

**Equality Bodies
Working on the Rights
and Discriminations
Faced by Trans and
Intersex Persons**



EQUINET
European Network
of Equality Bodies

Equality bodies working on the rights and discriminations faced by trans and intersex persons

AN EQUINET DISCUSSION PAPER



During the past years, equality bodies all over Europe have increased their efforts to protect the rights of transgender persons ¹, and are lately intensifying also the protection of the rights of intersex persons ². Certain situations of discrimination are similar for both groups, but each of them also experiences specific problems that need a particular approach. The progress made by equality bodies on each of these topics varies depending on the national contexts and on the available legal

protection in EU and national legislation ³. Even if there is still room for improvement, advances have been made regarding the rights of transgender persons. This paper highlights several of the actions taken in this regard. The protection of intersex persons is still a developing area in most countries. Therefore, not many examples of actions are available yet. It is however clear that equality bodies ⁴ are engaged to keep working to improve the protection against discrimination of both transgender and intersex persons in Europe

The target group this paper aims to reach are equality bodies and their staff. The paper aims at providing information on existing legal protection against discrimination as well as working definitions used by equality bodies. Furthermore, it provides an overview of areas in which trans and intersex persons experience discrimination from the perspective of equality bodies. Finally, it provides an insight on challenges faced as well as activities carried out by equality bodies to support trans and intersex persons in the context of discrimination.

¹ **Trans or transgender:** An umbrella term for people who have a gender identity that is different to the sex assigned at birth, and for people who wish to portray their gender identity in a different way to the sex assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer, gender-fluid, non-binary, crossdresser, trans man, trans woman and several others. (Source: *Legal gender recognition in the EU – The journeys of trans people towards full equality*, Publications Office of the European Union, June 2020)

² **Intersex individuals** are born with physical sex characteristics that do not fit medical or social norms for female or male bodies, and these variations in sex characteristics may manifest themselves in primary characteristics (such as the inner and outer genitalia and the chromosomal and hormonal structure) and/or secondary characteristics (such as muscle mass, hair distribution and stature), source: EP Resolution of 14 February 2019 on the rights of intersex people (2018/2878 (RSP), https://www.europarl.europa.eu/doceo/document/TA-8-2019-0128_EN.html)

³ Maltese legislation is currently widely regarded as a good practice in this field. Instead of defining trans and intersex, it focuses on defining gender identity, gender expression and sex characteristics:

Gender identity, gender expression and sex characteristics, Article 2:

- **“gender expression”** refers to each person’s manifestation of their gender identity, and, or the one that is perceived by others;

- **“gender identity”** refers to each person’s internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and, or functions by medical, surgical or other means) and other expressions of gender, including name, dress, speech and mannerisms;

- **“sex characteristics”** refers to the chromosomal, gonadal and anatomical features of a person, which include primary characteristics such as reproductive organs and genitalia and, or in chromosomal structures and hormones; and secondary characteristics such as muscle mass, hair distribution, breasts and, or structure.

⁴ The following 18 Equality bodies have participated in the survey on trans and intersex persons: Austria, Belgium, Bosnia, Croatia, Cyprus, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Lithuania, Malta, Poland, Portugal, Slovakia, Sweden and the UK.

LEGAL PROTECTION FOR TRANS AND INTERSEX PERSONS IN EUROPE

Various legal definitions of trans and intersex people have been criticized for defining people by their bodies and only certain elements of their identity. Such definitions stipulated in law risk being focused on medical categories and/or to exclude groups of people who self-identify and are identified as trans or intersex. They may also quickly become outdated and inappropriate. The approach favoured by the community is to focus rather on the nature and cause of the discrimination they experience, i.e. on defining gender identity, gender expression and sex characteristics. This can be compared to certain other groups protected in anti-discrimination legislation where the law focuses on defining the protected characteristics and not the groups as such (for instance anti-discrimination legislation does not define who is a gay person, a Roma, a Christian or a Muslim, but employs the protected characteristics of sexual orientation, race or ethnic origin and religion or belief).

The important *P versus S and Cornwall County Council* judgment of the Court of Justice of the European Union (CJEU) ⁵, decided in 1996, held that "...the scope of the Directive cannot be confined simply to the prohibition of discrimination based on the fact that a person is of one or other sex". It added that in view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person ⁶. This principle is now established in EU equality legislation within Directive 2006/54/EC which, by reference to the CJEU case law, protects individuals who intend to undergo, are undergoing or have undergone gender reassignment, against discrimination and binds EU Member States to the same principles ⁷.

In the last years, international organisations have started to address human rights of trans and intersex persons. In general, human rights are universal and indivisible, and hence apply to everybody, including

trans and intersex people although their protected characteristics are not explicitly mentioned in the open-ended list of prohibited grounds of discrimination as for example in the European Convention on Human Rights (ECHR). Nonetheless, the European Court of Human Rights (ECtHR) has made it clear that Article 14, as the non-discrimination provision of the ECHR also covers questions related to gender identity ⁸. It has also produced a sizeable jurisprudence on gender identity issues, although often taking the angle of the right to respect for private and family life rather than non-discrimination, becoming more and more demanding in guaranteeing the rights of trans persons ⁹.

