

Dossier for the topic: Discrimination of trans* people in Germany

Trans* is an umbrella term for people who do not or not solely identify with the gender they were assigned with at birth. They do not identify within the hegemonial binary gender norm.

This dossier gives an insight into different aspects of being transgender. Terms will be explained. Besides that, experiences of discrimination, which can be within a wide range of the daily life of trans* people in Germany, will be described. Legal bases are relevant for the protection of trans* people and their recognition. Furthermore, the situation of trans* people in Germany will be viewed in an international comparison. Additional material and links will be found here.

The term trans* will be spelled with an asterisk and refers to the diversity within trans* identities. The term trans* with the * is also perceived as exclusionary. Therefore, it should be referred to another perspective which views the spelling with the * critically.

1.1 Transgender has various expressions

Transgender, and its shorter version trans*, is an umbrella term. The * in trans* cannot be seen as the German „Gendersternchen“ (gender star), but rather refers to trans* identities outside of the gender binary, for example non-binary or gender fluid trans* people.

The term trans* is used as an adjective. This dossier will look at different terms of, and about, trans* people and their historical context. The term trans woman/ trans man will be explained and the differences between transsexual, transgender and the German term „transident“ are shown. Besides that, the non-binary gender identity will be described. Furthermore, the difference between trans* and intersex will be explained.

The queer dictionary explains terms about gender diversity. Further questions can also be discussed within their suggestion box.

Transgender is manifold as gender identity, gender expression and gender body differ in various forms from the heteronormativity of the society. Heteronormativity only defines the two genders man and woman, which are attracted to each other. Non-conformance to the heteronormativity is often also the base for experiences unequal treatment.

1.1.1 Heteronormativity and binary gender norms

Heteronormativity describes the hegemonial social norm which justifies the binary gender norm as biologic by assigning gender on the basis of physical aspects. The binary gender norm only recognises two genders, male and female, and defines heterosexuality, the sexual attraction between those two genders, as natural. Heteronormativity defines the non-existence of further genders besides cis man and cis woman. The word cis describes, as an adjective, the gender identity which one was assigned at birth.

Everyone, for example trans*, intersex or non-heterosexual people, who do not meet the expectations of the binary gender norm, are defined as different from alleged standard. Therefore, heteronormativity structures powers between genders and sexualities. Non-conformance from the alleged norm will be viewed as negative and lead to unequal treatment. The devaluation of people whose identity does not equal the heteronormative categories of gender roles, gender relations and sexuality, is called hetero sexism.

At the beginning of the 1990's, the US-American philosopher and gender scientist Judith Butler describes in the publication 'Gender Trouble' that the category sex is also constructed. For Butler this means that the categorisations of bodies in male and female are only based on an imaginary categorisation and assignment without natural legitimisation. The construct of the heteronormativity is supported by the assumption of a supposed sex biologism. This means the equalisation of, for example, organs, hormones or chromosomes with the sex and supports the assignment of people based of physical characteristics.

A further introduction to the term 'heteronormativity' as well as criticism to the biologic-medical imagination of sex/gender can be found in the Gender Glossary of the University of Leipzig.

This assignment should be reconsidered as gender, as well as gender body exist in different variations. Butler's theory is intensively discussed in scientific discourses and part of gender studies.

1.1.2 Gender identity, gender expression and gender body

The German term 'Geschlecht' refers equally to the English terms sex and gender. To enable a further analysis, this dossier will differ between gender identity, gender expression and gender body.

The German term 'Geschlechtsidentität' (gender identity) is an approach to the concept of gender and refers to the individually experienced gender identity. This can be, but is not necessarily equal to, the category sex of the gender one was assigned with at birth. People who wholly or partially do not identify with the gender they were assigned with at birth, identify themselves as trans*. In contrast, people who identify as the gender they were assigned with at birth are called cis woman or cis man. People with a gender identity beyond the binary gender norm of man and woman can use the umbrella term non-binary for themselves. A person can have one, none or various gender identities, like for example a non-binary trans* person.

'Geschlechtsausdruck' (gender expression) describes the physical expression of one's gender and can refer to clothing, language, movement and appearance of a person. Gender expression often shows within the social categories of female and male. Although gender identity and

expression do not have to be identical, daily, one's gender identity is often extrapolated from their gender expression. The third dimension of sex/gender, next to gender identity and expression, is one's gender body which is often referred to as sex. The gender body (sex) of trans* people cannot fully or partially correspond with their gender identity. They are often assigned with a gender by others due to physical characteristics based on the gender they were assigned at birth. This expression of power is called 'othering'.

In 2012, the Federal Agency for Civic Education (bpj) published multiple essays on gender identity in 'Aus Politik und Zeitgeschichte'. The whole edition can be found in the chapter material.

1.1.3 Identification as trans*

During time trans* people have used different self-labelling terms for a more precise differentiation of the umbrella term trans*. Terms used on a daily basis are not just defined by self-labelling, but rather also by non-self-labelling terms (othering) which are rejected by trans* people due to the discriminatory and derogatory meaning. For a better understanding, different terms and identification will be shown in this dossier:

The 'Regenbogenportal' of the Federal Ministry for Families, Senior Citizens, Women and Youths offers information and material about identities and the realities of life for trans* people.

- trans woman and trans man
- transsexual, transgender and the German term 'transident'
- non-binary gender identity

1.1.3.1 Trans woman and trans man

The gender identity of trans woman and trans man can be, in the logic of binary gender norms, in accordance with their 'opposite gender' they were assigned at birth. Also, people who just partly identify as the opposite gender can use the terms trans woman or trans man as self-labelling terms. Besides that, trans* people can also have a gender identity beyond binary gender norms, for example as non-binary.

The University of Flensburg developed a guideline for the handling of names and pronouns and recommends asking respectfully when unsure. Their brochure also provides practical tips and information for a respectful interaction with trans* people.

How a trans* person would like to be named and addressed is different. Therefore, it is important to listen to and respect the person. Differences should be made between self-labelling and non-self-labelling terms. The description 'used to be a man/woman' is non-self-labelling and inappropriate as it connotes that the gender identity of the person has been different in the past.

1.1.3.2 Transsexual, transgender and 'transident'

The three terms can refer to people who partly or fully do not identify with the gender they were assigned at birth. However, the terms cannot be used synonymously as they do have different connotations. Besides that, terms can be used/considered as self-labelling or non-self-labelling terms by trans* people, which is why the individual self-labelling term of a

trans* person should always be respected. For trans* people, it can be a painful experience when they are assigned with the wrong gender identity on the basis of physical characteristics or behaviour. Gender dysphoria describes the suffering due to a wrongly assigned gender identity.

Transsexual

The term transsexual is based on the binary gender norm and refers, therefore, especially to the categories man/woman. If trans* people use this as a self-labelling term, it can express that their gender identity is the ‘opposite’ of the gender they were assigned at birth. The term is used especially in medical, psychological und legal means. Due to the historical context, the use of the term transsexual by cis people is seen as discriminatory and rejected by trans* people. Since the 1950’s, ‘transsexuality’ was defined as a disease by the medicine and psychology and listed as such in the international classification of diseases (ICD). This categorisation supported the stigmatisation of trans* people. Due to longstanding activism of the trans* community, which make clear that their identity cannot be classified as a disease, in 2022 the WHO will change the name of the diagnose ‘transsexuality’ to ‘gender incongruence’ and will no longer pathologies it as a mental illness in the ICD10. Medically the identity as trans* will then be defined as a question of ‘sexual health’.

Next to the medical context, the term ‘transsexuality’ also gets criticised as misleading, as being trans* is independent of one’s sexual orientation and refers to the gender identity. However, some trans* people prefer the term ‘transsexual’ instead of ‘transgender’. Through the English word ‘sex’, they can put the focus of their self-definition on the fact that their body differs from their gender identity.

Transgender

Transgender refers to the English term ‘gender’. The term arose in the 1970’s, when trans* people became more visible in public. The term closed the gap between the medical term ‘transsexual’, which only refers to two gender and the term ‘travesty’, which means temporarily acting as the other gender. The reference to the English word ‘gender’ shall allow that people who have a gender identity other than male or female can identify with that term.

Transident

Next to trans*sexual, “transident” is another word for transgender. As a self-imposed term it is used to highlight the aspect of identity which refers to the sexual identity. Nevertheless even in that case it is up to every person to decide if they want to use that term or to decide that they prefer a different term.

In a press release of June 2018, the organisation Bundesvereinigung Trans* welcomes the elimination of transsexuality being categorised as a mental illness, starting with the ICD 11 as an important step for the improvement of trans* people’s healthcare.

1.1.3.3 Non-binary gender identity

Non-binary people do not assign their gender identity in the binary view of society. The term ‘Enby’ or ‘Enbie’ is often used synonymously and refers to the English pronunciation of the abbreviation ‘nb’ for non-binary. In the non-binary spectrum, there are various identities as for example agender (nongendered), gender fluid (shifting between different genders/expressions) or androgyne (person who feels/express as male and female).

‘Genderqueer’ has a similar meaning as non-binary. In general, ‘queer’ is a self-labelling word of people who do not identify within heteronormativity but rather in one of the categories, summarised with the abbreviation ‘LGBTIQ+’ (lesbian, gay, bisexual, trans* intersex, queer, asexual). Before the 1980’s, the term ‘queer’ has been used negatively but was reclaimed by the LGBTIQ+ community through the positive use as a self-identification.

