

‘Trans’, ‘transgender’ and ‘transsexual’ in case law: a corpus-assisted analysis of ECtHR judgments

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Abstract

The European Convention on Human Rights aims at protecting human rights and fundamental freedoms and promoting democracy among the 46 members of the Council of Europe. As such, it protects people against any form of discrimination, including discrimination based on gender identity or sexual orientation. The purpose of this study is to explore the use of three transgender identity labels (‘trans’, ‘transgender’ and ‘transsexual’) in a corpus of 19 ECtHR’s judgments and compare them against the guidelines for a respectful use of language provided by GLAAD and TGEU, two organisations actively involved in the promotion of equality for LGBTQ and transgender people. The findings of this corpus-assisted analysis reveal a neglectable presence of the label ‘trans’ and a use in step with the times of ‘transsexual’ and ‘transgender’. The immediate context shows some violations of the guidelines, with ‘transsexual’ being used as a noun when the adjectival form is considered the most appropriate one, and with both labels being preceded by modifiers emphasising surgical processes and transition phases. Further research is encouraged to expand the study not only beyond the three labels but also beyond ECtHR’s judgments to assess whether the language used in case law protecting against discrimination may happen to be – regrettably – discriminatory.

Keywords: corpus-assisted discourse analysis, European Court of Human Rights, gender identity labels, transgender, transsexual

1. INTRODUCTION

The European Convention on Human Rights (ECHR) is an international treaty aimed at protecting human rights and fundamental freedoms and promoting democracy in Europe among the 46 members of the Council of Europe (CoE). As regards discrimination, the ECHR protects people against any of its forms, including discrimination based on gender identity or sexual orientation. However, the original wording of the ECHR provisions reflects the understanding of human rights of the historical period in which it was drafted and adopted, that is in the immediate aftermath of Second World War.¹ Therefore, it does not explicitly protect certain rights that are – or should be – recognised today, as happens in general in relation to constitutions due to the fact that “the circumstances of human life change constantly and sometimes drastically, calling for a novel interpretation of the constitution which few, if any, of the original actors (drafters, judges, the people) could have foreseen” (Letsas, 2013, p. 106). Indeed, over time the interpretation of ECHR has undergone a gradual but significant evolution,

¹ The ECHR was opened for signature in Rome on 4 November 1950 and came into force on 3 September 1953.

especially through the judicial work of the European Court of Human Rights (ECtHR), in order to respond to the changing needs of society.

This study sets out to explore the linguistic representation of transgender identities through the use of gender identity labels in a corpus of judicial decisions in English by the ECtHR. Before delving into this, a brief overview is in order of how the progress of the rights of transgender people is reflected in the case law of the ECtHR.

At the time of the drafting of the ECHR, issues related to gender identity, sexual orientation, and LGBTQ+ rights had almost no weight in social and political discourses. As a result, the rights enshrined in the ECHR, such as in Article 8 (Right to respect for private and family life), Article 12 (Right to marry), and Article 14 (Prohibition of discrimination) were somehow only accessible to people who were recognised as cisgender and heterosexual. However, the ECtHR could not turn a blind eye to the increasing visibility of gender and sexual diversity in society, given that “discourses on transgender identities have become a frequent feature of the general public debate being covered by hard news, soft news and gossip columns” (Polese & Zottola, 2019, p. 80). Most significantly, it could not ignore the call for the extension of ECHR rights to LGBTQ+ people. As a consequence, it has begun to adopt – gradually and through an evolutive interpretation that balances individual persons’ rights and public interest grounds and takes into account European consensus² but also departs from it when an autonomous interpretation is seen as the most suitable solution – a more progressive stance in this regard.

The very first case before the ECtHR concerning the right to gender recognition³ of a transgender person (*Van Oosterwijck v. Belgium*) dates to 1980 and was followed by many others in the subsequent four decades. As reported by TGEU (2015), “[i]n a judgment delivered on May 12, 2015, *Identoba and Others v. Georgia*, the European Court of Human Rights (ECtHR) clarified that all trans people are protected against discrimination on grounds of gender identity under art. 14 of the Convention”, which it considers to be “an important and awaited step”.

In 2021, the Department for the Execution of judgments of the European Court of Human Rights released a thematic factsheet on lesbian, gay, bisexual, transgender and intersex (LGBTI) persons’ rights,⁴ which outlines a number of examples of measures adopted by States to implement the judgments of the ECtHR to safeguard these rights, such as decriminalisation of same-sex relationships, combating hate crimes, freedom of assembly and freedom of expression, legal recognition of gender identity, access of LGBTI persons to social rights, same-sex couples and civil union laws, right to adoption, parental authority and custody of children. One year later, the Registry of the ECtHR updated its *Guide on the case-law of the European Convention on Human Rights – Rights of LGBTI persons*, which is meant, as its very title says, to inform legal practitioners about the fundamental ECtHR case law relating to the rights of LGBTI persons. As the Guide explicitly states, “[t]he Court’s judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate,

² For a brief explanation of the concept of ‘European consensus’, see the help page of the Council of Europe entitled “Interpretative mechanisms of ECHR case-law: the concept of European consensus” at <https://www.coe.int/en/web/help/article-echr-case-law> [Last accessed: 15/12/2022].

³ For a state-of-the-art overview of ECtHR’s case law on the right to gender recognition, see Holzer (2022).