It is also important to note that the Council of Europe's Istanbul Convention on preventing and combating violence against women and domestic violence provides explicit protection against discrimination on the ground of gender identity in the implementation of the Convention ¹⁰.

The UN Committee on Economic, Social and Cultural Rights (CESCR) confirmed in 2009 that under the International Covenant on Economic, Social and Cultural Rights (ICESCR) "other status" as recognised in Article 2(2) includes "gender identity ... as among the prohibited grounds of discrimination", adding that "persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace" ¹¹.



⁵ CJEU, *P v S and Cornwall County Council*, Case C-13/94, Judgment of the Court of 30 April. ECLI:EU:C:1996:170

⁶ See Section 20 of the judgment, European Court Reports 1996 I-02143, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61994CJ0013&from=EN>

⁷ Recital 3 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0054&from=EN>

⁸ ECtHR, *Identoba and Others v Georgia*, Application no. 73235/12, 12 May 2015

⁹ See the evolution of the ECtHR's case law in their factsheet on gender identity issues: https://echr.coe.int/Documents/FS_Gender_identity_ENG.pdf

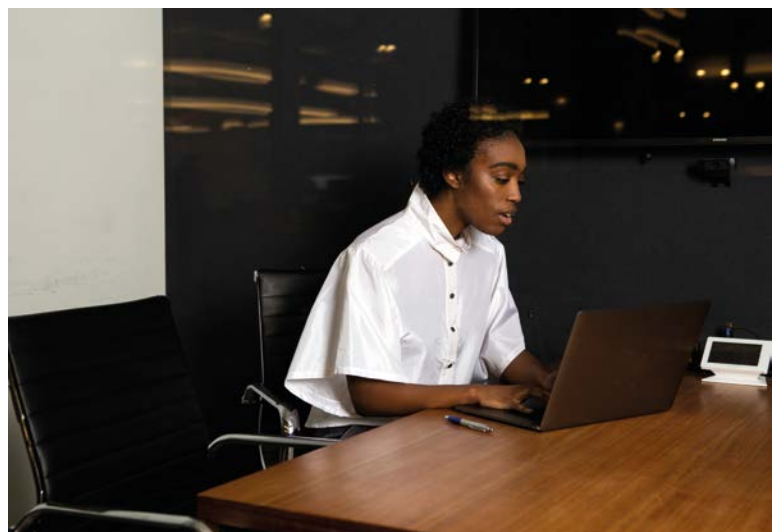
¹⁰ Article 4 of the [Convention](#)

¹¹ CESCR (2009), General comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights), (E/C.12/GC/20).

In 2011 the United Nations Human Rights Council (HRC) adopted a resolution on Human rights, sexual orientation and gender identity, in which it expresses grave concerns about discrimination against individuals because of their sexual orientation and gender identity¹². In 2012 the European Commission published a report on tackling discrimination against trans and intersex people, which deals with discrimination based on sex, gender identity and gender expression, thus introducing these concepts to a wider public¹³.

Similarly, the Yogyakarta Principles Plus 10¹⁴, adopted in 2017, uses the concepts of gender identity, gender expression and sex characteristics, whereby gender identity is defined as 'each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms'; gender expression refers to 'each person's presentation of the person's gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioral patterns, names and personal references [which] may or may not conform to a person's gender identity' and sex characteristics: 'each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty'.

When it comes to protection from discrimination at the European level, as mentioned earlier, it is established through the case law of the CJEU that the discrimination of a transgender person should be regarded as sex discrimination. Trans persons, those that intend to undergo, are undergoing or have undergone gender reassignment, are therefore protected according to well-established CJEU case law against discrimination in the areas of employment and occupation¹⁵, goods and services¹⁶ as well as matters of social security¹⁷ in accordance with EU law. This covers some, but not all trans persons, leaving out those that have no intention to undergo gender reassignment. When it comes, however, to the protection of intersex people, there is still no EU legislation or case law offering protection against [discrimination](#) based on variations in sex characteristics – although it could be argued that protection could be possible under the scope of the Directives for equal treatment between women and men¹⁸.



¹² A/HRC/17/L.9/Rev.1

¹³ S. Agius and C. Tobler (2012), *Trans and intersex people: discrimination on the grounds of sex, gender identity and gender expression*, European Network of Legal Experts in the Non-Discrimination Field, Brussels: European Commission. See: <https://op.europa.eu/en/publication-detail/-/publication/9b338479-c1b5-4d88-a1f8-a248a19466f1>

¹⁴ The Yogyakarta Principles plus 10 (YP+10) aims to document and elaborate the Yogyakarta Principles from 2006 through a set of Additional Principles and State Obligations. They providing definitions for gender expression, gender identity and sex characteristics. See: https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

¹⁵ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006, p. 23–36. Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180, 15.7.2010, p. 1–6. See also: P v S and Cornwall County Council, 30 April 1996, C-13/94.

