. With regard to the use of legal frameworks on disability and their application to intersex people, in 2014, the German Institute for Human Rights clarified in their submission to the UN Committee on the Rights of Persons with Disabilities (CRPD) that intersex is 'neither a disability nor in itself a long-term physical impairment as these are defined in the CRPD'.[84] Available literature on the matter also states that intersex people 'are mistakenly constructed as disabled within international and national laws and thus stereotyped as non-productive'.[85] OII Europe, the umbrella organisation of European human-rights based intersex organisations, confirms these positions in a statement published in 2015. The organisation clarifies that the inclusion of intersex within the definition of disability reinforces the idea that intersex persons 'need treatment' and this could lead to higher levels of marginalisation and stigmatisation.[86]

As already mentioned, sources on sex-selective abortions against intersex foetuses are scarce, especially sources that adopt a purely human rights approach. In the research conducted for this paper, we did not find any legal or policy documents published by international human rights institutions that explicitly address and condemn sex-selective abortions of intersex foetuses. An important finding is that from all the reports published by the European Commission against Racism and Intolerance (ECRI) of the Council of Europe about intersex rights in different European countries, we discovered that only one mentions sex-selective abortions of intersex foetuses, as the vast majority

83 Behrmann/Ravitsky (2013), 40.

84 The German Institute for Human Rights (2014), 6.

85 Das (2014), 21.

86 OII Europe (2015), 11.

prioritises issues surrounding the performance of surgeries that violate the right to bodily integrity.[87] In the report for Greece, ECRI characterises sex-selective abortions of intersex foetuses as a form of discrimination and intolerance: '[a]s regards in particular intersex persons, notably children, they may face serious forms of discrimination and intolerance, including from medical professionals who reportedly often recommend abortion of intersex children to expecting parents'.[88] This report is also quoted in the Explanatory Memorandum (para. 119) of the very recent Recommendation of the Committee of Ministers on equal rights for intersex persons (CM/Rec(2025)7).[89] The Recommendation in para. 34 states that 'Member States should ensure that variations of sex characteristics are not the sole basis for encouraging selective abortion, where abortion is legal under national law; that prospective parents are provided with clear, comprehensive, comprehensible and evidence-based information about intersex variations and their associated health outcomes; and that they receive psychological and social support services'. The Recommendation is probably the only international document to date that highlights in detail the issue of sex-selective abortions of intersex.

Another interesting finding of our research is that, even before ECRI's 2011 report and the CM/Rec(2025)7, the European Court of Human Rights (ECtHR) ruled in *R.R. v. Poland* that the failure to ensure the applicant's timely access to PGD, which would have enabled her to decide whether or not to seek a legal abortion, violated her rights under the European Convention on Human Rights (ECHR). The case was about Turner syndrome and in that regard the Court did not touch upon the syndrome *per se*, as it stated in paragraph 202 that 'it is therefore not for the Court to embark on any attempt to determine the severity of the condition with which the doctors suspected that the foetus was affected, or whether that suspected condition could have been regarded as entitling the applicant to a legal abortion (...) given that the legal obligation to secure access to pre-natal genetic testing arose under the provisions of the 1993 Act regardless of the nature and severity of the suspected condition'. In the partly dissenting opinion of judge De Gaetano, it is also mentioned that 'it should be further noted that most of the medical literature on the subject is in agreement as to the fact that persons with Turner syndrome can have a normal life when carefully monitored by their doctor'.

Overall, a point that is still overlooked is that many years have passed since the intersex movement started advocating for the protection of their rights and many measures have been taken at legal and policy levels at national, regional and

87 See the reports from Azerbaijan, Armenia, Albania, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, France, Georgia, Germany, Hungary, Iceland, Liechtenstein, Luxembourg, Malta, North Macedonia, Norway, Poland, Slovak Republic, Switzerland, available here https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/country-monitoring.

88 ECRI (2022), 5.

89 CM-CoE (2025).

international levels to protect their bodily integrity[90] and give them access to the recognition of their gender identity.[91] All these developments show that sex and gender are not binary, but a spectrum, a distinction currently reflected even in the law. All the legal measures taken to protect intersex bodily integrity also reflect that intersex people are perfectly healthy, do not need any interventions, and that they are free to identify with and lead their lives as intersex without trying to abide by the standards imposed by the female/male binary. Therefore, including intersex people in diagnostic lists is outdated, unethical, and leads to severe human rights violations. In addition, prioritising solely and/or primarily on human rights violations arising from surgeries performed on intersex people sheds light only on one aspect of the problem and does not address other severe issues of discrimination that intersex people face, including sex-selective abortions.

4. Concluding remarks: sex-selection and the spectrum of sex

Our research has shown that sex-selection performed against female and intersex foetuses is deeply discriminatory and emerges from the same stereotypes surrounding sex as well as patriarchal attitudes that tend to erase foetuses that are not 'male'. With the exception of the CoE and its recent CM/Rec(2025)7, the majority of human rights bodies have been primarily vocal about sex-selective abortion against female foetuses, calling on Member States to implement relevant regulation. Unfortunately, the same action is absent concerning sex-selection against intersex foetuses; the enduring perception of sex as a female/male binary has effectively obscured the sex-selective abortions aimed at erasing intersex foetuses, notwithstanding the available evidence. As a first step, we propose that human rights documents published by international institutions to protect females against sex-selection should be interpreted in a broader manner to reflect recent societal and legal developments that show that sex is not binary but a spectrum. We anticipate that the regulation of sex-selection of intersex foetuses might not be enough, as laws tend to be broken – it was already stated that countries that have regulated sex-selection of female foetuses are still facing tremendous issues regarding sex diversity and gender equality. Nonetheless, it is crucial that the human rights violations that intersex people face due to the performance of sex-selective abortions begin to be addressed and condemned. At this point, there might have been significant efforts at international and national levels to protect the rights of intersex persons, but these steps seem to be sporadic. For these efforts to be effective, they ought to adopt a comprehensive and holistic approach to evenly address all the issues intersex people face, including those that occur before they are born, as they underscore the complexities underlying the ongoing intersex rights violations.

90 For the latest developments on the protection of bodily integrity consult ILGA Europe (2025).

91 For a comparative overview on the legal gender recognition for intersex people in Europe consult OII Europe (2021).

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