

Challenges Facing Transgender Persons

Any discrimination based on any ground such as sex... or sexual orientation shall be prohibited.
EU Charter of Fundamental Rights (Article 21)

The gender that we are officially assigned at birth (male or female) is based upon our physical features. However, this might not match our gender identity – that is, the way we feel and think about our gender. A transgender person is someone who has and/or expresses their gender identity differently from the gender identity that they were assigned at birth.

A transgender person may choose to express their gender identity in different ways. To make more permanent physical changes surgery and hormone treatment may be used. This can take several years, and does not always involve complete gender reassignment ('sex change'). Gender identity may also be expressed through clothing and cosmetics (known as 'cross-dressing' or 'transvestism').

It should be noted that transgender persons face transphobia and discrimination on grounds of their gender identity and not necessarily because of their sexual.

Protection from discrimination

Transgender persons suffer from discrimination, often on a greater scale than lesbians, gays and bisexuals, particularly in the area of employment. Transgender persons who are open about their gender identity in the work place are more likely to face harassment from co-workers and may have to change jobs.

EU anti-discrimination law prohibits discrimination on the basis of sex in the workplace. The European Court of Justice has found that a transgender person, who has been discriminated against, can be protected by the prohibition on sex discrimination, if they have had or are having a complete gender reassignment. However, it remains unclear whether other transgender persons (who have not had or are not in the process of having surgery) are protected.

The Member States adopt different approaches:

In 12 Member States (Belgium, Denmark, France, Ireland, Italy, Latvia, Netherlands, Austria, Poland, Slovakia, Finland, Sweden and UK) this is treated as a form of sex discrimination. However, usually transgender persons are not expressly protected as a category. Instead it is the practice of national courts to include them within sex discrimination.

In 11 EU Member States (Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovenia), transgender discrimination is seen neither as sex nor sexual orientation discrimination. It is uncertain whether, if at all, transgender persons are protected from discrimination.

In 2 Member States (Germany, Spain), it is treated as sexual orientation discrimination.

In 1 Member State (Hungary) a special ground of discrimination, gender identity, covers transgender people.

The right to change gender and legal recognition

A second question affecting transsexuals (those who undergo gender reassignment) relates to their right to change their gender and have this officially recognised. The European Court of Human Rights has established that authorities:

- Must allow individuals to undergo gender reassignment surgery
- Must legally recognise the altered gender and the right to marry someone of the opposite sex

However, problems remain:

- Most Member States impose strict conditions on surgery, which may include counselling and prior authorisation. In the Czech Republic, for example, operations need the approval of a five-person commission, including two doctors and a lawyer.
- Four Member States (Ireland, Luxembourg, Latvia and Malta) still do not legally recognise the altered gender or the right to marry.
- Nine Member States impose strict conditions on someone wishing to change their forename, such as requiring medical evidence.
- Over 80% of transgender persons surveyed across the EU were refused State funding for surgery and/or hormone treatment and more than half reported funding their own treatment.
- Many health professionals either do not wish to offer such treatment or lack the relevant knowledge to do so.

A RIGHT TO EQUAL PROTECTION

EU anti-discrimination law should expressly prohibit discrimination on the ground of gender identity. This should protect all those who express a gender identity different to that assigned at birth such as cross-dressers and transvestites and not only those who have had or are having surgery.

This flyer is based on two reports *Homophobia and Discrimination on the grounds of Sexual Orientation and Gender Identity in the EU Member States – Part 1 Legal Analysis* published by the European Union Agency for Fundamental Rights (FRA) in June 2008 and *Homophobia Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States – Part 2 The Social Situation* published in March 2009.

The full report is available at: <http://fra.europa.eu>

All publications of the European Union Agency for Fundamental Rights can be ordered via its website free of charge.