¹⁶ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004, p. 37–43.

¹⁷ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ L 6, 10.1.1979, p. 24–25. See also: Richards v Secretary of State for Work and Pensions, 27 April 2006, C-423/03; MB v Secretary of State for Work and Pensions, 26 June 2018, C-451/16.

¹⁸ Inês Espinhaço Gomes (2019), *Queering European Union Law: Sex and Gender Beyond the Binary and Cisnormativity*. Europa Kolleg Hamburg, p. 22. See here: <https://europa-kolleg-hamburg.de/wp-content/uploads/2019/04/Study-Paper-Ines.pdf>

LEGAL PROTECTION AGAINST DISCRIMINATION OF TRANS AND INTERSEX PERSONS				
State	Explicitly protects trans and/or intersex persons	Explicitly protects gender identity/ expression and/or sex characteristics	Implicitly protects trans and intersex persons	No or only partial protection of trans and intersex persons
Austria			✓	
Belgium		✓		
Bosnia		✓		
Croatia		✓		
Cyprus				✓
Czech Republic			✓	
Denmark			✓	
Finland		✓		
Germany			✓	
Greece			✓	
Hungary			✓	
Lithuania				✓
Malta		✓		
Poland			✓	
Portugal		✓		
Slovakia		✓		
Sweden	✓			
United Kingdom	✓		✓	

At the national level of Equinet Members the approach towards protecting trans and intersex persons from discrimination varies as the responses from the 18 Equinet members participating in the survey show. Only few countries **explicitly name** trans or intersex persons in their legislation such as Sweden, where the Discrimination Act prohibits discrimination of persons with a transgender identity or expression. A larger number of countries (such as Malta, Belgium, Finland, Croatia, Slovakia and Bosnia) have **explicitly protected** gender “identity/gender expression” or/and “sex characteristics” ¹⁹. For example, Malta’s anti-discrimination legislation has definitions of, ‘gender identity’, ‘gender expression’ and ‘sex characteristics’. Here sex characteristics are referred to as “the chromosomal, gonadal and anatomical features of a person, which include primary characteristics such as reproductive organs and genitalia and, or in chromosomal structures and hormones; and secondary characteristics such as muscle mass, hair distribution, breasts and, or structure”. In Belgium, the Legal preparatory work for the Belgian Gender



Discrimination Act mentions an explicit definition of gender identity and gender expression ²⁰. The Finnish Equality Act prohibits “discrimination based on the fact that individual’s physical gender-defining characteristics are not unambiguously female or male”. In the UK, discrimination of trans persons is expressly prohibited if they have the protected characteristic of gender reassignment ²¹. Intersex persons may also be protected under the UK sex or disability non-discrimination provisions. The UK also has protection

¹⁹ Maltese Gender Identity, Gender Expression and Sex Characteristics Act adopted by the Maltese Parliament on the 1st April 2015. See here: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12312&l=1>

²⁰ *Préparations parlementaires relatives au projet de loi modifiant la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes en vue de l’étendre à l’identité de genre et l’expression de genre*, Doc. parl. Chambre 2013-2014, n°3483/001. <https://www.dekamer.be/doc/flwb/pdf/53/3483/53k3483001.pdf#search=%22genderidentiteit%20en%20genderexpressie%20%2053k%20%3Cin%3E%20keywords%22>

²¹ Section 7 Equality Act 2010. See here: <http://www.legislation.gov.uk/ukpga/2010/15/section/7>. This provision does not cover trans people who are non-binary or intersex persons unless they are perceived to have the protected characteristic of gender reassignment.



to the sex assigned at birth and the expectations that exist around their perceived/assigned sex²². The Hungarian Ombudsman introduced a working definition in their report AJB-883/2016 which states that trans* persons are an umbrella term for a wide range of persons, referring to people whose gender identity or gender expression does not fully correspond to the gender that was assigned to them at birth²³. The UK Parliament Women and Equalities Committee defines trans people as having a gender identity which differs from that of their (assigned) birth sex; they also confirm that trans identities take a wide diversity of forms, that trans identity can be “non-binary” in character and that some intersex people identify as trans²⁴. The Equality and Human Rights Commission in the United Kingdom agrees with their definition²⁵. When it comes to intersex people according to the working definition of Denmark’s government action plan on LGBTI (June 2018), intersex people are referred to as persons born with reproductive organs, chromosome patterns or other indicators of a biological sex that do not correspond to the binary understanding of male or female. The working definition of intersex persons of the Belgium Institute for the equality of women and men refers to people whose biological sex is difficult or impossible to determine according to the medical and social norms concerning male and female bodies with respect to sexual characteristics. According to the Belgian definition the chromosomal, gonadal or anatomical sex characteristics show natural variations. When those variations make it difficult to classify a person as a woman or a man, the Belgian Institute for the Equality of Women and Men is talking about an intersex condition. This can be immediately visible at birth, but in some cases the characteristics only become apparent later in life, for example during puberty. The Greek Ombudsman refers to intersex persons as persons who, at birth, have primary sex characteristics that do not correspond to the chromosomes, genes, hormones and/or anatomy by which the classification of persons as male or female occurs.

for perceived and associated discrimination which may apply to trans or intersex persons.