1.1.4 Trans* people and intersex people

Intersex people are born with physical sex characteristics which, in the logic of the medical and societal gender understanding, cannot be assigned clearly as male or female. Physical characteristics like chromosome, genitals, hormones or the distribution of muscle mass can have various forms.

Intersex people are defined by their medical categorisation, whereas a gender identity as trans* means a partial or full discrepancy to the gender one was assigned at birth. Intersex people can also be trans*, for example if they were assigned with a male or female gender at birth. This occurs for example, when intersex people are not categories as such or physical characteristics are assigned to the supposed male or female gender by operational surgery, which is, among others, seen as disregarding human rights by Amnesty International. Intersex people can also identify as cis when they identify with the gender they were assigned with at birth.

The brochure ‘Inter & Sprache’ by the organisation TransInterQueer e.V gives a critical insight into terms relating to intersex people and refers to the discriminatory character of alleged neutral terms. It shows already existing respectful and emancipatory terms.

1.2 Experienced unequal treatment

Trans* people experience wide-ranging unequal treatment due to their gender expression and/or their gender identity as those do not equal heteronormativity. When this discrimination ends up in verbal or physical attacks, this is called hate crime. Discrimination against trans* people and hate crime take place in all areas of social life.

As a survey of trans* people of the Federal Anti-Discrimination Agency in 2017 shows, discrimination in ‘public and leisure’ is in first place. Due to the study ‘Queere Freizeit’ (queer leisure) by the German Youth Institute (DJI), specific unequal treatment that young people face is uncomfortable and unpleasant striking observation (79.8%), discriminatory jokes or swear words (75.8%) and insults (55.1%). 26.3% of the young people face sexual harassment, 21.4% threat of violence and 11.9% physical attacks. Due to a survey (external link: by the European Agency for Fundamental Rights (FRA), 31% of the German trans* people often or always avoid public spaces due to discrimination.

To enforce human rights for trans* and LGBTIQ+ people, civic actors and human rights experts composed 29 Yogyakarta principles in Yogyakarta (Indonesia) in 2006. The principles apply different UN human rights to trans* and LGBTIQ+ people and propose measures by which states can realise those principles.

1.2.1 Discrimination against trans* people

Discrimination against trans* people, often also referred to as transphobia, is the irrational (and partly violent) rejection of trans* people due to their gender identity.

Hostile behaviour against trans* people is expressed by discrimination and harassment. An EU-wide survey by the European Agency for Fundamental Rights (FRA) in 2019 showed, that 66% of the German interviewees stated experienced discrimination due to them being trans* within the last 12 months. The European average was at 60%.

The dossier gives an insight into discrimination against trans* people in the area of employment, access to goods and services, education sector and the use of sanitary facilities and dressing rooms.

This dossier uses the term ‘discrimination against trans* people’ instead of the term ‘transphobia’ as the hostile and negative attitude against trans* people does not relate to fear as the Greek word ‘phobus’ (=fear) implements.

1.2.1.1 Area of employment

In the area of employment, discrimination against trans* people are not well researched. Therefore, an overview of the distribution of discrimination against trans* people at the workplace is limited. However, interviews of specifically experienced situations by people affected give an insight.

The study ‘Spezifika der Arbeitssituation von Trans*-Beschäftigten in Deutschland’ (Specifics of the work situation of trans* employees in Germany) by the Institute for Diversity and Anti-Discrimination Research (IDA) showed, that out of the interviewees trans* people were four times more likely to be job seeking than cis people. This illustrates that the access to employment is impeded for trans* people in Germany. Discrimination continues at the workplace where trans* people experience bullying and exclusion and, in comparison, are more likely to be employed in the low-wage sector.

The study ‘Out im Office?!’ by the Institute for Diversity and Anti-Discrimination Research (IDA) in 2017 is the first representative study about the discrimination realities of trans* people in the area of employment.

1.2.1.1.1 Access to employment

The access to employment is often characterised by discrimination against trans* people. A survey of the Situation in Europe by the European Agency for Fundamental Rights (FRA) showed, that in 2019, 36% of the interviewed trans* people experienced discrimination against them when searching for a job. Besides that, the study ‘Out im Office?! (Out in office)’ by the Institute for Diversity and Anti-Discrimination Research (IDA) in 2017 showed that more than half of the job applicants got rejected at least once in their life due to trans* discriminatory behaviour of potential employers. Due to those difficulties, the average income of trans* people is significantly lower compared to cis people. More than a quarter of the interviewees earn less than 1,000€ per month, whereas only 8% of the interviewed cis people stated this. In a survey by the Federal Anti-Discrimination Agency, a trans* person reported that they were not employed due to their gender identity and gender expression:

“At an interview it was explained to me that I reach the required competences but by identifying as transsexual, I could not be considered for the job, as customers might react negatively.”

The resulting impediments to access to employment also show in the numbers and type of employment. Due to a study by the University of Hamburg in 2015, 70.8% of the trans* people in Germany have been in full-time employment compared to 74% of the rest of the population. 17.5% of the trans* people did not have a paid employment, compared to the German average of 4.6%.

The Berlin Land Office for Equal Treatment – against Discrimination published a comprehensive reader about the realities of trans* people in work environments. The printing version of the reader can be found in the Chapter Material.

1.2.1.1.2 On the job

Not only in the access to employment, but also on the job itself, trans* people regularly experience discrimination. A survey by the European Agency for Fundamental Rights (FRA) shows that on EU level 39% of the trans* people feel discriminated against at their work place. The study ‘Out im Office?!’ (Out in office) stated that employers are more likely to be the origin of discrimination against trans* people than colleagues. Furthermore, two-thirds of the interviewed trans* people pay attention to conform with cis gender roles, which means adjusting the voice, movement, clothing or hair style to binary gender norms.

Besides that, the study makes clear that to about 45% of the interviewed trans* people, it is important to dismantle discrimination against trans* people and prejudices by openness. However, this intention is often complicated by their work environment. Every fourth interviewee mentioned uncomfortable jokes about trans* people, defamation or imitation. 30% of the trans* people reported not being appreciated due to being trans*. In some cases, (6%) trans* people also got transferred or terminated (8%). About one quarter reported that they were refused access to the toilet corresponding with their gender identity. Further discriminatory experiences include inappropriate interest to the private life/body or the imitation of behaviour of trans* people (64.2%), exclusion (62.3%), sexual harassment (51.8%), bullying/extortion (37.3%), verbal abuse/insults (29.3%) and withdrawal of the personal contact with customers (15.5%).

The travelling exhibition “Trans* in der Arbeitswelt” (Being trans* in the work environment) by Anja Weber portraits twelve trans* people, who were accompanied at their workplace and can be borrowed from the Berlin Land Office for Equal treatment for up to twelve months.

1.2.1.2 Access to goods and services

Next to the area of employment, trans* people also experience discrimination in the public access to goods and services. Those are transactions of everyday life, in which trans* people receive poorer service or are not addressed correctly to their gender identity. Special attention needs to be paid to the health care sector, in which trans* people are exposed to othering and therefore their self-determination being denied. Furthermore, discrimination is being experienced in the access to housing by the owners and/or neighbours.

The Federal Anti-Discrimination Agency named 2015 to the thematic year against discrimination on the ground of gender and therefore developed recommendations for action for society and policies, which shall support dismantling discrimination.

1.2.1.2.1 Transactions of everyday life

‘Transactions of everyday life’ include purchasing daily goods (groceries, clothes, insurance, etc.) as well as the use of services like hairdressers appointments or opening a bank account. In 2017 a non-representative survey by the Federal Anti-Discrimination Agency (ADS) showed that 6% of the stated discrimination against trans* people took place in the area of ‘transactions and services’. The data situation about discrimination against trans* people in the area of transactions of everyday life in Germany is fragmentary. The study ‘Being Trans in the European Union’ by the European Union Agency for Fundamental Rights (FRA) in 2011 found that, 23% of trans* people experienced discrimination in cafes, bars or restaurants, 20% while purchasing goods, 18% in the sport and fitness sector and 12% in a bank branch on European average. Most discriminatory experiences to trans* people occurred as poorer service or other customers being offensive to trans* people. Due to the following study by the FRA from 2019, it seems that discrimination against trans* people have risen. 29% of the trans* people living in Germany experiences discrimination when purchasing good and visiting cafes, bars or clubs. This equals the European average. Data collection which only allow the options ‘man’ or ‘woman’ when addressing customers is one form of discrimination against trans* people in online-businesses. Since the law which allows changing information made in the ‘Geburtenregister’ (natal register) and the possibility of the so called third gender option ‘divers’, was introduced, internet providers are required to at least offer a third option when purchasing goods online. In practice, this is rarely the case and therefore, trans* people who do not identify as the available options of ‘man’ or ‘woman’, do not find an appropriate option.

During transactions of everyday life (e.g., access to housing, services like travelling etc.) as well as at the access to employment which require an official identification document, trans* people are often confronted with the discrepancy between their appearance and their official name or gender entry. The ‘Ergänzungsausweis’ of the German Association for trans* and inter* sexuality (dgti) provides a potential solution.

1.2.1.2.2 Healthcare sector

A survey) by the Federal Anti-Discrimination Agency from 2017 (ADS) showed an overrepresentation of discriminatory experiences in the context of medical practice. Often it is reported that doctors and nursing staff deny the gender identity of trans* people. Furthermore, situations of conflicts arise for example when the gender identity is not being respected when allocating a hospital room.

