



MODULES

1. Recognition
2. Language
3. Visibility
4. Documents
5. Spaces
6. Protection
7. Innovation
8. Intersectionality
9. Communication

Extra: Legal issues

Basic legal information and examples from other sports organizations

A person's own body, gender identity, or so-called medical or legal transition are very personal and intimate matters. Only the person involved should be able to choose whether or not to pursue medical procedures (such as hormone replacement therapy or operations on their chest or genitalia) or take legal measures (change of name, change of gender marker in the civil registry) pursuant to their gender identity. The legal situation remains challenging for TIN people in Germany and other countries around the world. In the first section, to broaden your understanding of the legal framework, we provide you with an overview of legal options for TIN people, using Germany as an example.

In the field of recreational sports, a person should be allowed to participate in sports programs based on their self-designated gender. In the second section, we present numerous examples of solutions for approaching gender diversity in sports organizations.

1. Legal framework

Germany has four different gender markers available: "female," "male," not specified, and, as of late 2018, "diverse." As of this writing (August 2021), people who were assigned the incorrect gender marker at birth have two different options for amending their gender marker and first name: either by way of the so-called Transsexual Act (TSG) or using the Civil Status Act (PStG).

The TSG pathway is an extremely complex, lengthy, and expensive process. This option requires the applicant to demonstrate before a court of law that due to their “transsexual” identity, it is highly probable that their affiliation with the opposite gender will not change.

As “proof,” the applicant is obligated to submit two expert opinions. The applicant must cover the costs associated with these assessments on their own. The entire process can take between six months and several years to complete, depending on the court or experts involved in the decision. In addition to the severe, protracted stress associated with this procedure, the applicant can expect costs of between 1,000 and 3,000 euros.

Therefore, it is important to support athletes who have not yet completed this process wherever possible by using their chosen first name and new pronoun or honorific. To provide people with a correct form of identification during the time needed to complete the court procedure, the Deutsche Gesellschaft für Transidentität und Intersexualität (dgti e.V.) enables applicants to apply for a supplemental ID that lists their new first name and gender marker. This form of identification is now so well-established that it is recognized by the police as well as numerous insurance providers and even banks.

Since late 2018, people with “differences of sexual development” have had the opportunity under § 45b PStG to amend their gender marker by submitting an application at the civil registry office. The process is simple, fast, and inexpensive. However, this pathway is currently intended for use by intersex individuals only. According to the Federal Supreme Court, trans people are still required to submit to the lengthy and expensive process required under the TSG.

This unequal treatment, which restricts the right to amend civil records to those who can demonstrate their gender variance based on physical characteristics, contravenes Article 3 of the Basic Law for the Federal Republic of Germany (Grundgesetz), which stipulates that “[a]ll persons shall be equal before the law.” The limitation also contravenes the 2017 ruling of the Federal Constitutional Court (BVerfG) in which the court urged legislators to formulate a constitutional solution addressing these questions of civil status. In an April 2021 ruling, the District Court of Münster denounced this unequal treatment as unconstitutional and handed the case over to the Federal Supreme Court for clarification (District Court of Münster, case number 22 III 34/20). Urteil als verfassungswidrig und verwies den Fall an das Bundesverfassungsgericht zur Klärung (Amtsgericht Münster, Aktenzeichen 22 III 34/20).

People who have the gender marker “diverse” or have not specified a gender are not represented in many areas of life, and in many cases, there are still no regulations in place at all. This is the current situation in most types of sports.

2. Equal treatment of TIN people in sports club rules and regulations

Most individual sports and team sports are largely divided into binary male and female categories. In its essence, this constitutes structural discrimination against TIN people: Trans and intersex people are often hindered in or prohibited from participating if they are not perceived as female or male (whether or not they have changed their gender marker), and for non-binary people who have the gender marker “diverse” or an unspecified gender, there are no state or nationwide regulations and/or suitable competition categories.

Legally speaking, sports fall under the jurisdiction of private law, and organizations have extensive freedoms when it comes to organizing their internal structures and competitions. Some typical justifications that organizations make for failing to provide structures for TIN people include: “Nobody like that has ever joined our organization before” or “We’re open to everyone. Anyone can participate here.”

Clubs and associations who want to develop anti-discrimination structures cannot simply wait for a trans athlete or a person with a “diverse” or unspecified gender marker to apply for membership. Particularly in the field of recreational sports, statutes and competitions should be structured in such a way as to enable participation by anyone who wishes to join without requiring them to compromise their identity in order to do so. Sports and sports facilities should be as inclusive and accessible as possible. This requires a comprehensive analysis of possible barriers (→ EM 2 Language, 4 Documents, 5 Spaces, 6 Protection, 8 Intersectionality).

Examples of good practice

The following examples illustrate gender-inclusive approaches that could serve as inspiration for developing practical solutions at your club or association: We will continue to post additional examples on our project website.

- The **model statutes of the State Sports Association of Berlin** (LSB Berlin) list gender identity and physical characteristics in its article on violence:

"Any form of discrimination based on (...) gender identity and physical characteristics is expressly prohibited." It also provides for the establishment of a complaint commission (→ WB EM Protection). Website:

<https://lsb-berlin.net/angebote/verbands-und-vereinsberatung/gesetze-ordnungen-musterr/mustersatzung-mit-erlaeuterungen-und-hinweisen/> (German only)

- The **model statutes of the State Sports Association of North Rhine-Westphalia (LSB NRW)** use the gender asterisk (*) to draw attention to gender diversity. Website: https://www.vibss.de/fileadmin/Medienablage/Recht_und_Versicherungen/Mustersatzung/VIBSS-Mustersatzung_2021-09-16.pdf (German only)
- The **German Football Association (DFB)** uses the gender asterisk (*) on its website (www.dfb.de) when referring to all genders (→ EM 2 Language).
- As of 2022, the **reporting statute of the Berlin Football Association (BFV) § 3 (2)** includes regulations for self-determined participation by transgender players with the gender markers “diverse” or “not specified.” In addition, the association instated an advisor who is available to be contacted by individuals, associations, or third parties in accordance with this regulation and to whom the specified documentation, medical attestations, and assessments may be presented. (→ WB 7 Innovation). Website: https://berliner-fussball.de/fileadmin/user_upload/der_bfv/Downloads/satzung-und-ordnungen/5_-_MO_-_Meldeordnung_1._Juli_2021.pdf (German only)
- The **EuroGames 2020** in Düsseldorf, which was unfortunately cancelled due to the Covid-19 pandemic, developed an all-gender inclusion policy specific to individual sporting events. At the EuroGames 2021 in Copenhagen, athletes could compete in the categories “female,” “male,” and “non-binary,” and competitions for mixed-gender teams were held in some sports (→ EM 7 Innovation). Website: <https://copenhagen2021.com/eurogames/>

The examples listed here apply primarily to **recreational sports** focused on the goal of making **sports accessible for everyone**. In elite international sports, associations (e.g., IAAF) have issued special policies governing testosterone levels (for women only). The practice is controversial, as there is still too little research in this area. While these regulations at least specify which people are permitted to participate in which sports (although they force many healthy women athletes to undergo hormone therapy), there are also associations that exclude trans women entirely. We hope that this practice will be reconsidered and changed in the future. However, we cannot and do not intend to expand this discussion to include elite sports, as it would exceed the scope of this document.