Similarly, a larger number of countries **implicitly protect** trans and intersex persons from discrimination. These include for example Austria, Czech Republic, Germany, Denmark, Greece Hungary, Poland and Portugal. In most cases discrimination of trans and intersex persons is protected within the category of “sex” or “sexual identity”. The Czech Antidiscrimination Act (198/2009 Coll.) includes the term “sexual identification” which is expressly covered by the protected ground “sex”. Only in few countries participating in the survey, such as Lithuania or Cyprus is there **no protection or the protection is only covering trans persons but not intersex persons**.

In the absence of a legal definition, some equality bodies participating in the survey opted to use **working definitions of trans and intersex people**. To have an internal working definition of trans and intersex can help equality bodies to make the groups visible and address better their situation and risks of discrimination. Regarding trans persons for example, the Belgium Institute for the Equality of Women and Men defines a transgender person as someone whose gender identity and/or expression does not correspond

²² Definition used in the Institute’s leaflet ‘Living as a transgender person without discrimination’

²³ For a more detailed definition, please refer to the homepage of the Trans* NGO Transvanilla Organisation. (<https://transvanilla.hu/informaciok/altalanos/nemi-kategoriak-transz-identitasok>)

²⁴ <https://publications.parliament.uk/pa/cm201516/cmselect/cmwomeq/390/390.pdf>

²⁵ <https://www.equalityhumanrights.com/en/our-work/news/commission-responds-new-report-transgender-equality>

AREAS IDENTIFIED BY EQUALITY BODIES IN WHICH TRANS AND INTERSEX PERSONS FACE DISCRIMINATION AND SEEK ASSISTANCE FROM EQUALITY BODIES

Trans and intersex people face discrimination in different areas of life as different studies are showing. Due to the combination of the lack of legal protection from discrimination of intersex people on the EU-level, as well as the limited amount of equality bodies who have a mandate to further the protection of intersex persons there is still a lot of work ahead for equality bodies to identify the domains in which and how intersex people are vulnerable to discrimination. Therefore, the examples mentioned here will mainly concern transgender persons, unless otherwise specified.

Discrimination in the area of **employment** was identified as a challenge for most trans and intersex persons. Equality bodies reported several problems in this domain. A major issue is the difficulties experienced by trans and intersex people in the **access to employment**. The Czech Republic and Greece referred to the discrepancy between the information on official documents and the gender identity and expression as interfering with the access to labour. Poland, Austria and Germany referred to difficulties with obtaining work certificates after the legal gender recognition proceeding. Equality bodies also mentioned that the **intimidation** of trans persons in the workplace was a major concern. This is often linked to harassment, mobbing, isolation, misgendering etc. These can also be related to the coming out of trans persons as well as intersex persons and during transition. Another reported issue is the **dismissal** of trans persons and the non-renewal of labour contracts. Finally, unfavourable treatment in the field of **working conditions** as well as the lack of non-binary toilets, changing rooms, gender sensitive language and personal form of address at the workplace are mentioned as risks of discrimination both for trans and intersex persons.

In the area of **goods and services** several problems were reported. A majority of the equality bodies identified access to **healthcare** as a central issue for trans and intersex persons. This includes the difficulty in access to general medical health care services, fear or distrust of medical practitioners due to past violations, or difficulty accessing gender affirming treatments. Cyprus, Denmark, Germany and Great Britain (GB) specifically mentioned the behavior of medical staff towards trans patients as being problematic. Belgium, Bosnia, Malta, GB and Sweden identified the access to healthcare related insurance and/or the reimbursement of medical treatments as a problem area. Some equality bodies, for example in Denmark, Finland, Greece, Germany and



Poland, specifically referred to the risk of discrimination in relation to non-consensual gender assignment surgeries and other gender-“normalizing” treatments of intersex children.

A specific problem was identified as the access to **single sex services** (e.g. Belgium, GB, France). Finland, Germany and Lithuania mentioned the problem of bathrooms and changing rooms in sports centers. In the same vein France and Cyprus referred to problems with correctional facilities. In certain countries a complex debate has developed between some women’s groups and trans groups around the issue of single sex services and how to ensure everyone’s right to use services that correspond to their gender identity and feel safe and secure in such environments.

Another reported problem was the **misgendering** of trans persons and intersex persons **by service providers**. In France, some banks refused to take into consideration the change of gender and first name of their trans clients for their banking operations. They also used the term ‘Sir’ or ‘Madam’ for trans clients in accordance with their gender on the official documents but not the female or male first name. It was also reported that forms for customers, e.g. when shopping online or registering for a service, were not inclusive of the full spectrum of possible legal genders, which poses a risk for discrimination especially for intersex people (e.g. Germany). Belgium and Germany mentioned problems with access to **housing** for trans persons based on stereotypes and biases against trans persons.