Besides that, trans* people report about difficulties with treatment by specialists, for example gynaecologists or urologists as those are often refer to a biologicistic-medical idea of sex and gender. Due to a survey by the European Union Agency for Fundamental Rights (FRA) in 2019, Germany after Bulgaria, had the second highest number of experiences of discrimination relating to medical examination. With 40% the percentage of trans* people who have experienced discrimination is nearly twice as much compared to the survey of 2011. In 2019, the most reported disrespect of personal boundaries in medical context were inappropriate questions (25%) and ignoring specific needs (22%). For fear of experiencing discrimination or intolerance, 19% of the German interviewees decided against medical treatment.

Next to the discrimination against trans* people by medical staff, trans* people also face barriers in the process of surgical operation. Those can be an (important) part of the personal expression of trans* people. However, the access is limited due to structural barriers. The costs of 6,000 – 15,000 € for a surgical operation is just minimally covered by health insurances. The requirement of living conformably to one's own gender identity in everyday life for multiple years can have an influence on the career choice and is perceived as degrading, as physical characteristics (e.g., breasts or beard) must be elaborately hidden. Furthermore, for a surgical operation, psychological reports are required and the trans* person, therefore, is dependent upon their assessment by experts. For this reason, 21% of the German trans* people decided to use surgical treatment in another EU country as stated by the European Union Agency for Fundamental Rights (FRA).

Structural barriers in the context of surgical operation also arise from discrimination against trans* people and heteronormativity which is rooted within society. The longstanding work of trans* activists led to a punctual simplification in the requirements for surgical treatment, for example the possibility, that hormone therapy can, in general, be prescribed by any qualified doctor. However, experiences of trans* people show that doctors still often refuse the prescription of hormones, even if it is just a follow-up prescription. At the same time, conservative political actors misuse reports of people who do not (fully) identify as trans* anymore to complicate surgical measures. This is criticised by trans* activist Julia Serano as it denies the self-determination of trans* people and grounds the discriminatory argument that a gender identity as trans* just resulted from external pressure.

Depending on the examination of consultants, judges or therapists is called 'gate keeping'. In the book 'TRANS.FRAU.SEIN. Aspekte geschlechtlicher Marginalisierung' (Trans.Woman.Being. Aspects of gender marginalisation) the author Felicia Ewert defines gate keepers as: , people [...], who hold a specific position to decide on chapters in trans* people's lives.' The book by Felicia Ewert is available at publisher edition assemblage.

1.2.1.2.3 Access to housing

Due to missing data about discriminatory experiences at the access to housing in Germany, only international comparisons can provide orientation.

A study by the European Union Agency for Fundamental Rights (FRA) showed that 2011 and 2019 a little more than one fifth of the trans* people in Germany felt discriminated against when looking for housing.

Trans* people who depend on economic providers in their housing situation, e.g., teenagers, are at risk of losing their housing due to transphobic discrimination in their home environment against them. Besides that, trans* people are disadvantaged in accessing housing. One possible connection can be made to the discrimination against trans* people in the area of employment, which makes trans* people more likely to work in precarious employment than cis people, who are then more likely to be accepted by a landlord, due to a regular and higher income.

Further information about the legal situation relating to discrimination in the context of housing can be found on the website of the organisation 'Fair renting – fair living'.

1.2.1.3 Area of education

During school time, professional training and during puberty, gender identities can be an important.

During this time, trans* people can be confronted with strong contradictions between their body and identity and can experience discriminatory exclusion by peers or teachers.

In the area of education, trans* people are also, by structural marginalisation: changing rooms, toilets or physical education, often only accepted by the binarity of cis male or cis female. This environment also impacts trans* youths beyond their everyday school life: Interviews show that starting a traineeship or studies can require major efforts of young trans* people. Some describe that feeling the need to transition (e.g., by a surgical operation) before continuing a traineeship, so that they face less discrimination within their environment. Medical treatment can also have a temporal impact as trans* people have to pause or reschedule their traineeship during the treatment.

The survey by the European Union Agency for Fundamental Rights (FRA) of 2019 showed that 35% of the interviewed trans* people have experienced discrimination by school university staff compared to 24% in 2011.

In a survey by the Federal Anti-Discrimination Agency in 2017, 27.3% of the interviewed trans* people reported that they have experienced bullying in the areas of education. The study 'Acceptance of sexual diversity at Berlin Schools' showed one fifth of the sixth- and nine-graders have witnessed negative reactions to classmates who did not act within gender norms more than half of the time.

In the area of education, as well as access to employment, insecurities and refusals often occur in the use of the right name in work contracts, lists of names, student or employee IDs before, as well as sometimes even after an official change of the name and marital status. Legally, the use of another name is not illegal as long as no fraudulent intent is followed and the person can be clearly identified. In the university context (education), this is ensured through the use of the student ID or at the work place by the social security number. A short assessment by the Humboldt University also refers to the legal scope of universities when using the chosen name of trans* or inter* person before a legal name change.

The guideline 'Homophobia and Transphobia in schools and youth facilities: What can be done by educational staff?' by Ulrich Klocke recommends, that schools should formulate clear guideline regulations as students most likely orientate on those. Furthermore, educational work, diversity orientated working material and the existence of a contact person in cases of bullying would lead to a higher tolerance.

1.2.1.4 Sanitary facilities and dressing rooms

For trans* people, the binary assignment to male and female toilets can be an exclusionary and conflict situation. Especially by the wrong ascription by others, the use of a toilet is seen as 'wrong' or supposedly wrong, which can be expressed in psychological, physical or sexualised violence. A statement in an interview by the Federal Anti-Discrimination Agency 2017 illustrates this: 'In front of every public toilet I have to classify myself; with women I feel uncomfortable, with men I get strange looks.'

Anna Damm from the trans* consultancy at the Humboldt University in Berlin stated that for a lot of trans* people the use of toilets is connected with anxiety. As one approach, unisex toilets are discussed or, like the Alice Salomon University in Berlin, have already been implemented as a reaction to claims in the form of all-gender toilets. Sweden can also be seen as a role model. With the set-up of gender-neutral toilets, basic sanitation for everyone is made possible by the safe access to toilets and its equipment (toilet seats, urinals, sinks, changing tables).

The Berlin Senate Administration for Justice, Consumer Protection and Anti-Discrimination offers a flyer with information and recommended actions for the implementation of public toilets which are accessible for all genders.

Similar problems occur when using dressing rooms in, for example, gyms, public pools or sports clubs. An interview by the FRA showed, that in 2011, 19% of the German trans* people felt discriminated against in sports clubs or gyms. In gyms, trans* people are not only confronted by the question of which dressing room can be used, but also by discriminatory situations in the practice room. As a reaction to external requests, some gyms and public pools have implemented usage times for trans* people. Those can be a more secure room for trans* people, but only change partially structural and institutional forms of discrimination against trans* people.

1.2.2 Hate crimes

The European Union Agency for Fundamental Rights defines hate crime as ‘physical or verbal attacks against people, which are motivated by prejudices of a specific characteristic of the person affected, as for example their sexual orientation or gender identity’.

The German criminal law does not include any specific laws relating to hate crimes against trans* people. Until now, only § 46 StGB para. 2 can be used for non-specific references when wording the motivation of the perpetrator. § 46 StGB para. 2 states:” In the assessment, the court weighs the circumstances that speak for and against the perpetrator against each other. In particular, account shall be taken on the motives and object given of the perpetrator, including racist, xenophobic or other forms of inhumanity, the attitude and will of the perpetrator, the degree of negligence, the manner of execution and the consequences of the act, the perpetrator’s previous life, their personal and economic circumstances and conduct after the crime, in particular his efforts to make good the damage and the efforts of the perpetrator to seek compensation with the person affected.

Police statistics are not very informative about the frequency of hate crimes against trans* people as only the total amount of hate crimes against trans* and homosexual people is stated. A survey by the European Union Agency for Fundamental Rights in 2019 tried to close this gap.

An overview about the legal situation of hate crime in the EU countries can be found in the chapter material.

Half of the interviewed trans* people in Germany stated that they have experienced hate-motivated harassment in 2019. Between 2014 and 2019, nearly one fifth of the interviewees have, at least once, been victims of physical or sexualised attacks, with even 10% of them having experienced this six times or more. Hate crimes are often carried out by cis men who are unknown by the victim. Physical or sexualised attacks are happening two-thirds of the

time in public spaces, compared to a little more than 50 % of the hate-motivated harassment. Social networks were stated as the second most common place for harassment with 16 %.

Within the last 10 years, the number of people affected who reported a hate crime has risen slightly on European average but remains low. In 2011, 4.5 % have reported their last experiences hate-motivated harassment to the police or another organisation compared to 10 % in 2018. In 2011, 15 % reported their last experienced physical or sexualised attack, compared to 21 % in 2018.

1.3 Legal basis

For the legal protection of trans* people in Germany, firstly the Basic Law (GG) is relevant, which guarantees the general rights of personality and the precept of equality. However, this protection is only ensured when people respect the general rights of personality and the precept of equality. If those are violated, sufficient resources are required for the law enforcement by the affected person.

When violating the GG, the person affected can file a constitutional complaint if all other instances have been exhausted, which will be decided about by the Federal Constitutional Court. For example, after a successful constitutional complaint of a trans* and intersex person, the Civil status law (PStG) was reformed. § 21 para. 1 no. 3 PStG still states that the gender has to be filed in the natal register, but § 22 para.3 PStG now allows ‘divers’ as a third legal gender or a marital status without a gender open gender record.