⁴ <https://rm.coe.int/thematic-factsheet-lgbti-eng/1680a3b2d7> [Last accessed: 15/12/2022]

safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties” (Registry of the ECtHR, 2022, p. 5). This document was followed by a factsheet released by the Press Unit of the ECtHR titled *Gender identity issues*,⁵ which lists and briefly summarises the cases before the ECtHR concerning the rights of transgender individuals.

Despite these undeniable steps forward, there are also critical views on the judicial work of the ECtHR. As Debecker (2019) puts it, the Strasbourg Court “is the main body for protecting human rights in Europe, yet it has had a complicated relationship with trans rights”. This is so because it “balances between making landmark decisions for the protection of trans rights while denying trans persons other necessary protections. It seems like one of the arguments it often uses to generate change, that of international consensus, is also one of the arguments holding it back”.

Against this background, this study explores the use of three transgender identity labels – ‘trans’, ‘transgender’ and ‘transsexual’ – in ECtHR’s judicial discourse by adopting a corpus-based approach (section 3). The starting point for this study are the guidelines for a respectful use of language provided by GLAAD and TGEU (section 2), which are used here to assess the use of transgender identity labels extracted from a the corpus of ECtHR judgments (section 4). The paper then ends with some conclusive remarks on the findings and possible directions for future research (section 5).

2. THEORETICAL FRAMEWORK

As well explained by Zottola (2018, p. 241), “[m]ost studies on trans identities from a linguistic viewpoint are recent”. Apart from being quite recent, with most works published since the late 1990s, these studies have traditionally fallen under queer linguistics (Hall, 2013; Motschenbacher & Stegu, 2013), but in more recent times trans linguistics has started gaining ground (Zimman, 2020, 2021). Regardless of the branch of linguistics to which they are assigned, the studies focusing on the linguistic representation of transgender people may be broadly divided into two categories based on an in-group versus out-group distinction. On the one hand, we have studies illustrating how trans identities are represented by people who are cisgender (i.e., non-trans) and are thus outsiders, and in this case much research has concentrated on the representation of transgender identities in the press (Baker, 2014; Zottola, 2018, 2021). On the other hand, we see studies revolving around the use of language for self-representation and self-definition by trans people, which thus adopt an insider’s perspective (Hall, 1997, 1996; Hall & O’Donovan, 1996; Zimman & Hayworth, 2020a, 2020b).

Although transgender and gender recognition issues in ECtHR’s case law have already been explored from a legal, human rights perspective (see, for instance, Cannoot, 2019; Gonzalez-Salzberg, 2014; Holzer, 2022; Korkiamäki, 2014), to our knowledge the linguistic representation of transgender persons in the judgments of the Strasbourg Court has not received much attention so far. The purpose of this study is thus to assess whether in the corpus described in section 3 the use of transgender identity labels shows transrespect, which is intended as “the expression of a deep form of respect for and recognition of individuals whose lived gender identity or gender

⁵ https://www.echr.coe.int/Documents/FS_Gender_identity_eng.pdf [Last accessed: 15/12/2022]

expression differs from the gender role assigned to them at birth, or those individuals who are assigned at birth with, and raised in a different gender role than, those known in binary male-female gender systems”.⁶ Given that “[c]oncepts and definitions that refer to sexual orientation and gender identity are an evolving field”, it comes as no surprise that “[m]any of the terms used in the past to describe LGBT people, namely in the mental health field, are now considered to be outdated and even offensive” (Moleiro & Pinto, 2015, p. 1). This also applies to the labels used to refer to transgender persons, which have undergone a significant evolution in recent times. In order to verify whether the ECtHR’s use of language is trans-respectful, this study adopts an outsider’s perspective, in line with the first strand of research mentioned above, and relies on the definitions and guidelines for respectful use of language provided by two organisations, namely GLAAD and TGEU, which are actively involved in the promotion of equality for LGBTQ and transgender people, respectively.

2.1. Transgender identity labels: definitions and guidelines

The first reference material used as benchmark in this study is the glossary (hereafter G_GLAAD)⁷ featured in GLAAD’s *Media Reference Guide* (11th edition). This guide was produced by GLAAD,⁸ the world’s largest Lesbian, Gay, Bisexual, Transgender and Queer (LGBTQ) media advocacy organisation founded in 1985, and is “intended to be used by journalists reporting for mainstream media outlets and media creators who want to tell the stories of LGBTQ people fairly and accurately”.⁹ The second reference material is also a glossary (hereafter G_TGEU)¹⁰ and was developed by TGEU (registered as Transgender Europe e.V.),¹¹ a much more recent organization started in 2005 and funded by the Government of the Netherlands, the Council of Europe and the European Union, whose mission is to strengthen the rights and wellbeing of transgender people in Europe and Central Asia.

Although the two organisations do not focus on judicial discourse, these two glossaries have been selected because not only do they provide the definitions of gender identity labels and other trans-related terms such as ‘depathologisation’, ‘sexual orientation’ and ‘transphobia’, but they also contain notes to guide the users towards a correct and respectful use of language which could be useful in any type of communication. For instance, G_GLAAD features a section devoted to anti-trans terms that the mainstream media should avoid where we can read that “[g]ender identity is an integral part of a person’s identity. Do not characterize transgender people as ‘deceptive,’ as ‘fooling’ or ‘trapping’ others, or as ‘pretending’ to be, ‘posing’ or ‘masquerading’ as a man or a woman”. In G_TGEU, usage notes are provided as NBs. For example, after the definition of ‘Transgender or Trans’ we find the following recommendation: “do not use transgendered, and always use the descriptive terms preferred by the individual. Trans identity is not dependent upon medical procedures”.

