

Face Equality International (FEI) Research Project

This publication has been provided by Reed Smith with the assistance of Amazon. Reed Smith provides legal services to Face Equality International. This research has been prepared for Face Equality International only and has not been applied to specific facts. It is only intended to highlight the state of the legal regime in each jurisdiction and where the law may need to be adapted in order to be more inclusive of people with facial differences. Reed Smith owes a duty to Face Equality International only. The contents of this communication are for informational purposes only and do not constitute legal advice. This communication may be considered Attorney Advertising – [Details](#). Prior results do not guarantee a similar outcome in the future.

Germany

No.	Question		Answer
1.	<p>a. Do people with facial disfigurements (marks, scars, etc.) have any legal protection against discrimination?</p> <p>b. Which law relates or mentions the legal protections?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>a. Not all people with facial disfigurements have legal protection against discrimination. In order to have legal protection, a person must be considered to have a disability. Not every physical abnormality or facial disfigurement is considered a disability. It must be a significant abnormality that causes curiosity or consternation from others and it would be expected that the person constantly attracts attention and as a consequence withdraws from life in the community to qualify. We must look on a case by case basis to determine whether a person with facial disfigurement falls under the definition of disability and therefore has legal protections against discrimination.</p> <p>b. Here is the list of laws that provide legal protections</p> <p>Social Code Ninth Book - Rehabilitation and participation of people with disabilities § 2 Abs. 1 SGB IX https://www.gesetze-im-internet.de/sqb_9_2018/_2.html (only available in German)</p> <p>Convention on the Rights of Persons with Disabilities (UN-BRK article 1) available in German https://www.behindertenbeauftragter.de/DE/AS/rechtliches/un-brk/un-brk-node.html</p> <p>BSG, 10th March 2022 judgement, B 1 KR 3/21 R (only available in German)</p>
2.	<p>a. What is this country's legal definition of disability?</p> <p>b. When do people with a facial disfigurement fit within that definition?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>a. § 2 Abs. 1 SGB IX:</p> <p><i>“People with disabilities are people who have physical, emotional, mental or sensory disabilities which, in conjunction with attitudinal and environmental barriers, are highly likely to prevent them from participating equally in society for longer than six months. An impairment in accordance with sentence 1 exists when the</i></p>

	<p>c. How does being excluded from that definition affect the protection of their rights?</p>	<p><i>physical and health status deviates from the state typical of old age. People are at risk of disability if an impairment is to be expected in accordance with sentence 1.¹</i></p> <p>Germany ratified the UNCRPD, which has been in force since 2009. The definition of disability in Art. 1 UNCRPD: <i>„People with disabilities include people who have long-term physical, emotional, mental or sensory disabilities which, in interaction with various (meaning: attitudinal and environmental) barriers, can prevent them from fully, effectively and equally participating in society.²“</i></p> <p>b. In order to be considered a disabled person and obtain the benefits that disabled people are entitled to, a disability card must be obtained following an assessment carried out by medical professionals and social services. The competent Decision-Making Authority will then decide whether to issue a disability card.</p> <p>Not every physical abnormality is sufficient. Rather, it must objectively be a significant abnormality that causes perceptible reactions from others such as curiosity or consternation and thus it can be expected at the same time, that the person concerned constantly attracts a lot of attention, becomes the object of special attention and therefore withdraws from life in the community and may become lonely, so that participation in society is jeopardized.</p> <p>The assessment of disfigurement does not depend on a subjective or personal assessment of the affected person. The determination that insured persons are disfigured due to a physical abnormality in individual cases is to be assessed on the basis of an objective standard and is primarily a question of fact (BSG, 10th March 2022 judgement, B 1 KR 3/21 R).</p> <p>The person has to file a request “Antrag auf Feststellung einer Behinderung nach § 152 SGB IX“. This request differs in the various states (example: https://www.zbfs.bayern.de/imperia/md/content/blvf/sgbix/antrag_2023.pdf). They have to state all their impairments, diseases and disabilities. They also have to state all medical treatments in the last 2 years and</p>
--	---	--

¹ Original text in German reads: *„Menschen mit Behinderungen sind Menschen, die körperliche, seelische, geistige oder Sinnesbeeinträchtigungen haben, die sie in Wechselwirkung mit einstellungs- und umweltbedingten Barrieren an der gleichberechtigten Teilhabe an der Gesellschaft mit hoher Wahrscheinlichkeit länger als sechs Monate hindern können. Eine Beeinträchtigung nach Satz 1 liegt vor, wenn der Körper- und Gesundheitszustand von dem für das Lebensalter typischen Zustand abweicht. Menschen sind von Behinderung bedroht, wenn eine Beeinträchtigung nach Satz 1 zu erwarten ist.“*

² Original text in German reads: *„Zu den Menschen mit Behinderungen zählen Menschen, die langfristige körperliche, seelische, geistige oder Sinnesbeeinträchtigungen haben, welche sie in Wechselwirkung mit verschiedenen (gemeint sind: einstellungs- und umweltbedingte) Barrieren an der vollen, wirksamen und gleichberechtigten Teilhabe an der Gesellschaft hindern können.“*