However, legally this rather refers to intersex people , which could not be assigned in the understanding of a binary gender system as male or female at birth.

Trans* people can only use ‘divers’ as their gender record if they can prove medically that they are

The Federal Anti-Discrimination Agency is the first contact point in a case of discrimination.

intersex. In terms of the prohibition of discrimination against trans* people, the General Equal Treatment Act (AGG) as well as the Transsexual Act (TSG) are also relevant.

Highest court decisions relating to the AGG as well as the TSG exist, which legally prohibit the discrimination against trans* people. However, it is important to mention that for the enforcement of these legal regulations, legal actions are necessary and not every person affected has (sufficient) resources.

1.3.1 Basic Law

The basis for the prohibition of discrimination in the Federal Republic of Germany is the basic law (GG), which states a legal and social equality of every person. In particular, two fundamental rights which are stated in the basic law have to be mentioned. The general right of personality, which derives from Art. 2 para. 1 and Art.1 para. 1 GG, as well as the precept of equality, deriving of Art. 3 para. 3 no. 1 GG. A constitutional complaint is a remedy which allows people protected by the basic law to appeal against breaches of law by state power.

The general right of personality is not specifically stated in the basic law (GG), but in practice is established as the derivation of Art. 1 para. 1 (protection of human dignity) in connection with Art 2 para. 1 GG (right of free development of one’s personality. It contains the protection of privacy, which includes the sexual self-determination of a person. The protection is also valid for one’s own gender identity.

Another prohibition of discrimination occurs from the precept of equality in Art. 2 para. 3 no. 1 GG. Due to the precept of equality, every person has to be protected against discrimination. Therefore, Art. 3 para. 3 no. 1 GG states ‘Geschlecht’ (sex/gender), which also refers to genders beyond male or female. Although the wording of the before stated Art. 3 para. 2 GG only names men and women, there is no contradiction between the two paragraphs. Art 3 para. 2 GG underlines that existing societal disadvantages between men and women shall be removed but does not state that the gender system only recognises two genders.

An English version of Art. 2 and Art. 3 of the German Basic Law can be found in the chapter material.

1.3.1.1 European level

The resulting conclusions on the prohibition of discrimination against trans* people, deriving from the Basic Law also arise at the European Level, if Art. 3 para 3 sentence 1 GG is interpreted conformably with European law, that is to say, at the level of the European Council and the European Union.

At the level of the European Council (ECHR), Art. 14 of the European Convention on Human Rights is decisive. It states that the rights and freedoms without discrimination recognised by the ECHR must be guaranteed, especially on the ground of gender/sex. Several judgments of the European Court of Human Rights also refer to Art. 8 para. 1 ECHR to legally prohibit discrimination against trans* people, as this article guarantees every person the right to respect their private and family life.

At the level of the European Union, Art. 21 of the Charter of Fundamental Rights of the European Union prohibits the discrimination on the grounds of gender/sex. The European Convention on Human Rights (European Council) and the EU Charter of Fundamental Rights only use the word ‘gender’ and, therefore, do not refer to a binary gender system.

The equality principle in Art. 3 para. 3 sentence 1 GG states that ‘no one [...] may be discriminated against or favoured on the grounds of their gender, origin, race, language, heritage, belief, religious or political views.’

1.3.1.2 Constitutional complaint 1 BvR 2019/16 (Federal Constitutional Court)

In the constitutional complaint 1 BvR 2019/16 of 2017, the claimant was assigned female at birth and was registered as a girl in the natal register. Due to the Turner Syndrome, the person only has one x chromosome. The person permanently does not identify as either female or male and applied therefore for the positive entry as divers in the natal register. The responsible registry office denied this on the basis of the Civil status law (internal link: 1.3.2) (PStG), as § 21 para. 1 no. 3 in connection with § 22 para. 3 PStG would not allow such a registration. The only possibility for the claimant would be to have no gender recognition in the natal register.

The Federal Constitutional Law ruled in favour of the claimant. The Civil status law requires the registration of a gender but does not offer the possibility of a positive entry besides male and female, but only leaving such a registration free

The proclamation of the Federal Constitutional Law can be found in the chapter material.

of any indication. Therefore, the recognition of the gender identity is denied. The proclamation of the Federal Constitutional Law of 10 October 2017 states that the General Right of Personality as well as the procedural right of people who permanently do not identify as either male or female are violated. Therefore, the regulations of the § 22 para. 3 PStG are unconstitutional. The legal regulation violates the general right of personality pursuant to art. 2 para. 1 in connection with art. 1 para. 1 GG in its meaning as the protection of the gender identity. At the same time, § 22 para. 3 PStG discriminates on the ground of gender/sex, therefore, the prohibition of discrimination anchored in art. 3 para. 3 sentence 1 GG was also violated.

The Federal Constitutional Law mandated the federal government to eliminate the violations of the general right of personality and the principle of equality, resulting from the existing regulations of the Civil status law. The previously – both legally as well as socially – recognised gender categories ‘male’ and ‘female’ have been extended to include the new entry ‘divers’ with the new law of 18 December 2018, regarding the information in the natal register.

1.3.2 Civil status law

The Civil status law (PStG) regulates the ‘personal status’, the legal family status within the legal system. It includes data on birth, marriage and death, as well as all related family and name law facts. In the personal status, a person is determined according to legal criteria.

In § 21 para. 1 no.1 PStG, gender/sex is also classified as a characteristic of the personal status. Therefore, the recognition of gender under civil status law has an identity-forming effect. Since 2018, the ‘Law amending the information to be entered in the natal register’ opens up the possibility to leave the gender entry blank or the registration as ‘divers’, when the child could not clearly be assigned as either male or female at birth. If these people were assigned as male or female, they can also have their gender entry and first name changed later by a declaration to the registry office in accordance with § 45b PStG. Since the new-born is unable to communicate their gender identity at the time of the entry shortly after birth, the entry can be changed at the time where the affected person is able to develop their own gender identity.

Intersex people for whom the parents have registered a certain gender/sex, can delete their gender entry or attain the status of a third gender. For a child, who is not legally competent or under the age of 14, only their legal guidance can make the declaration. Trans* people can change their gender entry according to the regulations of the transsexual law or, as stated in the judgment of the OLG Celle of 12.05.2017 leave their gender entry blank. It is important to mention that people can be trans* and intersex at the same time, which is not recognised by the legislation and is always perceived as two different groups.

1.3.2.1 § 21 para. 1 no. 3 PStG and judgement

§ 21 para. 1 no. 3 civil status law (PStG) required an official certification of a child’s gender. The entry possibilities are ‘male’, ‘female’ and since 2018, ‘divers’ as well. In the case of non-assignment, it is also possible to leave the gender entry blank, but the legislation does not, up until now (status of 2020), intend to fully delete the gender entry in the natal register. As an explanation, it is stated that the gender entry given at birth is a reference entry which provides the possibility of proof within the legal communication. In contrast to other registers

like the civil register, the natal register holds probative force in accordance with § 54 PStG. The following judgments state that the gender must be entered mandatorily in the civil status but, in contrast to the general assumption, the name assignment can be independent of this.

Federal Constitutional Law of 05.12.2008, ref.no.: 1 BvR 576/07

Situation: A couple has chosen the name ‘Kiran’ for their child, a named used in Indian for both men and women. The registrar refused to register the first name, as it was the only first name, it therefore raised doubts about the child’s gender/sex. The entry is only admissible if it is accompanied by another first name which clearly indicated the child’s gender/sex. In German usage, first names with the suffix ‘an’ tend to refer to people of the male gender such as Maximilian, Sebastian or Stefan.

Judgment: The Federal Constitutional Court ruled that parents are allowed to give their child a gender-neutral name, as there are no laws to rule this out. Precious instances had referred to a service instruction for

The judgment of the Federal Constitutional Court can be found in the chapter material.

registrars, which, however, are meant to be understood only as an instruction and not as a law. The only limit to the naming is where the well-being of the child may be endangered. Also §§ 21 para. 1. no.1, no.3 PStG, the list that the name and gender/sex of the child be entered in the civil register does not specify that the name must be clearly assignment to the gender/sex.

Furthermore, according to art. 6 para.1 sentence 1 Basic law (GG): ‘care and education of children [...] the natural right of parents [...]’. By naming the child, they protect the child’s general right of personality (internal link: 1.3.1), which is derived from art. 2 para. 1 in connection with art. 1 para. 1 of the Basic Law, since it includes the right to receive a first name and its protection. The parent’s decision is important for the personality of the child, because the name helps them to find their identity and develop their individuality.

1.3.2.2 § 22 para. 3 PStG and judgement

If a child cannot be clearly assigned as either male or female at birth, according to § 22 para. 3 civil status law (PStG), the gender entry can either be left blank since 2013, or be registered as ‘divers’ since 2018. With the extension of § 22 para. 3 PStG by the ‘Law on the amendment of information to be entered in the natal register’, in 2018 the decision of the Federal Constitutional Court of 10 October 2017 was implemented. The German state recognises the existence of more than two genders. The term ‘divers’ is used as a collective term to give the person concerned the possibility of gender identification besides the genders male and female.