⁶ Transrespect versus Transphobia Worldwide, “Terminology”, <https://transrespect.org/en/working-definitions/> [Last accessed: 22/12/2022]

⁷ <https://www.glaad.org/reference/trans-terms> [Last accessed: 22/12/2022]

⁸ <https://www.glaad.org/> [Last accessed: 22/12/2022]

⁹ <https://www.glaad.org/reference> [Last accessed: 22/12/2022]

¹⁰ <https://tgeu.org/glossary/> [Last accessed: 22/12/2022; originally posted: 04/07/2016]

¹¹ <https://tgeu.org/> [Last accessed: 22/12/2022]

Space considerations make it impossible to consider all the terms included in these two glossaries. For this reason, the focus in this study is on three fundamental transgender identity labels whose presence in the corpus described in section 3 has already been ascertained, namely ‘transgender’, ‘trans’ and ‘transsexual’. In what follows, the definitions of these labels as provided in G_GLAAD and G_TGEU are reported (emphasis added), together with the relevant usage notes, in order to compare them, highlight the use of the labels currently considered appropriate and bring to the fore the uses regarded as offensive. Given that in G_TGEU ‘transgender’ and ‘trans’ are defined together, the definitions and usage notes of these labels (and other relevant labels) are reported together in Table 1. The definitions and usage notes related to ‘transsexual’, on the contrary, are provided in Table 2.

	G_GLAAD	G_TGEU
Label and definition	Transgender An <i>adjective</i> to describe people whose gender identity differs from the sex they were assigned at birth. People who are transgender may also use other terms, in addition to transgender, to describe their gender more specifically. [...] 	Transgender or Trans is an <i>umbrella term</i> which includes those people who have a gender identity which is different to the gender assigned at birth, and those people who wish to portray their gender identity in a different way to the gender assigned at birth. Transgender includes those people who feel they have to, or prefer to, or choose to, whether by language, clothing, accessories, cosmetics or body modification, present themselves differently to the expectations of the gender role assigned to them at birth. This includes, among many others, transsexual and transgender people, transvestites, cross dressers, no gender, multigender, genderqueer people, intersex, and gender variant people who relate to or identify as any of the above. ¹²
Usage note	Use the term(s) the person uses to describe their gender. [...]	n.b.: do not use transgendered, and always use the descriptive terms preferred by the individual. Trans identity is not dependent upon medical procedures.
Label and definition	Trans Used as shorthand for <i>transgender</i> , and on second reference after first using the word transgender.	
Usage note	If you use trans without defining it, or without the first reference of transgender, mainstream audiences may not understand its meaning or what you are referencing.	
Label and definition	Transgender Man A man who was assigned female at	Transgender Man or Trans Man or FTM (Female to Male) are terms that

¹² This definition was adapted from the *Transrespect versus Transphobia Worldwide research project*, www.transrespect.org [Last accessed: 22/12/2022]

	birth may use this term to describe himself. He may shorten it to trans man.	may be used by people who were assigned female at birth but identify and live as men. ¹³
Usage note	(Note: trans man, not “transman.”) Some may prefer to simply be called men, without any modifier. Use the term the person uses to describe their gender.	Some may prefer to simply be called men, without any modifier. It is best to ask which term an individual prefers.
Label and definition	Transgender Woman A woman who was assigned male at birth may use this term to describe herself. She may shorten it to trans woman.	Transgender Woman or Trans Woman or MTF (Male to Female) are terms that may be used by people who were assigned male at birth but identify and live as women.
Usage note	(Note: trans woman, not “transwoman.”) Some may prefer to simply be called women, without any modifier. Use the term the person uses to describe their gender.	Some may prefer to simply be called women, without any modifier. It is best to ask which term an individual prefers.

Table 1. Definitions and usage notes related to ‘transgender’ and ‘trans’ in G_GLAAD and G_TGEU

The first difference between the definitions provided for ‘transgender’ is that in G_GLAAD the term is immediately identified as an adjective, thus excluding its use as a noun, while in G_TGEU the label is described as an “umbrella term”. The idea that ‘transgender’ is an adjective is reinforced later in the glossary, in a section titled “Term to avoid” particularly rich in ‘does and don’ts’ concerning trans-related language. In this section the use of the forms ‘a transgender’ and ‘transgenders’ is discouraged because “[t]ransgender should be used as an adjective, not as a noun” and further guidance is given through exemplification: “Do not say, ‘Tony is a transgender,’ or ‘The parade included many transgenders.’ Do not write ‘transwoman’ or ‘transman.’ Do not capitalize transgender, unless it begins a sentence or is part of a name (e.g., National Center for Transgender Equality)”. The same section also suggests avoiding the use of ‘transgendered’ (in G_TGEU, this note appears immediately after the definition, see Table 1), given that “The adjective *transgender* should never have an extraneous ‘-ed’ tacked onto the end. An ‘-ed’ suffix adds unnecessary length to the word and can cause tense confusion and grammatical errors. Not using the ‘-ed’ suffix also brings transgender into alignment with lesbian, gay, bisexual, and queer”. Again, concrete examples are provided to show how language should work: “You would not say that Elton John is ‘gayed’ or Ellen DeGeneres is ‘lesbianed,’ therefore you would not say Laverne Cox is ‘transgendered’”.