			<p>provide evidence. Based on this assessment, the disability and the degree / severity of the disability are determined by the authorities and a disability card can be issued.</p> <p>Examples of facial disfigurement which fall under disability (but not with the same degree / severity of disability) (see https://www.gesetze-im-internet.de/versmedv/BJNR241200008.html):</p> <ul style="list-style-type: none"> - peripheral facial palsy - full or partial loss of the nose - cleft lip and palate - Neurodermitis constitutionalis - Chronic recurrent urticaria/Quincke's edema - Acne triade - Skin changes in autoimmune connective tissue diseases - Bladder forming skin diseases - Psoriasis vulgaris - Distinctly disfiguring scars (visibility of scars is of itself insufficient to fall under disability) (BGH, 3 StR 185/07) <p>https://www.gesetze-im-internet.de/versmedv/BJNR241200008.html</p> <p>c. If the person is excluded from the definition (e.g. the assessment came to the conclusion that there is no disability), the person will not have any advantages granted to people with disabilities under German law and will not be protected and supported by the laws related to people with disabilities.</p>
3.	<p>Are there aspects of disability and/or disfigurement law that ensure a legal right to healthcare, education or employment?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>In Germany, there are various legal regulations that ensure the protection and support of people with disabilities. For people with disfigurements to make use of these regulations, they will need to apply for the determination of a disability according to § 152 SGB IX (following the principles of the assessment as set out in sec. 2 above).</p> <p>In the area of labour, there is the German Social Code Book IX (SGB IX), which regulates participation in working life for people with disabilities. Employers with more than 20 employees are required to ensure that at least 5% of their workforce consists of people with disabilities or pay a compensation fee. Additionally, employers are obligated to make reasonable accommodations to enable employees with disabilities to perform their jobs effectively. Individuals with disabilities can obtain a disability certificate (Schwerbehindertenausweis) by applying to the responsible authorities, which entitles them to certain benefits and protections in the workplace.</p>

			<p>Additionally, employers are restricted in their ability to terminate the employment of workers with disabilities. Employers must obtain approval from the Integration Office (Integrationsamt) before terminating the employment of a person with a severe disability, regardless of the reason for termination. This requirement is aimed at preventing discrimination against individuals with disabilities and ensuring their continued inclusion in the workforce.</p> <p>In the healthcare sector, there is the Social Code Fifth Book (SGB V), which ensures healthcare for people with disabilities. Individuals with disabilities are entitled to the same healthcare services as everyone else. There are also specific services and facilities tailored to the needs of people with disabilities, such as specialized clinics and rehabilitation centers. Accessing healthcare services typically involves registering with a healthcare provider (e.g., statutory health insurance) and presenting any necessary documentation related to the disability.</p> <p>In education, the German Disability Equality Act (Behindertengleichstellungsgesetz, BGG) ensures equal access to education for people with disabilities. Schools are required to make reasonable accommodations to support students with disabilities, such as providing assistive technology, accessible facilities, and additional support services. Parents or individuals with disabilities can contact the school administration or educational authorities to discuss accommodation and support options. There is also the possibility of support through integration or special education.</p> <p>These laws are based on international agreements such as the UN Convention on the Rights of Persons with Disabilities and are intended to ensure that people with disabilities can participate in society on an equal footing. Germany was one of the first member states of the United Nations to sign the UN CRPD and its Optional Protocol on 30 March 2007 and ratified it on 24 February 2009 by depositing its instrument of ratification in New York. The UN CRPD and its Optional Protocol have been binding for Germany since the 30-day deadline expired on 26 March 2009.³ This means that the UN Committee on the Rights of Persons with Disabilities can receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation of the Convention.</p>
4.	a. How effective are the legal protections? Please describe evidence		b. For those with facial disfigurements in particular, under German law the degree of disability is determined according to healthcare principles. Certain anti-discrimination benefits typically only apply to those with a grading of 50% or above as assessed in the manner described above. Assessment will likely involve

³ <https://www.bmas.de/DE/Soziales/Teilhabe-und-Inklusion/Politik-fuer-Menschen-mit-Behinderungen/Behindertenrechtskonvention-der-Vereinten-Nationen/behindertenrechtskonvention-der-vereinten-nationen.html> (German version only)

<p>available of the effect of the legal protections.</p> <p>b. What are deficiencies or areas for improvement in these legal protection measures as they apply and affect people with facial disfigurement?</p> <p>c. What evidence exists to prove that the information and resources guaranteed by law are actually available to disabled persons?</p>		<p>documentary evidence and personal interaction, with assessors being healthcare professionals, social workers or other support providers. While there have been cases where a “high degree of facial disfigurement” has led to a grading of 50%, each facial disfigurement will be assessed on its own basis. This leads to uncertainty for individuals with facial disfigurements, as opposed to countries that expressly mention disfigurement or physiological abnormality within their legal definition of a “disability”.</p> <p>Responses to a. and c. Statistics from the Federal Employment Agency⁴ suggest that only one third of in scope businesses complied with their obligation to fill a minimum number of roles with disabled people. A 2018 survey from the Federal anti-discrimination agency found that the obligation to employ workers with disabilities applied to 168,693 companies and businesses, of which 102,529 had to pay a compensatory levy in for failing to meet their quota. The Federal Participation Act (which imposed reforms due to be completed by 2023) aimed to address this gap by charging higher levies for those who did not meet quotas. In 2023, Germany had the highest rate of employment for persons with disabilities in its history⁵. For accessibility, although buildings, transport etc. must be capable of being used by disabled people without particular difficulty and generally without external help, studies⁶ have shown that many towns, cities and rail stations still present accessibility barriers to disabled people</p>
--	--	--

⁴ 2017 survey: https://www.destatis.de/DE/Presse/Pressemitteilungen/2020/05/PD20_N026_23.html

⁵ <https://www.ohchr.org/en/news/2023/08/experts-committee-rights-persons-disabilities-welcome-germanys-increase-social>

⁶ <https://de.statista.com/statistik/daten/studie/39308/umfrage/barrierefreie-bahnhoeefe-in-deutschland/>, https://sozialhelden.de/wp-content/uploads/2019/07/DStGB_Broschuere2019_Web.pdf