Section 22 para. 3 PStG is a discretionary clause. Therefore, a child can also be registered as ‘female’ or male’ even if the gender body of a child cannot be clearly assigned to the binary gender system. An older version, § 22 para. 3 PStG, only allowed leaving the gender entry blank. Below you will find a summary of the judgment of the Celle Higher Regional Court (OLG) of 12 May 2017 which was submitted as a template for the judgment of the Federal Constitutional Court ref.no.: 1 BvR2019/16 of 10 October 2017.

OLG Celle of 12.05.2017, ref.no.: 17 W 5/17

Situation: The claimant has been registered as male in the natal register at birth. Due to an application according to the transsexual law (TSG) in 2013, the gender entry was changed from ‘male’ to ‘female’ by the district court of Hamburg. In 2016, the applicant found out that

they still do not identify as male, but also not as female. In self-perception and in the perception of others, contradictions arise between the male sex and the gender identity as non-binary. Therefore, the applicant now would like to leave the gender entry blank.

However, the registrar found that the applicant does not have the option of leaving the gender entry blank. § 22 para. 3 PStG refers to intersex people, who already have both sex characteristics at birth and for whom biologically neither a male nor female gender can be assigned. However, according to the available documentation, the applicant is biologically clearly assigned as male. A feeling itself is not enough to leave the gender entry blank in the natal register. The TSG only provides the possibility of changing the gender from male to female or the other way around. The TSG does not provide sexlessness.

Judgment: The Higher Regional Court of Celle ruled that the complaint of the registry office was null and void. The gender identity of a person is part of the general right of personality (art. 1 para. 1 in connection with art. 2 para. 1 GG). The gender according to the civil status law should equal the gender identity. However, in the complaint of the registry office, § 22 para. 3 PStG was interpreted in such a way that the gender entry can only remain blank if a person could not be assigned as either female or male. Therefore, the complaint is invalid. If the deletion of the gender entry would depend on biological characteristics, the right to self-determination would be sufficiently taken into account, as intersex is about the identity of the ‘perceived gender’ and not the ‘apparent gender’. This sensation is independent of biological characteristics. § 22 para. 3 PStG must therefore be interpreted in such a way that a gender identity solely based on subjective feelings are sufficient to justify a deletion of the gender entry.

The judgment of the Higher Regional Court of Celle can be found in the chapter material.

1.3.3 The General Equal Treatment Act

In 2006, the General Equal Treatment Act (AGG) was passed by the Bundestag with the aim: ‘to prevent or eliminate discrimination on the grounds of race, ethnicity, gender, religion, age or sexual identity’ (§ 1 AGG). Even if the law does not explicitly name the ground gender identity, wherefore trans* people are mostly discriminated, trans* people are seen as protected by the term ‘Geschlecht’ (gender).

The AGG regulated the relationship between private individuals, but not the relationship between citizens and the state. Its scope of application is the area of employment and the access to goods and services, available to the public (e.g., housing). § 3 AGG defines the types of discrimination. These are direct discrimination, indirect discrimination, harassment or sexual harassment (defined as a violation of one’s dignity) and instructions to one of the mentioned discriminations. Although the AGG exists since 2006, there are only a few judgments relating to trans* people. However, central judgments will be summarised in this dossier.

The AGG can be found in the chapter material.

1.3.3.1 Direct discrimination

According to § 3 para 1 of the General Equal Treatment Act (AGG), direct discrimination is given ‘when a person experiences/will experience a less favourable treatment in a situation compared to another person on the grounds stated in § 1’.

Direct discrimination of trans* people is based on the pejorative, stigmatised and negative behaviour against trans* people due to their gender identity. One example by the Federal Anti-Discrimination Agency 2017 in the area of employment makes this clear: ‘My [...] employer fired me before starting my new position as HR manager. In a private discussion I

Language can be discriminatory and exclude people. ‘Was tun?’ (What to do’) is a guideline for anti-discriminatory daily language.

was told that the head HR manager of Europe felt offended after he found out that I am a trans woman. He did not work with a trans woman and told the manager of the German subsidiary to terminate me immediately’.

1.3.3.2 Indirect discrimination

Indirect discrimination is less obvious than direct discrimination, as it does not refer to intentional acting, but rather to apparent neutral structures and regulations, which do discriminate against certain people. According to § 2 para. 2 of the General Equal Treatment Act (AGG), indirect discrimination is ‘when apparently neutral rules, criteria or procedures put people at a particular disadvantage compared to other people (within the meaning of § 1 AGG), unless the relevant rule, criteria or procedures are objectively justified by a legitimate aim’. In order to determine indirect discrimination, there must be a different treatment which is not objectively justified.

For example, for many official acts, it is necessary to prove one’s identity by an official document. The identity documents of many trans* people do not show the correct gender. In such moments, they must come out unintentionally. Therefore, trans* people are more often confronted with uncomfortable and intimidating situations during official acts.

The German Society for Trans identity and Intersexuality (dgti e.V.) allows trans* people to apply for an officially recognised supplementary ID card (external link) so that they can avoid having to identify themselves with a document that contradicts their gender identity.

Another example is gender-separated toilets. Due to the socially dominant heteronormativity, toilets separated by two genders appear as a neutral regulation. This does not take into account the fact that not everyone identifies as one of the two genders or marked as incongruent to the specific gender by other people and are denied access to toilets. Discriminatory experiences of trans* people in the context of sanitary facilities may also result in verbal and/or physical violence (hate crime).

Therefore, trans* people are disadvantaged in everyday life as they cannot use sanitary facilities as unconditionally as cis people.

Seemingly neutral regulations which discriminate against groups of people are not always recognised as discrimination in judicial decisions. This is illustrated by the example of a trans man, who was refused as a police candidate, ref.no.: 9 E 5687/06 due to his drug hormone supply. This was not considered as discrimination on the grounds of gender by the Frankfurt Administrative Court. However, the apparently neutral police regulations as ground for this decision places the plaintiff at a distinct disadvantage in comparison with non-trans* people.

1.3.3.3 Multidimensional discrimination

Multidimensional discrimination, also called intersectional or multiple discrimination, refers to experiences of discrimination where several discrimination realities intersect with each other at the same time. Trans* people who experience multidimensional discrimination are not only affected by heterosexism, but also by racism, anti-Semitism, ableism or other form of structural discrimination which intersect with each other. For example, Jewish trans* people have different experiences compared to non-Jewish trans* people or Jewish cis people. Multidimensional discrimination refers to the intersection of different form of discrimination. For those affected, it is often difficult to identify whether the discrimination is due to their trans* identity or their membership to another marginalised group, as in intersectional discrimination, different forms of discrimination occur at the same time.

The General Equal Treatment Act (AGG) does not recognise multidimensional discrimination as its own form of discrimination, but states in § 4 that disadvantage on the grounds of several characteristics mentioned in § 1 (race, ethnicity, gender, religion, belief, disability, age, sexual orientation) is only justified if the justification applies to all the characteristics concerned. An expert report by the ADS of 2010 showed that multidimensional discrimination is often not analysed appropriately in court from a legal perspective.

The intellectual term intersectionality goes back to the lawyer Kimberlé Crenshaw. The starting point was a wave of layoffs at General Motors in the 1970s, which primarily affected black women. Because both white women and black men were employed, the terminations could not legally be considered as discriminatory on the grounds of gender or race as the law did not cover this specific intersection (intersectionality) of gender and race as a form of discrimination.

1.3.3.4 Judgments

There are some judgments in which the AGG was used as a legal basis.

Administrative Court Frankfurt am Main of 03.12.2007, ref.no.: 9 E 5697/06

Facts of the case: A trans man complained because after passing the selection process for the Hessian police service, he was rejected due to his identity as trans. The state police doctor considered the complainant as not fit for service, as according to regulations, male police officers must have ‘at least one functioning testicle’, otherwise mood swings may occur. Despite submitted reports which consider the probability of mood swing to be very low, the state police continued the rejection. The complainant then brought an action for infringement of § 3 para. 2 of the General Equal Treatment Act (AGG).

Judgment: The Court did not rule in favour of the claimant. Only applicants who, by virtue of their physical constitution, are able to give their full commitment at all times, are eligible for the police enforcement service. An employer could not be obliged to hire a transsexual candidate with hormone problems. The failure of recruitment did not violate the principle of equality and the prohibition of discrimination. On the contrary, the importance of the police enforcement service provided an objective reason for the different treatment. After the pronouncement of the judgment, the complainant filed a constitutional complaint at the Federal Constitutional Court, which was dismissed without reason.

Federal Labour Court of 17.12.2015, re.no.: 8 AZR 421/14

Facts of the case: The complainant is a trans woman and sues for compensation due to a violation of the prohibition of discrimination, according to the AGG. She applied to the defendant and was invited for an interview. However, in the face-to-face meeting, the defendant perceives the complainant as a man rather than a woman and doubts her gender several times during the interview. Shortly after, the complainant received a rejection letter. The conclusion that the defendant considered the complainant to be transsexual because he did not believe her to be a woman when meeting her and remained sceptical even after, is too short-sighted. He had not known that the plaintiff was transsexual, and therefore, he could not have discriminated against her.

Judgment: The court ruled in favour of the complainant. The complainant is entitled to compensation according to § 15 para. 2 AGG. Trans* identity as such does not specifically belong to the grounds mentioned in § 1 AGG, to which the prohibition of discrimination in § 7 para. 1 AGG refers. However, it can be relevant in the context of the ground ‘gender’ and ‘sexual identity’ pursuant to § 1 AGG, both mentioned in the justification to § 1 AGG. It is not required to fully prove the discrimination, but only to be regarded by the court as predominantly probable.