However, even when ‘transgender’ is an adjective it may not be used in a respectful manner. This happens when ‘transgender’ is followed by the noun ‘individual’, since “referring to people who are trans as ‘individuals’ contributes to dehumanizing them”. For this reason, GLAAD suggests using ‘transgender person’ and ‘transgender people’, but also any other label preferred by the person themselves, such as ‘trans woman’, ‘trans man’, ‘transgender girl’, ‘transgender woman’ and so on.

¹³ This and the following definitions were adapted from GLAAD’s *Media Reference Guide*.

An aspect that does not emerge from Table 1 but is worth mentioning is that while in G_TGEU the labels ‘FTM (Female to Male)’ and ‘MTF (Male to Female)’ are given as alternatives of ‘transgender man’ and ‘transgender woman’ without any note on their use, in G_GLAAD’s “Term to avoid” section we can read that ‘female-to-male’ and ‘male-to-female’ are outdated since they imply “someone is changing their gender from one binary gender to the other binary gender”, whereas “[i]n reality, the person’s gender is an innate sense of self that has not changed”. Instead, GLAAD suggests using ‘transgender’ followed by the most appropriate noun.

	G_GLAAD	G_TGEU
Label and definition	Transsexual (<i>adj.</i>) An older term that originated in the medical and psychological communities. As the gay and lesbian community rejected homosexual and replaced it with gay and lesbian, the transgender community rejected transsexual and replaced it with transgender.	Transsexual is an older term that originated in the medical and psychological communities. The term is still preferred by some people who have permanently altered – or seek to alter – their bodies through medical interventions (including but not limited to hormones and/or surgeries). ¹⁴
Usage note	Some people within the trans community may still call themselves transsexual. Do not use transsexual to describe a person unless it is a word they use to describe themselves. If the subject of your news article uses the word transsexual to describe themselves, use it as an <i>adjective: transsexual woman or transsexual man</i> .	Unlike transgender or trans, transsexual is <i>not an umbrella term</i> . It is best to ask which term an individual prefers. If preferred, use as an <i>adjective: transsexual woman or transsexual man</i> .

Table 2. Definitions and usage notes related to ‘transsexual’ in G_GLAAD and G_TGEU

As the two definitions in Table 2 highlight, the label ‘transsexual’ is an older term used originally within the medical and psychological communities, where it was associated with a mental disorder.¹⁵ It must also be said that this label has undergone a semantic shift. For decades, the label “was restricted for individuals who had undergone medical procedures, including genital reassignment surgeries”, which is also why we can read in the definition by TGEU that it “is still preferred by some people who have permanently altered – or seek to alter – their bodies through medical interventions (including but not limited to hormones and/or surgeries)”. However, nowadays it may refer to “anyone who has a gender identity that is incongruent with the sex assigned at birth and therefore is currently, or is working toward, living as a member of the sex other than the one they were assigned at birth, regardless of what medical procedures they may have undergone or may desire in the future “ (Moleiro & Pinto, 2015, p. 2). While we may be led to believe that the labels ‘transsexual’ and ‘transgender’ refer to one and the same concept, with the latter being preferred by transgender persons in line with the gay and lesbian

¹⁴ This definition was adapted from GLAAD’s *Media Reference Guide*.

¹⁵ For more information on the decline of the label ‘transsexual’, see Zimman and Hayworth (2020).

community's rejection of 'homosexual', there is no clear-cut consensus on this point, since some scholars see a distinction between the two concepts.¹⁶

In line with the definitions and usage notes concerning 'transgender' and 'trans', also for 'transsexual' GLAAD highlights the fact that the term is an adjective, whereas TGEU specifies that, unlike the previous terms, 'transsexual' is *not* an umbrella term and recommends using it, when appropriate, as an adjective.

3. METHODOLOGY: CORPUS DESCRIPTION AND TOOLS

For the purposes of this study, a corpus of 19 judgments issued by the ECtHR was collected. The starting point for the selection of the judgments to be included in the corpus was the already mentioned factsheet by the Press Unit of the ECtHR on *Gender identity issues*. Given that the focus of this study is on judgments available in English, the cases for which only a French version of the judgments was available were not included in the corpus.¹⁷ The same applied to cases whose topic was relevant to the study but resulted in a decision rather than a judgment, since they are considered different text types (despite admittedly sharing numerous similarities). The remaining cases, shown in Table 3, were then downloaded from the HUDOC database¹⁸ and constitute the corpus analysed here. In this regard, it should be noted that the *Factsheet* only features cases in which the Court ruled on the merits, but for the purposes of this study, which also traces the evolution of naming strategies over time, the very first case concerning the right to gender recognition (*Van Oosterwijck v. Belgium*) was added to the corpus, although the Court found the application inadmissible.

Case	Final judgment	Separate opinion(s)
Van Oosterwijck v. Belgium	06/11/1980	✓
Rees v. the United Kingdom	17/10/1986	✓
Cossey v. the United Kingdom	27/09/1990	✓
B. v. France	25/03/1992	✓
X, Y and Z v. the United Kingdom	22/04/1997	✓
Sheffield and Horsham v. the United Kingdom	30/07/1998	✓
Mikulić v. Croatia	04/09/2002	
Van Kück v. Germany	12/07/2003	✓
Grant v. the United Kingdom	23/05/2006	
L. v. Lithuania	11/09/2007	✓
Hämäläinen v. Finland	16/07/2014	✓
Y.Y. v. Turkey	10/03/2015	✓
S.V. v. Italy	11/10/2018	
X v. the Former Yugoslav Republic of Macedonia	17/01/2019	✓
Rana v. Hungary	16/07/2020	

¹⁶ See, for instance, Cannoot (2019, 15, footnote 10), who affirms that “while all transsexual persons are trans*, not all trans* persons are transsexual”.