Outside of the confines of the European equal treatment directives trans and intersex persons however also experience forms of unequal treatment related to their gender identity, gender expression and sex characteristics:

Discrimination experiences by trans and intersex persons are also related to **legal gender recognition and administrative procedures**. A **lack of legal gender recognition** or the **mandatory sterilization/medical diagnosis** as a condition for legal gender recognition, are considered as human rights violation by equality bodies in many countries, for example Croatia, Cyprus, Czech Republic, Finland and Germany. Equality bodies also identified problems **with or during the administrative procedures** to gain legal gender recognition. Some

found them to be too slow (e.g. Croatia, Cyprus, Germany) or mentioned that the officials were not aware enough of the legislation (Belgium, Bosnia), or didn't apply it correctly (France), others mentioned problems with the change in official documents (name or gender) (GB), and of data access (Poland, Czech Republic) and data collection (GB). In Hungary, in May 2020, the Parliament voted to replace the category of "sex" on the civil registry with one of "sex assigned at birth". This makes legal gender recognition impossible.

One of the main issues that was identified in **education** was bullying in schools and universities, which has to do also with the fact that sensitization on trans and intersex persons situations is still often missing in school curricula and education. This received a special mention from Belgium, Cyprus, Germany, Slovakia and GB. Another issue was the adaptation of diplomas and professional degrees to the person's current gender marker and changed name. Similarly, the lack of possibility for trans children to change their gender marker on school id's or other documents was reported by Belgium, Czech Republic, Finland, Germany and Poland. Some countries assisted trans persons whose teachers refused to use the name of their pupil if that name wasn't the pupil's legal name (for example in France).

Many equality bodies also highlighted that **hate speech and harassment** in the public sphere and online are a major issue for intersex and trans persons.



CHALLENGES IDENTIFIED BY NATIONAL EQUALITY BODIES IN THE SUPPORT OF TRANS AND INTERSEX PERSONS FACING DISCRIMINATION



LACK OF KNOWLEDGE AND VISIBILITY, IGNORANCE

The biggest challenge that equality bodies detect in society is marginalization and a lack of visibility and knowledge about intersex and trans people, as well as gender stereotypes and ignorance. They also observe a lack of understanding in public institutions. Employers as well as specific professional groups, like doctors, often lack basic knowledge on trans and intersex persons and their rights. Even within LGBTIQ communities, trans and intersex people are marginalized. And some equality bodies too detected the need for capacity building within their own organizations. There is also a lack of research about trans and intersex people's issues. A general shift to the right within society and the political system exacerbates these problems.



HARMFUL OR INSUFFICIENT LEGISLATION AND ADMINISTRATIVE ACTIVITY

In many countries, the legal systems and the state administrations themselves pose major challenges for trans and intersex people. For instance, in **Lithuania**, there is no administrative procedure for legal gender recognition, trans specific health care remains unavailable and national anti-discrimination legislation does not cover the ground of gender identity. In the **Czech Republic**, legal gender recognition is tied to the condition of obligatory surgery and sterilization. The **Danish** equality body indicates unclear legal terms which lead to confusion and intransparency regarding the scope of Law. The **Croatian** equality body reports of administrative obstacles that hinder trans and intersex persons' access to Law. The **Finnish** equality body reported challenges in detecting and distinguishing discrimination of gender minorities from other forms of inappropriate treatment faced by gender minorities. **France** reports the inappropriate behaviour of some police officers towards trans people. In some cases, they even refused to register their complaints. In **Germany** the right to gender affirming treatments is based on complicated and discriminatory regulations.



UNDERREPORTING

Some equality bodies report that they receive very few or no complaints (**Austria, Belgium, Bosnia and Herzegovina, Czech Republic, Denmark, France, Germany, Malta, Poland, Sweden**). They suppose several reasons for the underreporting: a lack of trust in government institutions, a lack of knowledge about the existence of the equality body and a lack of knowledge about its mandate. This corresponds with a lack of knowledge on the equality bodies' side about how to reach intersex and trans people. In **Portugal**, the Commission for Equality in Labour and Employment (CITE) has no mandate to deal with this issue.



CONFLICTS BETWEEN DIFFERENT RIGHTS GROUPS

As mentioned above, in certain countries a complex debate is taking place between some women's groups and trans groups. It mainly focuses on the issue of single sex services and how to ensure everyone's right to use services that correspond to their gender identity while feeling safe in such environments. Equality bodies, owing to their mandate often covering many or all grounds, may be requested to take positions in this debate and/or to act as intermediaries.



UNDERFUNDING AND LACK OF ORGANIZATIONS

Some equality bodies report that they have too limited capabilities for their work on discrimination of trans and intersex persons. In **Belgium**, there were no additional funds granted when gender reassignment was included as a protective ground. The **Polish** equality body reports that there are no national NGOs which focus specifically on the situation of intersex people.