If you have been discriminated against and want to take legal action with the support of the Bureau for the Implementation of Equal Treatment, visit our website for further information.

1.3.4. Transsexual Act (TSG)

According to the Transsexual Act (TSG) of 1981, trans* people can change their gender under civil status law (see civil status law) I.e., the information in the birth certificate and official documents, as well as their name, if the prerequisites are met. For this purpose, trans* people must submit an application stating that, due to being trans*, they do not identify with the gender they were assigned with at the gender entry and have been following the inner compulsion to live accordingly to their gender identity. Furthermore, it must be assumed that the sense of belonging to this gender will no longer change. In order to assess those circumstances, the competent court obtains two reports.

The Transsexual Act can be found in the chapter material.

Although the Federal Constitutional Court proposed the deletion of the gender entry under civil law status to the legislation in its judgment in 2017, this was rejected.

1.3.4.1 Judgments

Social welfare court Nuremberg of 08. August 2019, ref.no.: S 7 KR 37/19

Facts of the case: The complainant’s gender identity is female, however her gender body is male. Therefore, she applied for a cost absorption for a surgical operation at her health insurance. Several reports were prepared which prove that the complainant feels a belonging to the female gender. The health insurance objects this and states that it need an evaluation by the medical service of the health insurance to make a final decision. In his report, he stated that the requirements for a cost absorption of the requested medical measures by the health insurance are not sufficiently fulfilled and substantiated.

Judgment: The court ruled in favour of the complainant. She does have the right for cost absorption of her surgery costs. The legal basis for this decision is § 21 para. 1 sentence 1 Volume V of the Social Insurance Code. In order to be able to claim medical treatment, they have to ‘suffer from their illness’. The WHO classification of ‘transsexuality as a disease’, valid until 2022, also applies to Germany. Trans* people live on the irreversible and permanent consciousness to belong to a gender they were not assigned with at birth due to their physical sex characteristics. The definition of their gender identity is not a right of the medical service of the health insurance, but only for the complainant herself.

Higher Administrative Court of Hamburg of 17.05.2019, ref.no.: 5 Bf 225/

Facts of the case: A federal policewoman sues for the complete adaptation of her personnel file to the female gender. Previously, she had her name changed and underwent a surgical operation. She calls on the defendant to adapt all documents in the personnel file to her current first name and to the female gender. **Judgment:** The court did not rule in favour of the complainant. § 5 para. 1 TSG (prohibition on disclosure) does not justify a claim for civil servant staff to change the contents of their personnel file after changing their name for the time beforehand. Such a claim also does not arise from the right of rectification (Art. 16 DSGVO) under data protection law, the duty of care under civil service law (§ 17 Federal Civil Service Act) or the fundamental right to informational self-determination according to the general right of personality (art. 2 para. 1 in connection with art. 1 para 1. GG).

Higher Regional Court Frankfurt of 24.05.2017, ref.no.: 20 W 223/16

Facts of the case: The person was assigned female at birth and applied for the adaption of the first name and the gender entry as male, according to the Transsexual Act (internal link: 1.3.4). However, this was rejected by the registry, as the person has Turkish citizenship and therefore, the change should be applied for in Turkey.

Judgment: The court ruled in favour of the complainant. Despite foreign nationality, an application for first name change pursuant to § 1 para. 1 no. 3 TSG, can be made, since the applicant’s Turkish domestic law does not provide a similar regulation to the TSG. The first name should therefore be adapted. In a previous case law, the Federal Constitutional Court had already stated that the right of free development of one’s personality according to the general right of personality from art. 2 para. 1 in connection with art. 1 para. 1 GG protects the first name of a person as a means of finding his personality and development. However, it is also an expression of the experienced and acquired gender identity, whereby the assignment also depends to a large extent on the psychological constitution and the sustainably self-perceived gender.

Since some parts of the Transsexual Act have already been declared as unconstitutional by the Federal Constitutional Court and it is considered as outdated, read a policy paper from the Bundesverband Trans* regarding legal reforms (as of December 2016) relating to trans* people.

1.4 International comparison

Considering the legal and social situation of trans* people is not only important in Germany. Through a global perspective, positioning the German anti-discrimination work as well as the exchange and critical reflection on approaches and concepts is possible. For example, in contrast to Germany, gender-neutral toilets are already standard in Scandinavian countries, Australia, New Zealand, and some US states and are also signposted as such.

The Yogyakarta principles are proposals of framework conditions on how human rights can be realised for trans* people, developed in an international cooperation.

For a European comparison you can find information on the situation in the Netherlands, Belgium and Sweden. An insight into further international perspectives on India, Argentina and the US is also provided.

1.4.1 Europe

Since the Amsterdam Treaty in 1997, the European Union required Member States to make targeted improvements in gender equality in all areas of life. Legislative instruments such as the Charter of Fundamental Rights of the European Union (chapter III, art. 21-23, 25, 26 (2009)), Article 19 of the Lisbon Treaty (2009), as well as several directives support this project. According to Article 19 of the Lisbon Treaty, ‘the council (of the European Union) may take appropriate action to combat discrimination on the grounds of gender, race, ethnicity, religion or belief, disability, age or sexual orientation’.

In a resolution of 2015, the Council of Europe, which consists of 47 member states and includes all member of the EU, calls on member states to prevent discrimination against trans* people and to specifically include this in future anti-discrimination laws. Furthermore, the paper suggests that states officially recognise the third gender as an additional option.

EU member states have implemented the measures and requirements to varying degrees. For example, some countries (Belgium, Denmark, Ireland, the Netherlands, Sweden, the United Kingdom) have already added anti-discrimination legislation to their own national legislation prior to the entry into force of a wide range of EU legislative measures. However, those were mainly about the protection against discrimination on the ground of ethnical characteristics. This dossier offers a closer look at the situation of trans* people in the EU countries of the Netherlands, Belgium and Sweden.

The organisation ‘Transgender Europe’ provides information and resources about the life quality and security of trans* people in Europe and Central Asia.

1.4.1.1 Netherlands

The International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe (ILGA Europa) ranks the Netherlands 12th out of 49 European countries for the implementation of LGBT rights. Although the legal situation seems to be relatively good, the reality of life is also marked by negative aspects, such as long waiting times for trans* specific medical treatment.

According to the motto ‘Orange is always part of the rainbow’, the Dutch government has produced an overview of the life realities of trans* people in the Netherlands.

1.4.1.1.1 Legal situation

Article 1 of the Dutch Constitution and the National Equal Treatment Act (AWGB) prohibit any discrimination and unequal treatment. Since 2014, it is possible to adjust the gender entry in the personal register without surgery, sterilisation and diagnosis. Only an expert document is required, certifying a permanent identification with the unregistered gender. The government plans to abolish the use of gender on official documents by 2015. Since 2019 anti-discrimination laws not only include the prohibition on the ground of gender like in Germany, but also on the ground of gender identity, with which trans* people are explicitly included.

As early as 1994, a national Equal Treatment Commission (‘ Commissie gelijke behandeling’) was set up to combat discrimination, investigate complaints and make proposals for the structural anchoring of equality legislation. The Commission differs from a court in that it examines discrimination cases, filing a complaint is free of charge and no legal assistance is required. Judgments and decisions are not legally binding but are supposed to be accepted by complainants and defendants, which is what happens in many cases. In addition, the Commission has an advisory function, on the one hand for those affected by discrimination and, on the other hand for policy makers and legislators. Similar to the German Equal Treatment Act, the focus of the Commission is on the area of employment, professional equal opportunity, supply with goods and services and education. Due to the cases published by the Commission, it can be considered as a useful institution as the number of complains of people affected who want to defend themselves against discrimination and see the Commission as a source of help is rising steadily.

An assessment of the International Lesbian, Gay, Bisexual, Trans and Intersex Association Europe about the legal situation of LGBT in the Netherlands can be found in the chapter materials.

1.4.1.1.2 Reality of life

According to the survey ‘Being Trans in the European Union’ by the European Union Agency for Fundamental Rights, the Dutch population are the most open-minded towards trans* people in the three areas of life: private life, working, life and health care. Nevertheless, only half of the interviewees live out their identity in private life and only a third in working life. Interviewees rate their quality of life with 6.6 out of 10 as slightly below the European average (6.9), while interviewees living in Germany rate it at 7.2. It remains to be seen whether the specific protection of trans* people introduced in the Netherlands in 2019 under the term ‘gender identity’ in anti-discrimination legislation will make improvements.

According to the FRA survey, 8% of trans* people surveyed in the Netherlands were victims of hate crime in 2011, seven times more often than cis people. According to the FRA discrimination without physical violence happens even more often. 45% of the interviewees report experiencing discrimination such as harassment or inappropriate comments. 24% of the trans* people avoid dressing accordingly to their gender identity, which was lower by one quarter compared to the European average, but the avoidance of certain places due to negative experiences is 54%, a little higher than the European average.

Experiences of discrimination in education and employment give a partly more positive picture. The students surveyed in the 2011 FRA study perceive the atmosphere towards them to one third as positive, mixed and negative in each case, in the workplace almost two third have the impression that their environment is rather positive and 19% perceive their environment as having an attitude towards them. Despite this, almost 60% said they had heard negative comments at least once. Of those who were looking for work in 2011, 50% reported discrimination, which is the third highest proportion across Europe (after Belgium and Ireland). On the other hand, the International Lesbian, Gay Bisexual, Trans and Intersex Association Europe (ILGA) points out, that options under labour law, such as leave of absence for surgical operation, means positive development.