¹⁷ For a detailed description of ECtHR's language regime see Peruzzo (2019, pp. 29-40).

¹⁸ <https://hudoc.echr.coe.int/> [Last accessed: 27/09/2022]

A.M. and others v. Russia	06/07/2021	✓
Y v. Poland	17/02/2022	
Christine Goodwin v. the United Kingdom	11/07/2022	✓
I. v. the United Kingdom	11/07/2022	✓

Table 3. ECtHR's cases making up the corpus

At the ECtHR unanimity is not a *sine qua non* for a verdict to be reached: under Rule 74 § 2 of the Rules of Court “[a]ny judge who has taken part in the consideration of the case by a Chamber or by the Grand Chamber shall be entitled to annex to the judgment either a separate opinion, concurring with or dissenting from that judgment, or a bare statement of dissent”. Therefore, a judgment containing separate opinions or statements of dissent may be ‘polyphonic’, with the majority judgment drafted by a judge rapporteur with the assistance of the Registry (Peruzzo, 2019, pp. 35-36) and separate opinions or statements of dissent written by the judges who feel the need to express them.

In the corpus used for this study, no judgment contains a statement of dissent, but 14 judgments contain at least one separate opinion (see Table 3). Given that separate opinions express the view of single judges rather than the ECtHR as a whole, a difference in style and tone can be noticed when compared with majority opinions: in separate opinions judges are “not constrained by trying to find agreement with fellow judges” and the tone is often much more personal than in the majority opinions (Senden, 2011, p. 21). Due to the possible differences between majority and separate opinions in terms of attitude towards gender identity issues and use of gender identity labels, the corpus has been divided into two subcorpora: the subcorpus containing majority opinions (MOs) and the subcorpus containing separate opinions (SOs), whose details obtained from Sketch Engine are reported in Table 4.

	Majority opinions (MOs)	Separate opinions (SOs)
Documents	19	14
Tokens	175,618	65,240
Words	146,478	55,762
Types	5,017	1,661

Table 4. Details of the two subcorpora

The subcorpora were then analysed using Sketch Engine. Through the CQL concordance search function, the occurrences of the search words ‘trans’, ‘transgender’ and ‘transsexual’ occupying either the noun or the adjective slot were extracted together with the immediate cotext. This allowed for the extraction of the nouns in the head position of the multi-word gender identity labels as well as of the modifiers preceding these labels. After retrieving the noun phrases (i.e., the gender identity labels) containing the search words, these were compared against the guidelines described in section 2.1.

4. RESULTS

The occurrences of ‘trans’, ‘transgender’ and ‘transsexual’ occupying either the noun or the adjective slot extracted from MOs and SOs are reported in Table 5.

Label		Majority opinions (MOs)	Separate opinions (SOs)
trans	total	1	3
	noun	0	0
	adjective	1	3
transgender	total	101	13
	noun	0	0
	adjective	101	13
transsexual	total	418	168
	noun	384	164
	adjective	34	4

Table 5. Occurrences of ‘trans’, ‘transgender’ and ‘transsexual’ in MOs and SOs in order of frequency

Considering the number of occurrences in the two subcorpora, the least relevant of the three gender identity labels in terms of frequency is ‘trans’, with four occurrences in total. This label is actually used exclusively in one judgment of 2021, where it appears only in the adjectival slot, thus following the guidelines described in section 2.1, and is accompanied by four different nouns, namely *people* in MOs and *families*, *parent*, and *therapists* in SOs. More remarkable are the frequencies of ‘transgender’ and ‘transsexual’, whose use is further illustrated in the sections below.

4.1. ‘Transgender’

The gender identity label ‘transgender’ occurs 114 times, 101 of which in MOs and 13 times in SOs. In both subcorpora, the first occurrences of ‘transgender’ are found in a judgment of 2014, and this label only occupies the adjectival slot, conforming to the trans-respectful language guidelines illustrated in section 2.1. Table 6 shows, in order of frequency (in MOs), the full labels and, where appropriate, any other pre-modifiers.

Label	Majority opinions (MOs)				Separate opinions (SOs)			
	First appearance	Last appearance	Occurrences	Judgments	First appearance	Last appearance	Occurrences	Judgments
transgender persons	2014	2022	45	6	2014	2015	3	2
transgender people	2015	2022	18	4	2015	2019	3	2
transgender person	2015	2022	16	4	2015	2015	1	1
post-operative transgen	2015	2015	5	1				

der persons								
transgender parents	2021	2021	5	1	2021	2021	1	1
transgender parent	2021	2021	3	1	2021	2021	1	1
transgender individuals	2014	2015	2	2	2014	2014	2	1
transgender refugee	2020	2020	2	1				
male-to-female transgender person	2021	2021	1	1				
married transgender individuals					2014	2014	1	1
post-operative transgender people	2019	2019	1	1				
post-operative transgender woman	2021	2021	1	1				
transgender asylum-seekers and refugees	2020	2020	1	1				
transgender woman	2021	2021	1	1	2021	2021	1	1