GOOD PRACTICE EXAMPLES FROM THE WORK OF NATIONAL EQUALITY BODIES

The vast majority of good practices were dedicated to trans issues, and very few focused on intersex issues. Designing and implementing good practices for intersex people should become a priority for equality bodies.



COOPERATION

In the course of the “Theme year against gender discrimination” in 2015, the **German Federal Anti-Discrimination Agency (FADA)** established a commission of experts to issue recommendations of action for political and social actors aiming to the elimination of discrimination of trans and intersex people.

In cooperation with the Hungarian NGO for trans and intersex people (Transvanilla Organization), the **Hungarian Office of the Commissioner for Fundamental Rights** organized several interdisciplinary conferences with domestic and foreign experts on topics of gender recognition and problems faced by intersex persons.

The **Commissioner for Human Rights in Poland** collaborates with the Polish Sexological Society in a working group consisting of doctors, mental health experts and lawyers, established to update standards of diagnosis and care for trans people so that they comply with international standards and human rights.



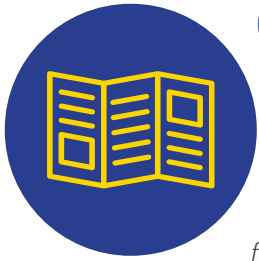
RECOMMENDATIONS

The **Belgian Institute for the Equality of Women and Men** issued recommendations to the different Belgian governments on how to enhance the legislative protection of trans people as well as recommendations for employers and organizations on how to handle recurring problems related to trans and intersex persons.

The **Czech Public Defender of Rights** published a recommendation to cancel the requirement of mandatory surgery and sterilization as a condition to legal gender recognition. In addition, a recommendation to the Ministry of Education, Youth and Sports led to a guideline for universities to issue new diplomas with new identity information and name on basis of individual requests by trans persons after legal gender reassignment, equal to those in Croatia.

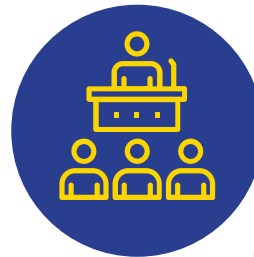
The **French Defender of Rights** recommended to the Ministry of higher education the re-edition of diplomas of students when they have changed their first name and gender on their official documents. This recommendation was followed. More recently, the Defender also recommended to the same Ministry and to the Universities to register the trans students under the first name under which they are known in accordance with gender identity although it is different from the one written in the official documents. This first name is thus used for the attendance lists, the student card etc. This was recently followed.

The **Polish Commissioner for Human Rights** included several recommendations on how to enhance protection of trans and intersex people in a comprehensive report of the legal situation of LGBTI persons in Poland ([summary in English available](#)). The recommendations were also shared with concerned Ministries.



GUIDES/LEAFLETS

The **Belgian Institute for the Equality of Women and Men** published the leaflet 'Taking out a hospitalization insurance: tips for trans people'. It informs trans people on their rights. Further, the Institute distributed a legal 'Guide for the guidance of trans people at work'; which describes the legal framework for trans people in the workplace and provides recommendations for employers.



TRAINING AND PUBLIC WORK

In April 2018, the **National Center for Human Rights in Slovakia**, in cooperation with the Methodology and Pedagogy Center, organized an educational seminar titled "We are the different, let's talk about it out loud" for teachers of secondary schools.

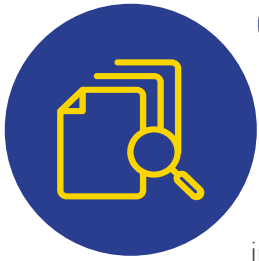
In 2017, the **German Federal Anti-Discrimination Agency** organized the conference "Diversity as a strength – diversity as a challenge" as well as the theme day "Equal rights for equal love".

Furthermore, the **Belgian Institute for the Equality of Women and Men** gives trainings and presentation on trans rights and discrimination.

In October 2018, the **Swedish Equality Ombudsman** arranged a conference on "Including leadership in practice #lgbt – Factors for success and pitfalls".

Equality bodies are providing different measures of promotional work, such as promotional films (Great Britain), social media presence (Germany) or awareness campaigns (Portugal).





CASEWORK

In France, a claim was lodged within the **Defender of Rights** concerning the refusal of hiring of a trans woman. The investigation of the Defender of Rights revealed that the employer refused the hiring when discovering the discrepancy between the appearance of the candidate and her official documents. Following the observations of the Defender of Rights, the Employment Tribunal concluded to discrimination based on gender identity and convicted the employer to EUR 1,500 of damages.

An adult trans student at a public evening school lodged a complaint with the **Greek Ombudsman** stating that she was being subjected to discrimination due to her gender identity. The GO recommended to the Teachers' Board specific measures of actual support and acceptance of the trans student's gender identity: (a) addressing her with her female name, (b) respecting her dressing preferences and (c) allowing her to use the restroom facilities which match her gender identity. The GO's recommendations were accepted unanimously by the Teachers' Board.