In the chapter materials you can find an article which describes how a monthly pop-up clinic tries to counteract long waiting periods for surgical and hormonal treatment in Amsterdam.

According to the FRA study 2014, healthcare sector shows a variegated pattern. The Netherlands is in the lower middle of European countries in terms of the incidence of discrimination by health workers. However, the proportion of those who felt discriminated against in the healthcare sector in 2011 is still almost one-fifth. In addition, the health care system has insufficient trans* specifically trained physicians, so that waiting periods of up to one year are possible, which can be challenging especially for children and adolescents, when they are taking medication to prevent sex specific developments in puberty.

1.4.1.2 Belgium

Until 2016, Belgium was rather among the European laggards in terms of trans* rights. The International Lesbian, Gay, Bisexual, Trans & Intersex Association Europe (ILGA Europe) now ranks Belgium second out of 49 European countries in terms of implementing LGBT rights. Nevertheless, the realities of life of trans* people are still not sufficiently represented in law or comprehensively protected by the legal situation.

The study 'Being transgender in Belgium' was conducted in 2007 and 2017 and presents the topic very comprehensively.

1.4.1.2.1 Legal situation

There is no article in the Belgian Constitution which explicitly prohibits discrimination on the grounds of gender, gender identity or sexual orientation, so the Constitution provided less protection for trans* people than in Germany or the Netherlands. However, the adaptation of the first name and the gender entry allowed by Belgian law may be regarded as progressive. Since 2017, applications for the change of the first name can be submitted solely on the basis of a self-declaration, and thus without surgical operation or medical opinion. Nevertheless, there is criticism that without presenting a medical opinion, the application is ten times more expensive and that only the binary genders can be registered. Since 2003, a law prohibits on national level the discrimination on the ground of gender, which was extended in 2013 to gender identity and gender expression so that now trans* people are specifically taken into account.

An assessment by the International Lesbian, Gay, Bisexual, Trans & Intersex Association Europe of the legal situation of trans* people in Belgium can be found in the chapter materials.

1.4.1.2.2 Reality of life

The study 'Being transgender in Belgium' carried out by the Institute for Gender Equality in 2007 and 2017, shows a variegated pattern of the realities of the life of trans* people in Belgium. The proportion of trans* people living according to their gender identity increased by 40% between 2007 and 2017. Knowledge of anti-discrimination legislation has almost doubled, but at the same time the number of official complaints of discrimination has fallen only from 17.3% to 10.6%.

According to the study 'Being transgender in Belgium', between 2007 and 2017 the unemployment rate among trans* people decreased from 15.6% to 11.2%, but is still higher than the average 8% of the total population. Overall, the study finds that one third of working trans* people have negative experiences in the workplace. Because of this, 10% of trans* people decided to quit. Also, a quarter of the interviewees said that their experience had an impact on their motivation to apply for other jobs.

The author Linus Giese has mixed feelings about the Belgian movie 'Girl' which is about the ballet career of a trans* girl. In his blog he talks about the media presentation of trans* people and sees the movie as really focused on the body, whereas the psyche seems nearly unimportant.

In contrast to the workplace, according to the study, even half of the interviewees experience negative reactions at school. In both areas of life, the study finds that experienced discrimination also has an impact on the medical health.

If trans* people in Belgium would like to have a surgical operation, they may be released from work for this. However, they then only have the opportunity to go to specialised selected hospitals, which is criticised as a violation of the freedom to choose one's own medical care. Financial support can be partly applied for.

According to the study 'Being transgender in Belgium', medical care and interaction with healthcare staff improved between 2007 and 2017.

1.4.1.3 Sweden

The International Lesbian, Gay, Bisexual, Trans & Intersex Association Europe ranks Sweden 10th out of 49 European countries in terms of implementing LGBT rights, well behind Belgium but still slightly ahead of the Netherlands. The comparatively more positive legal situation is only partly reflected in the realities of life of trans* people.

In 2017, Sweden was one of the first countries worldwide to introduce compensation payments for forced sterilisation in the process of changing civil status, which was seen as a success for the recognition of trans* people.

1.4.1.3.1 Legal situation

Art. 2 of the Swedish Constitution prohibits discrimination on the grounds of ‘gender [...] or any other circumstance affecting the individual’. As a result, trans* people are better protected compared to the German Basic Law, which only states ‘gender’. In 1972, Sweden was the first country to adopt a law on the adaptation of the registered gender and name, which, however, required applicant to be unmarried and ‘sterilised’. In 2013, these conditions of the application were amended so that for a change of name and gender now ‘only’ medical diagnosis has to be submitted. However, as in Belgium, it is not possible to register a gender beyond ‘male’ and ‘female’. Since 2018, those who have been sterilised under the 1972 law have been able to apply for compensation. In 2009, a law prohibiting discrimination on the ground of ‘transgender identity or expression’ came into force. In 2017, anti-hate speech laws were also extended to the discrimination against trans* people.

An assessment by the International Lesbian, Gay, Bisexual, Trans & Intersex Association Europe of the legal situation of trans* people in Sweden can be found in the chapter material.

1.4.1.3.2 Reality of life

The reality of life for trans* people in Sweden is not free of problems and experienced discrimination, despite the positive image Sweden conveys to the outside world. In a 2019 survey of trans* people by the European Agency for Fundamental Rights, Swedish interviewees gave their life satisfaction a score of 5.9 (out of 10), which is slightly above the general average of 5.6. Almost half of the 370 interviewees said they had been discriminated against or harassed for being trans* in 2013. 10% of the interviewees highlighted having been a victim of transphobic hate crime in 2015. According to the survey, this makes Sweden one of the safest countries in Europe for trans* people compared to other European countries.

Here too, as in Germany, it is problematic that only a fraction of the experiences is reflected in police statistics. Negative experiences can limit trans* people’s lives. The survey shows that, in fear of discrimination, more than 20% of the interviewees do not dress accordingly to their gender identity but rather to heteronormative expectations of their assumed gender. In addition, more than half of the interviewees stated they avoid places in order to protect themselves.

The organisation Transgender Europe (TGEU) makes clear in its study published in 2017 that only around half of the 400 surveyed trans* people reported themselves to be in ‘good’ health conditions. In terms of mental health, 37% of interviewees reported that they had been affected by serious suicidal thoughts at least once in their lives.

According to the FRA, the proportion of trans* people who experienced discrimination from health professional in 2013 was 26%, the same as in Germany and the UK, and second highest in Europe. The organisation Transgender Europe (TGEU) has found that a widespread problem in the context of gender-related medical care is long waiting periods. However, the fact that, according to the study, the right to reimbursement for surgical operation is taken for granted by a large part of the population can be seen as a positive development.

According to the FRA study, the atmosphere in the work environment is described by trans* people as more pleasant than in the educational environment. Only a third of the interviewees consider the school environment to be trans* friendly. An equal number reported experienced discrimination in 2013. In the employment sector, on the other hand, the situation seems to be comparatively better. According to the study ‘Being Trans in the European Union’, the

percentage of discrimination in job search is the lowest in Europe with 17% in 2013. 60% report a generally positive working environment towards trans* people. The actual percentage of experienced discrimination in the workplace in 2013 is also one of the lowest in Europe, at 22%, according to the survey.

Two measures for which Sweden can be perceived as more progressive by international comparison are the widespread use of unisex toilets and the official introduction of a third gender-neutral pronoun. Gender-neutral toilets are the norm in Swedish libraries, supermarkets or official buildings. The gender-neutral pronoun 'hen' (alongside 'hon' = she and 'han' = he) was added to the Swedish dictionary in 2015, while the gender asterisk is only an optional addition in Germany. A US study found that the use of this pronoun positively influences attitudes towards LGBTQI* in general and trans* people in particular.

The documentation "Raised Without Gender" demonstrates how a family in Sweden tries to raise their children gender-neutral.

1.4.2 International

Developments on the situation of trans* people and approaches to anti-discrimination legislation should not only be considered on a European level. International collaboration such as the Yogyakarta Principles are important. They include descriptions and proposals for measures on how internal principles of human rights can also be realised for trans* people. The German government 'considers the Yogyakarta Principles as an important contribution of civil society, which is suitable to objectify the debate on the topic of discrimination based on sexual orientation and gender identity'.

The Yogyakarta principles can be found in the chapter material.

The situation of trans* people in some countries will be discussed more detailed in this dossier. These include India, Argentina and the US.

1.4.2.1 India

The realities of life of trans* people in India are diverse and have changed repeatedly over the centuries. Before briefly discussing the legal situation and realities of life for trans* people in India, it should be pointed out that this dossier was written from a European perspective, exclusively using online material.

For a short historical evolution of trans*gender community in India you can check out M. Michelraj's overview.

1.4.2.1.1 Legal situation

In 2019, a law was passed on the process of legal gender recognition, but it is strongly criticised by human rights organisation such as Human Rights Watch and activists in India. For legal recognition, it requires surgical operation by an official hospital. It violates several court rulings, most notably a ruling of the Supreme Court of India in 2014, which stated that 'trans people have a right to legal gender recognition, without the requirement of medical surgeries. Also, in its decision, the court recognised the need for positive action towards trans* people.

The law passed in 2019 explicitly prohibits discrimination against trans* people, but as already shown for Germany, a prohibition of discrimination does not mean the reality of life of trans* people is free of discrimination.