Table 6. Identity labels with ‘transgender + noun’ in MOs and SOs

Table 6 indicates that certain labels are exclusive to MOs, some labels have a very low frequency and others are hapaxes. This is obviously due to the peculiar circumstances of the cases at issue: a label such as ‘transgender parent’ will most likely occur in a case dealing with a person featuring both characteristics and will not appear in cases where

the transgender person has no children. Other labels are much more recurrent owing to the fact that they are used to describe possible situations or common experiences, such as in the following two extracts (emphasis added):

The court stressed in that regard that, under the terms of the latter, the amendment of the civil-status records of a *transgender person* had to be ordered by the court ruling on his or her gender reassignment. (*S.V. v. Italy*)

In some Council of Europe member States *transgender persons* could not obtain any legal recognition of their gender, while in other member States legal gender recognition was dealt with in a variety of different ways. (*Hämäläinen v. Finland*)

The most recurrent labels in both subcorpora are actually those with the most general meaning, considering that they do not contain gendered lexical items (e.g., woman, man, male, female) or lexical items pointing to transition, thus following the guidelines illustrated in section 2.1. However, by taking a closer look at the pre-modifiers accompanying ‘transgender + noun’ and analysing them against those guidelines, we can notice that in MOs four terms occur that contravene GLAAD’s guidelines containing ‘post-operative’. In fact, GLAAD advises against the use of expressions such as ‘sex change’, ‘sex-change operation’, ‘pre-operative’ and ‘post-operative’ because they “inaccurately suggest that a person must have surgery in order to transition” and encourages the use of ‘transition’ instead. For the same reasons, GLAAD suggests alternatives also for ‘male-to-female’ (and ‘female-to-male’), such as ‘transgender woman’ and ‘transgender person’.

4.2. ‘Transsexual’

Of the three gender identity labels analysed here, the most frequent in both subcorpora is ‘transsexual’. What can be noticed by going back to Table 5 is that ‘transsexual’ is used not only as an adjective – as the other two labels and as recommended in the guidelines – but also and more frequently as a noun, which should be avoided. If we consider ‘transsexual’ as an adjective first (Table 7), we can observe that in MOs the label combines with a greater variety of nouns (n=10) compared to SOs (n=4), and that the three most frequent combinations in MOs (*people*, *persons* and *person*) coincide with the most frequent nouns accompanying ‘transgender’ in the same subcorpus (Table 6).

Label	Majority opinions (MOs)				Separate opinions (SOs)			
	First appearance	Last appearance	Occurrences	Judgments	First appearance	Last appearance	Occurrences	Judgments
transsexual people	2006		12	3				
transsexual persons	2006		6	3	2019		1	1
transsexual person	2022		4	2	2014		1	1
transsexual	2022		2	2				

commu nity								
transsex ual offender	2022		2	2				
transsex ual parents	1997		2	2				
transsex ual prisoner s	2022		2	2				
transsex ual victims and witness es	2022		2	2				
transsex ual applican ts	2007		1	1	1992		1	1
transsex ual minorit y	2022		1	1				
post- operativ e transsex ual individu als					2014		1	1

Table 7. Identity labels with ‘transsexual + noun’ in MOs and SOs

Another interesting fact related to ‘transsexual’ as an adjective is that the first time it appears is in SOs (‘transsexual applicants’), in a judgment of 1992, while in MOs the first use as an adjective is reported in a judgment of 1997 (‘transsexual parents’), with a 10-year gap separating it from the next occurrences (‘transsexual people’ and ‘transsexual persons’ in 2006 and ‘transsexual applicants’ in 2007) and most occurrences (n=27) concentrated in 2022, which may be explained by the fact that three judgments included in the corpus date to this year.

If we now turn to ‘transsexual’ as a noun (Table 8), which is the most frequent case in both subcorpora, we can notice that in MOs the occurrences of the noun ‘transsexual’ (in its singular or plural form) without pre-modification (n=221) outnumber the occurrences with pre-modification (n=163), while in SOs the number of non-premodified and pre-modified noun ‘transsexual(s)’ almost coincide (n=68 v n=69).

	Majority opinions (MOs)				Separate opinions (SOs)			
Label	First appear	Last appear	Occurre nces	Judgm ents	First appear	Last appear	Occurre nces	Judgm ents

	ance	ance			ance	ance		
transsexuals	1980	2022	126	13	1990	2014	30	6
transsexual	1980	2022	95	13	1990	2014	38	8
pre-modifier + transsexual	1986	2022	60	12	1990	2014	24	6
pre- modifier+trans sexuals	1986	2022	103	10	1990	2014	45	6

Table 8. ‘transsexual(s)’ as a noun in MOs and SOs

At this point, it is worth spending some words on the modifiers preceding the label ‘transsexual’ in the two subcorpora (Table 9). With four exceptions, as already observed in relation to ‘transgender’, the pre-modifiers appearing in MOs mainly refer to either the stage in the transition process (e.g. ‘post-operative transsexuals’) or the direction of the transition (e.g. ‘male-to-female transsexuals’), with the number of variants reflecting multiple spelling options.