In Sweden the **Swedish Equality Ombudsman** noticed discriminatory disadvantages for pregnant men. The insurance authorities and companies relating to these disadvantages changed their mechanisms and routines (e.g. made online registrations and data handling accessible/possible for pregnant men) under the supervision of the Equality Ombudsman.

After a call for testimonies, the **Belgian Institute for the Equality of Women and Men** received a number of complaints about insurers practices. It was decided the Institute would go to court in several cases, to create a positive jurisprudence to support trans people's rights to access to health care without discrimination. The main focus has been on cases where insurance companies add exclusions of medical costs to an insurance contract taken out by a trans person, or where they refuse to reimburse gender affirmative treatments. Two definitive judgements have been reached in this area that confirm this is a discriminatory act and which will be used in future negotiations with the insurance sector.

After receiving relevant complaints, the **Office of the Commissioner for Administration and Human Rights in Cyprus** issued two reports (2013), concerning the police conduct in the arrest and detention procedure of trans persons, as well as the conditions of detention in the Central Prison. Following the reports, a police circular has been issued giving concrete guidelines to all police officers on how to handle cases of arrest and detention of trans people, with the purpose of respecting their rights and particular needs. A similar police guideline was also issued by the **Portuguese Commission for Citizenship and Gender Equality**. In prison, the **Office of the Commissioner for Administration and Human Rights in Cyprus** has managed to ensure that the trans detainee could continue her hormonal therapy and have full access to medical and psychological support.

In Poland, a company which hired a trans woman to work as a guard, refused to allow her to wear female uniform once the employer had realized that the gender marker in her ID is male (legal gender recognition proceedings to change it were pending in court). The woman did not agree to act as a man at work, thus her contract was terminated. She has lodged a legal claim against the employer arguing for compensation on the basis of the fact that she had been discriminated against because of her gender identity. The court of first instance has rejected the claim and the woman appealed. The **Commissioner for Human Rights** has joined the proceedings to argue in favour of the plaintiff.





REPORTS AND STUDIES

In 2016, the **Institution of Human Rights Ombudsman of Bosnia and Herzegovina** issued a special report on rights of LGBT Persons, which included chapters relating to identity and rights of transgender persons.

The **Polish Commissioner for Human Rights** carried out a study on discrimination on the labour market due to gender identity and in December 2019 has published a comprehensive report on the legal situation of LGBTI persons in Poland ([summary available in English](#)), which summarizes international standards of protection and compliance therewith.

In 2010, the **German Federal Anti-Discrimination Agency** published an expertise focussing on the discrimination of trans persons ([link to English version](#)) especially in the working area, as well as a report on LGBTIQ teachers ([link to English version](#)). In November 2020, FADA published a legal expertise on intersex persons in labour law and public service law²⁶ as well as study on requirements, measures and best practises to meet the needs of intersex persons at the workplace²⁷.

In 2010 the **Belgian Institute for the Equality of Women and Men** published a study 'Being transgender in Belgium' ([link to English version](#)), and a follow-up study was published in 2018: 'Being transgender in Belgium – 10 years later' ([link to English version](#)).



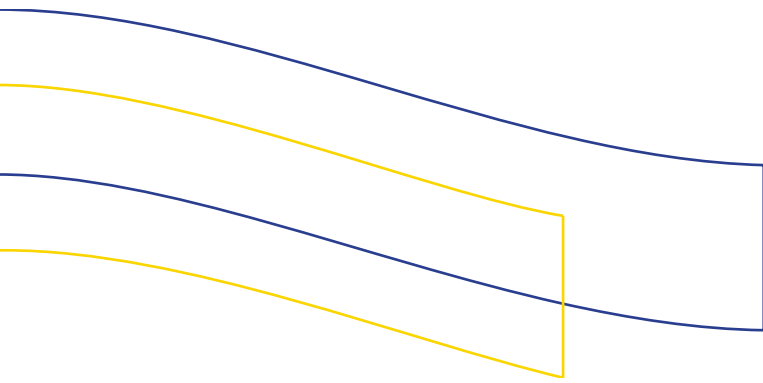
LEGISLATIVE WORK

In Croatia, the **Ombudsperson for Gender Equality** advocated successfully for the amendment of the State Registry Act and issued a Rule-Book which led to the legalization of legal gender recognition in Croatia.

The **Danish Institute for Human Rights** advocated for an anti-discrimination law to prohibit discrimination against LGBTI persons outside the working environment.

After investigations and recommendations of the **National Commission for the Promotion of Equality in Malta** Legal Notice 44 of 2018 was introduced, placing gender identity and sex characteristics and related conditions as one of the conditions in respect of which free medical aid may be accorded.

Followed by the work of the **Portuguese Commission for Citizenship and Gender Equality**, Law 38/2018 was passed which guarantees access to legal gender recognition based on self-determination for adults.