1.4.2.1.2 Reality of life

According to the last Indian Census in 2011, 4.8 million trans* people live in India.

According to a study of 2018 by the National Human Organisation reported by the India Times, the labour market is difficult for trans* people. Only 4% of the interviewees were in non-precarious employment at the time of the survey.

Trans* people also face disadvantage in healthcare. In the past, cases have come to light in which hospitals have sometimes refused treatment to trans* people. More than half of the interviewees stated that they lacked the financial means for surgical operations and thus the legal recognition of the gender, which requires surgery, is reserved for only a few.

An impression of the daily difficulties of trans* people in India is given by the movie 'Please Mind the Gap' in which the directors Mitali Trivedi and Gagandeep Singh show the partially gender separated metro in Delhi.

1.4.2.2 Argentina

The legal situation of trans* people in Argentina was positively highlighted worldwide in 2012, when the 'Gender Law' came into force, making it possible to change gender on official documents without medical diagnosis. Although Argentina is considered the most LGBT-friendly country in South America, trans* people are affected by decades of structural discrimination and their lives are marked by discrimination.

1.4.2.2.1 Legal situation

The Argentinian Constitution only contains one article than can be interpreted as protection against discrimination against trans* people. Art. 75 no. 19 gives Congress the right to pass laws that punish any discrimination in the education system. Although the wording is very vague, it can still be understood to include discrimination on the ground of gender identity. In 2012, the Argentinian Parliament took the initiative to pass the so-called 'Gender Law' ('Ley de Género'). It has assumed a worldwide pioneering. It allows for change to the gender identity on official documents without the need for psychiatric diagnosis, surgery or hormone therapy. The law understands gender identity as an inner and individual experience of gender. No norm, regulation or procedure may restrict the exercise of the right to gender identity by law. Despite the very progressive approach there is still criticism, as there are only two gender entries. There are no explicit laws that make discrimination against trans* people legally punishable. However, a 2018 court ruling is seen as a significant step in this direction for trans* people. In the verdict, a man was charged with 'travesticide' (span. 'travesticidio'), the murder ('homicide') of a trans* person.

A comprehensive overview of the 'Argentina Gender Identity Law' of 2012 can be found in the chapter material.

1.4.2.2.2 Reality of life

Argentina is considered the most progressive country in Latin America for the LGBTQI* community. Pride Marches have been held annually in Buenos Aires since 1991 and it was a pioneer for its marriage and gender equality laws. However, the country still needs to act on the concrete implementation of its progressive laws.

Trans* people suffer from a healthcare system that is difficult for them to access, as much of the staff denies their identity. Improvements have come with the so-called ‘Gender Act’ of 2021, which makes it possible to have one’s legal gender registration adjusted without a medical diagnosis, as well as have the cost of surgical operation covered by the healthcare system. These changes have reduced the proportion of discrimination in the healthcare system by more than 60%, but the proportion is still at 30%. Separate hospital wards for trans* people have been established, but this is limited to a few large hospitals.

Access to education and employment is difficult for many trans* people. Many drop out of school due to negative experiences. After the law of 2021, the world’s first evening school has opened for trans* people only in Buenos Aires, where trans* people have the opportunity to graduate. This is also possible in the community project ‘Casa Trans’ which opened in 2017 in Buenos Aires.

Approximately 85% of trans* women and about 65% of trans* men are employed in precarious sex work. Often, there are insufficient opportunities to protect oneself from HIV or other sexually transmitted diseases, which contribute to the poor health situation of many trans* people. To improve the employment situation of trans* people, many legal organisations have called for a 1.5% quota in the public service, which should apply nationwide. This was submitted to the Chamber of Deputies. Since the beginning of September 2020, a one percent quota has been in force. Therefore, at least one percent of public service positions must be filled by trans* people.

The life expectancy of trans* people in Argentina is 35 years, more than half of the rest of the population. On the one hand, this is due to a high HIV rate, but also to high numbers of victims of physical or psychological violence. The rate of trans* people infected with HIV has dropped by a third after the introduction of the so-called ‘Gender Law’ in 2021. Violent crime led to the deaths of 59 trans* people in 2018. A 2018 court conviction for ‘travesticide’ (span. ‘travesticidio’), the murder (‘homicide’) of a trans* person, is therefore seen by trans* activists as ground-breaking against transphobic hate crime.

You can find an interview with the assassinated trans* activist Diana Sacayán about the reality of life of trans* people in Argentina in the chapter material.

1.4.2.3 US

The legal situation of trans* people in the US is characterised by different legal situations on Federal and State level. An assessment of the reality of life shows that social problems apply to trans* people to a particular extent here as well, especially if they are also affected by other forms of discrimination, such as racism.

1.4.2.3.1 Legal situation

The legal situation in the US is a patchwork of laws and decisions on Federal and State levels. It is only since a Supreme Court decision in 1976, that the US Constitution guarantees

protection against discrimination on the ground of gender by the Equal Protection Clause of the 14th Additional Article Section 1 to the Constitution.

After the civil war in the 19th century and the end of the enslavement, the 14th constitutional amendment ‘guaranteed the same protection of the law’ of African Americans and was interpreted regarding gender as well in the case *Craig vs. Boren*. Until now (as of 2020), there has not been a decision as to whether the clause also protects gender identity. Possibilities of adjusting the legal gender entry depend on the respective state. There are different procedures for adjusting the gender entry on birth certificated (although Tennessee and Ohio do not allow this), on driving licences (often easier than birth certificated) and on passports. Regulations for the passport are defined at the Federal level and include surgical operation. For all three document types, it is only possible in a few states to register a different gender beyond the binary female and male.

Apart from the potential protection provided by the Equal Treatment Clause of the US Constitution, there are no comprehensive anti-discrimination laws that explicitly protect trans* people. However, in June 2020, the US Supreme Court made a decision binding on all states. In it, the court Ruled that the Civil Rights Act of 1964, which prohibits discrimination in the workplace on the grounds of race, skin colour, religion, gender or national origin, also applies to trans* people by the word ‘gender’. In the area of education, trans* pupils and students could also be protected by Title IX of the Educational Amendments of 1972. Title IX states that ‘no person in the United States shall be excluded, denied benefits or discriminated on the ground of gender from participation in any educational program or activity funded by the Federal government’.

The Obama administration interpreted the ground ‘gender’ as including gender identity. However, in 2018, the Health Department under the Trump administration announced that the official Washington position henceforth defines gender only as the biologic sex.

Since all anti-discrimination legislation approaching at the federal level, such as the ‘Employment Non-Discrimination Act’ or the more general ‘Equality Act’ have failed in parliament since the 1970s, trans* people are more often dependent on their state’s right of protection against discrimination. The ‘Transgender Law Centre’ created a map on which each state was rated in relation to the protection of trans* people against discrimination. Protective laws are evaluated with positive points, laws that do not represent protection with negative points. On the map, 8 of the 50 US states are in the range between 0 and 25% of possible points. Coastal or northern states tend to perform better.

You can find a graphic that explains the requirements for legal name change in each state in the chapter material.

1.4.2.3.2 Reality of life

According to a study by the Williams Institute of 2016, 1.4 million people of the general population identify as trans*. Among the African American, Black, Latinx and Hispanic communities, 0.8% of adults identify as trans*. According to the study, 0.5% of the white population identify as trans*. In 2015, 28,000 trans* people participated in the ‘US Transgender Survey’ by the National Center for Transgender Equality. This notes that the healthcare system in the US is a particular problem for trans* people. According to the study, 55% of trans* people were denied treatment by a doctor in 2015 due to their identity as

trans*. As a consequence of discrimination, 23% of the interviewees avoid doctor's visits, which may have indirect effects on their health.

As health insurance coverage in the US is lower than in Germany, one third of the interviewees were unable to seek medical treatment at least once due to insufficient financial resources. Corresponding effects of this structural problem can be seen with the almost nine times higher suicide rate of 40%, compared to cis people. Furthermore, 1.4% of trans* people in the US are HIV-positive, compared to 0.3% of the cis population. Trans* people who are also affected by racism and therefore experience intersectional discrimination are more often affected. The proportion of people living with HIV is 19% in the African American Community and 4.4% in the Hispanic Community.

Similar to Argentina, discrimination is very present in school, according to the representative study 'US Transgender Survey'. According to the interviewees, discrimination is less present in the work life. More than three quarters of those surveyed, who were perceived as trans* by others during their school time, experienced discrimination. As a result, 17% decide to leave High School early, which can also have an impact on the unemployment rate of trans* people. With 15%, it is almost three times higher compared to the cis population. Here again, Black people and People of Colour are more likely to be unemployed compared to white trans* people. Discrimination in the workplace is also very present.

The 'US Transgender Survey' has not been conducted again since 2015 and therefore, no statements can be made about a possible improvement or deterioration of the reality of life for trans* people. However, it is well known that the Trump administration is having a negative impact on trans* people's healthcare. For example, under Trump's presidency, the Health Department and Human Services has nullified protections provided by 'Obamacare' to support health issues related to gender identity. The organisation Planned Parenthood which supports trans* people with education, hormone therapy, support groups and other resources, got renounced federal funding as new regulations by the Trump administration significantly limited their work, so they now have to fund themselves independently. Trans* people are also only allowed to be in the military if they hide their gender identity as trans*.

The National Center for Transgender Equality has compiled a list of the Trump administration's official actions against trans* people.

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