	Majority opinions (MOs)		Separate opinions (SOs)	
Label	Occurrences	Judgments	Occurrences	Judgments
post-operative transsexuals	29	8	36	5
male-to-female transsexual	23	6	1	1
post-operative transsexual	15	4	14	4
female-to-male transsexual	8	5	4	2
post-operative male to female transsexual	5	3		
male-to-female transsexuals	3	3	1	1
female to male transsexual	2	2		
female-to-male transsexuals	2	2		
male to female transsexuals	2	2		
pre-operative transsexual	2	1		
male to female transsexual	1	1		
male-to-female post-operative transsexual	1	1		
married transsexuals	1	1		
medically recognised transsexuals	1	1		
post-operative female transsexual	1	1		

post-operative male to female transsexuals	1	1		
preoperative transsexual	1	1		
preoperative transsexuals	1	1		
pre-operative transsexuals	1	1		
real transsexuals	1	1		
typical transsexual	1	1		
unmarried transsexuals	1	1		
true transsexuals			3	1
true transsexual			2	1
genuine transsexuals			2	1
false transsexuals			1	1
foreign post-operative transsexuals			1	1
genuine transsexual			1	1
post-operative female-to-male transsexual			1	1
post-operative male-to-female transsexual			1	1

Table 9. ‘pre-modifier + transsexual(s)’ in MOs and SOs

Two pre-modifiers in MOs are worth being discussed here, namely ‘real’ and ‘typical’,¹⁹ since they qualify the gender identity labels without providing any additional information. In other words, the reader must infer what makes a transsexual person a ‘real’ transsexual and who a ‘typical’ transsexual person is based on the cotext and the context. However, it should be noticed that the two instances appear in portions of judgments that can be considered “external cross-references “, this is textual material that “does not belong to the supranational legal system stemming from either the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols or the case law developed by the ECtHR “ (Peruzzo, 2017, p. 88). Indeed, ‘real transsexuals’ appear in a full quote of the applicant’s single ground of appeal before the French Court of Cassation reported in the Facts section of the judgment (which was thus translated from French into English), whereas ‘typical transsexuals’ occurs in a reformulation of the written opinions (originally in German) of the psychiatric experts who were consulted in the case. This means that the two expressions reflect the wording of external sources and might not have been used by the ECtHR itself had these references not been necessary.

In SOs we observe a similar trend, with the most frequent pre-modified nouns (n=58) referring to either gender confirmation surgery or transition direction. In SOs we can also detect adjectives qualifying the noun ‘transsexual’, namely ‘false’, ‘genuine’

¹⁹ Space constraints do not allow me to report full quotes here, but I would like to refer anyone interested in reading the extracts in which the two modifiers appear to *B. v. France* for ‘real’ and *Van Kuck v. Germany* for ‘typical’.

and ‘true’. However, a closer look into the corpus reveals two differences compared to MOs (although the value of these findings is very limited due to the meagre number of hits in both subcorpora): these qualifiers only appear in one judgment and express the opinions of the dissenting judges (rather than that of an external source or the majority opinion of the ECtHR). Indeed, the case at stake (*B. v. France*) was particularly controversial and as many as six judges attached a dissenting opinion to the judgment, preceded by a joint introduction, in which we can read the following (emphasis added in all the following extracts):

In the field of transsexualism the wide margin of appreciation allowed to the State must permit the State to regulate by means of case-law the legal status of *genuine transsexuals*, following objective criteria and respecting Article 8 (art. 8).

Although the dissenting opinions reveal the personal stance of the judges expressing them, it is undeniable that there may be a strong connection between the wording of the majority opinion and that of a separate opinion, as is exemplified in the following extract:

Consequently, it follows from these judgments that the courts did not consider the applicant to be a “*genuine transsexual*”, since the medical treatment had not been shown to be necessary and even after the surgical operation she had undergone in Morocco “Norbert [B.] continued to show the characteristics of a person of male sex “ (see paragraph 17 of the judgment).

The dissenting judge here agrees with national courts not considering the applicant to be a ‘genuine’ transsexual person and to show his agreement he quotes the national courts’ wording, which was already quoted in the Facts section of the judgment. The same can be found in a dissenting opinion by another judge, where we can read ‘true’ rather than ‘genuine transsexual’:

As for the applicant (whom I will not refer to in the feminine, as I do not know the concept of social sex and I do not recognise the right of a person to change sex at will), he is not a *true transsexual*: “... the court of second instance found that even after the hormone treatment and surgical operation which he underwent, Norbert [B.] continued to show the characteristics of a person of male sex; ... it considered that, contrary to the contentions of the person in question, his present state is not the result of elements which existed before the operation and of surgical intervention required by therapeutic necessities but indicates a deliberate intention on the part of the person concerned ...” (finding of the Court of Cassation, see paragraph 17 of the judgment).

Like in the previous extract, the dissenting judge resorts to an extended version of the same quotation to support his argument. However, in this case his agreement with the findings of French courts is made much more evident by the sentence introducing the quotation. Not only does the judge explicitly say that the applicant “is not a true transsexual”, but he also firmly makes his linguistic choices unequivocal by using the masculine pronoun “he” and refusing to use the feminine to refer to the applicant.

Another interesting extract from a dissenting opinion contains the qualifier ‘true’, but in this case the meaning of ‘true’ is explained by glossing it in parentheses:

From the point of view of jurists who favour a broad interpretation of the status of transsexuals, the B. judgment would be easier to appreciate if cases of *true transsexuals* (*operated on in public hospitals with medical supervision and documentation*) had been systematically refused by the French courts.