²⁶ https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Rechtsgutachten/Das_dritte_Geschlecht.pdf?blob=publicationFile&v=5

²⁷ https://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/Geschlechterdiversitaet_i_Beschaefigung_u_Beruf.pdf?blob=publicationFile&v=3

RECOMMENDATIONS FOR NATIONAL EQUALITY BODIES

- ➔ **Train and educate staff in the national equality bodies on discrimination faced by trans and intersex people.**
- ➔ **Increase efforts to build the knowledge base on inequalities and discrimination faced by trans and intersex people in cooperation with civil society.**
- ➔ **Provide advice to policy-makers on ensuring equality for trans and intersex people.**
- ➔ **Deepen work on the discrimination issues faced by trans and intersex people in the areas of employment, health issues, service provisions, legal gender recognition and education.**
- ➔ **Establish networks and cooperation with self-organisations and NGOs by intersex and trans persons.**
- ➔ **Encourage the European Union and national governments to ensure equality legislation provides protection from discrimination to trans and intersex people.**

BACKGROUND INFORMATION



Equinet, the European Network of Equality Bodies, brings together **49 equality bodies from across Europe**. Equality bodies are public institutions set up to promote equality and tackle discrimination on grounds of gender, race, age, sexual orientation, religion and belief, disability or other protected grounds. Many equality bodies address discrimination against trans and intersex people using their mandate on gender or specific grounds in their national legislation such as gender identity and expression, sexual characteristics or similar. Equality bodies play a fundamental role in the European non-discrimination architecture. As a first point of contact for victims of discrimination, equality bodies have an extensive understanding of how discrimination affects people in Europe.

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Zackary Drucker: *The Gender Spectrum Collection*

EQUINET MEMBER EQUALITY BODIES

ALBANIA

Commissioner for the Protection from Discrimination
www.kmd.al

AUSTRIA

Austrian Disability Ombudsman
www.behindertenanwalt.gv.at

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.gv.at

BELGIUM

Institute for the Equality of Women and Men
www.igvm-iefh.belgium.be

BELGIUM

Unia (Interfederal Centre for Equal Opportunities)
www.unia.be

BOSNIA AND HERZEGOVINA

Institution of Human Rights Ombudsman of Bosnia and Herzegovina
www.ombudsmen.gov.ba

BULGARIA

Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA

Office of the Ombudsman
www.ombudsman.hr

CROATIA

Ombudsperson for Gender Equality
www.prs.hr

CROATIA

Ombudswoman for Persons with Disabilities
www.posi.hr

CYPRUS

Commissioner for Administration and Human Rights (Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC

Public Defender of Rights
www.ochrance.cz

DENMARK

Board of Equal Treatment
www.ast.dk

DENMARK

Danish Institute for Human Rights
www.humanrights.dk

ESTONIA

Gender Equality and Equal Treatment Commissioner
www.volinik.ee

FINLAND

Non-Discrimination Ombudsman
www.syrjinta.fi

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.fr

GEORGIA

Public Defender of Georgia (Ombudsman)
www.ombudsman.ge

GERMANY

Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE

Greek Ombudsman
www.synigoros.gr

HUNGARY

Equal Treatment Authority
www.egyenlobanasmod.hu

HUNGARY

Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND

Irish Human Rights and Equality Commission
www.ihrec.ie

ITALY

National Office against Racial Discrimination - UNAR
www.unar.it

KOSOVO*

Ombudsperson Institution
www.oik-rks.org

LATVIA

Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG

Centre for Equal Treatment
www.cet.lu

MALTA

Commission for the Rights of Persons with Disability
www.crpdp.org.mt

MALTA

National Commission for the Promotion of Equality
www.equality.gov.mt

MOLDOVA

Council on Preventing and Eliminating Discrimination and Ensuring Equality
www.egalitate.md

MONTENEGRO

Protector of Human Rights and Freedoms (Ombudsman)
www.ombudsman.co.me

NETHERLANDS

Netherlands Institute for Human Rights
www.mensenrechten.nl

NORTH MACEDONIA

Commission for the Protection against Discrimination
www.kzd.mk

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Commissioner for Human Rights
www.rpo.gov.pl

PORTUGAL

Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL

Commission for Equality in Labour and Employment
www.cite.gov.pt

PORTUGAL

High Commission for Migration
www.acm.gov.pt

ROMANIA

National Council for Combating Discrimination
www.cncd.org.ro

SERBIA

Commissioner for Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA

National Centre for Human Rights
www.snslp.sk

SLOVENIA

Advocate of the Principle of Equality
www.zagovornik.si

SPAIN

Council for the Elimination of Ethnic or Racial Discrimination
www.igualdadynodiscriminacion.msssi.es

SPAIN

Institute of Women and for Equal Opportunities
www.inmujer.es

SWEDEN

Equality Ombudsman
www.do.se

UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission
www.equalityhumanrights.com

UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland
www.equalityni.org

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

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