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NEWS REPORT

Country:	Germany
Title:	Third gender identity besides female and male
Date:	19 February 2018
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<u>Context</u>	
Issue at stake:	Federal Constitutional Court decision on gender identity
Ground of discrimination:	Sex/gender
Source:	Court decision
Field:	Other
Applicable law:	German Basic Law (German constitution)

Content

Case: The civil status law requires that the gender of a newborn is registered immediately after birth. For many years, the documented gender could only be "male" or "female". Since it has been amended in November 2013, the civil status law states that if the child can be assigned neither the female nor the male gender, that child's civil status shall be documented in the birth register without indicating the child's gender. Adults born before 2013 could ask for the correction of their registered birth gender when they belonged neither to the male or female gender identity. The claimant applied for the correction of his*her gender registration but did not want to be registered as 'nothing' but claimed for a positive gender registration with a third sex/gender.

Decision of the Court: The Federal Constitutional Court decided on 10 October 2017 that the constitutional right of personality protects, among others, the gender identity of a person, covering the gender identity of those who cannot be assigned either the gender male or female permanently. Moreover, the constitutional prohibition of sex/gender discrimination also protects persons who do not permanently identify as male or female. The constitutional right of personality which protects gender identity, and the constitutional prohibition of sex/gender discrimination are both violated if the civil status law requires that the gender be registered but does not allow for a further positive entry other than male or female.

The court obliged the legislator to offer such a statutory third gender option by 31 December 2018 the latest. Time and again the court emphasized that the addition of a third option would not impair the rights of persons identifying themselves as male or female in any way or change anything for them and that, due to the differentiated wording of article 3 of the German constitution, this would especially not mean that gender quota or other special measures would become pointless.

Key points of analysis: The Federal Constitutional Court decided that the birth register must allow for a positive third gender entry other than male or female by 31 December 2018 the latest. This third option shall end the discrimination of persons identifying

neither as male or female without diminishing any rights of person identifying either female or male or any measures to tackle gender discrimination e.g. by gender quota or other special measures.

Internet link sources: Decision of the Federal Constitutional Court of 10 October 2017 (English):

http://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2017/10/rs20171010_1bvr201916en.html