Finally, ‘false’ is used in a dissenting opinion where also ‘social obstacles’ to the recognition of transgender identities are discussed. In this particular case, the judge

mentions the exploitation of ‘false transsexuals’ and links it to procuring and transvestite prostitution, thus implying an association between transgender identities and morally questionable activities and behaviours.

Certain countries unfortunately have places where *false transsexuals* are exploited, opening the way to procuring and transvestite prostitution.

On a final note, some diachronic considerations can be made comparing ‘transgender’ and ‘transsexual’ in the two subcorpora. The label ‘transgender’ made its first appearance in the analysed corpus more than three decades later than ‘transsexual’, with its first hits dating to 2014 in both MOs and SOs. ‘Transsexual’ thus covers a much longer time span, appearing first as a noun in 1980 in MOs and in 1990 in SOs and then as an adjective in 1997 in MOs and in 1992 in SOs, which explains the higher number of hits. Both ‘transgender’ and ‘transsexual’ are observed in the latest judgments issued in 2022, which means that in the corpus under examination they have been coexisting for the less than a decade. However, the recent emergence of ‘transgender’ in ECtHR’s judgments may supply further confirmation to the observation that

In recent years, terminology relating to transgender identities has undergone changes shifting away from transsexual identities – with a focus on moving from one sex to the other – to transgender – with identities developing diverse gender expressions and gendered bodies. (Polese & Zottola, 2019, pp. 79-80)

5. CONCLUSIONS

The aim of this study was to discuss how the labels ‘trans’, ‘transgender’ and ‘transsexual’ are used in a corpus of ECtHR’s judgments dealing with transgender identity issues if analysed against the guidelines on respectful language use by GLAAD and TGEU. The exploration of the corpus revealed that ‘trans’ plays a neglectable role in the corpus, while ‘transgender’ and ‘transsexual’ are quantitatively much more interesting. ‘Transsexual’ has a longer history in the corpus, with the first hits dating to 1980, and is used as both a noun and an adjective. ‘Transgender’ is much more recent, appearing in 2014, and occupies the adjectival slot only.

Looking through contemporary lenses, the findings suggest that not all the occurrences of ‘transsexual’ and ‘transgender’ in the corpus comply with GLAAD’s and TGEU’s guidelines, since these labels should be used exclusively as adjectives and should not appear in combination with pre-modifiers emphasising surgical processes or transition phases and directions. However, a number of facts possibly explaining these violations can be listed. First, since the earliest judgment taken into account (dating to 1980), sexual orientation and gender identity issues have gained centre stage in human rights, political and social debates as well as in linguistic research. As a consequence, gender identity labels have undergone a remarkable evolution, with terms available today that did not exist in the 1980s and 1990s and that are capable of expressing and respecting a greater variety of gender diversity and other terms that have experienced semantic shifts. A greater degree of awareness and sensitivity towards a respectful use of language is reflected in the guidelines considered, but most of the judgments used to compile the corpus were issued well before these guidelines and could thus not be informed by them. Moreover, while being in charge of protecting anyone against any form of discrimination – at least in the country members of the CoE – and thus being ideally compelled to use non-discriminatory language, the ECtHR cannot be deemed bound by sources like GLAAD’s or TGEU’s guidelines. Even in this regard, while there

is some negotiation when it comes to the wording of majority opinion, which may lead to the weeding out of possibly offensive lexical items, ECtHR's judges have almost full discretion when drafting separate opinions, as shown by the use of qualifying pre-modifiers by a dissenting judge who unequivocally expresses himself against the right of a person to change sex at will. Finally, one of the reasons why in ECtHR judgments an emphasis on surgery and the stage in the transition process could be detected is that this information may be useful in the review of both the facts of the case and the applicable law, given that certain rights may be conditional upon medical transition through gender confirmation surgeries (for instance, marriage v registered partnership).

A limit of this paper is that the focus is only on three labels, while the judgments under examination also reveal other breaches of trans-respectful language. For instance, the following excerpt from the Facts section contains a full sequence of violations:

She is a post-operative transgender woman (male-to-female transgender person). She was born genetically and phenotypically male and her gender was registered as “male” in her birth records. She currently identifies herself as female. (*A.M. and others v. Russia*)

GLAAD states that expressions like ‘born a man’, ‘biologically male’ or ‘genetically male’ “oversimplify a complex subject and are often used by anti-transgender activists to inaccurately imply that a trans person is not who they say they are”, whereas “a person’s sex is determined by a number of factors – and a person’s biology does not determine a person’s gender identity”. GLAAD also recommends avoiding saying that transgender people “identify as” their gender because this “implies that gender identity is a choice”, whereas “[t]ransgender people are their gender the same way cisgender people are their gender”.

Due to space constraints, it was impossible to review all the cases in which GLAAD’s and TGEU’s guidelines are violated in the corpus at stake. Likewise, it was unfeasible to investigate all the other trans-related linguistic choices and discursive strategies adopted in the corpus which may lead to misgendering or a disrespectful use of language, such as the use of personal pronouns and possessive adjectives, gender explication and titles, semantic prosody, and the use of definitions or other explanatory devices. All of these, though, certainly represent promising avenues of research in the field of discourse analysis, which could increase our understanding of the use of trans-related language by the ECtHR, and, if extended to corpora of case law issued by other (national or international) courts, could give us a clearer picture of whether judicial discourse dealing with discrimination is (non-)discriminatory itself.

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