

Italy: the status of the Human Rights of Lesbian, Gay, Bisexual, Transgender and Intersex people

Submission to the United Nations Human Rights Committee for its 119th Session

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Introduction

The respect of the human rights of LGBTI people in Italy is undermined by often incomplete legislation. By 2003 Italy transposed into national law the Employment Equality Directive (2000/78/EC) which prohibits discrimination based on sexual orientation and — to some extent — gender identity in the field of both public and private employment, has been introduced.

In April 2013 a National Strategy to prevent and contrast discrimination on grounds of sexual orientation and gender identity (2013-2015) was adopted by a Ministerial Decree. After 2015, the National Strategy hasn't yet been renewed.

In July 2003 Italy set up UNAR, the Office against Racial Discrimination which extended its mission to the removal of discrimination on grounds of sexual orientation and gender identity in 2010. However, the enlargement of its mandate is not prescribed by law: therefore UNAR's role in combating discrimination against LGBTI people is still impermanent and vulnerable to changes of the political will.

The Observatory for security against acts of discrimination (OSCAD) has been established – through an administrative act in 2010 – in order to help individuals who belong to minorities to enjoy their right to equality before the law and guarantee protection against any form of discrimination also based on sexual orientation and gender identity.

Despite the establishment of these two bodies, Italy still lacks an integrated and independent equality body pursuing a multi-ground equality agenda.

On a more positive note, the Inter-ministerial Committee on Human Rights was reformed in September 2013 after having been eliminated by the 2012 spending review and had its first plenary session on the 09th of December 2013.

Nevertheless, a specific law recognising the homophobic or transphobic nature of some hate crimes is still missing.

During the past ten years, some regional legislators have been taking an active part in fighting against discrimination of all kind and, in particular, discrimination based upon sexual orientation and, also, gender identity (Tuscany, Umbria, Emilia- Romagna, Liguria and Marche).

In recent years hate speech against LGBTI persons has directly come from public officials and politicians, especially during the debate on civil unions that took place in 2016.

Private life, freedom of expression and peaceful assembly are respected, and LGBTI NGOs can operate freely and engage with government, but there remains public hostility from some politicians, religious leaders and public officials.

Thanks to Law 76/2016 same-sex couples are legally recognised and can contract a civil union, which remains a separate institution from civil marriage though and is open only to same-sex couple. Moreover, adoption and stepchild adoption are still forbidden for same-sex couples and children already living with same-sex parents remain with no protection or rights towards one side of their families. Therefore Law 76/2016 sanctions the legal inferiority of same-sex couples and their children.

Gender reassignment is legally granted, medical procedures are available free of charge and changes in documents are guaranteed. In 2015 the Constitutional Court ruled that sterilisation must no longer be considered a necessary pre-requisite for gender legal recognition. Nevertheless, lack of specific regulation in procedures causes uncertainty and differentiation within the national territory; furthermore, the healthcare system does not provide free hormone therapy for secondary sexual characteristics in all Regions.

In 2016 the UN Committee on the Rights of Persons with Disabilities (CRPD) reprimanded Italy for Intersex Genital Mutilation practices, denouncing them as a breach of Art. 17 CRPD “Protecting the integrity of the person”. To date, Italy hasn’t taken any measure on the matter. Moreover, there is no specific legislation to regulate the modification of personal data for intersex/dsd individuals whose gender identity may not correspond to their medically assigned sex.

Italian institutions have been issuing some regulations in the past decade in order to act against violence, bullying and discrimination in schools but they do not explicitly address homophobia and transphobia. Few measures have been undertaken against homophobia in school but none of them is structural and transphobia is constantly neglected.

Overall, looking at health policies, the health care system fails to consider the special needs of LGBTI persons. Training of health personnel and social workers does not include LGBTI issues in a structural way with a negative impact on the delivered services and on the overall environment. The differences in sexual development (dsd/intersex) are still considered health issues, instead of possible natural variations in human sexual development.

Interpretation of the Italian law is that persecution on the ground of sexual orientation and gender identity are grounds for obtaining refugee status or humanitarian protection, while differences in sexual development (dsd/intersex) are still neglected. Moreover no policies or other positive measures have been adopted to tackle specific need of LGBTI asylum seekers.

Non-discrimination, equality between men and women, rights of minorities and prohibition of advocacy of national, racial or religious hatred (arts. 2, 3, 20, 23, 25, 26 and 27)

Hate crimes, hate speech and discrimination on grounds of sexual orientation and gender identity

The cases of homo-transphobia surveyed in the annual report that Arcigay will publish on the International Day against homophobia, transphobia and biphobia, on the 17th of May 2017, are 104. The report is based on the monitoring of major news outlets (almost all national newspapers and some local ones as well) and therefore reports only events covered by the media. To date, the report offers the most accurate picture of homo-transphobia in Italy: not because it is particularly accurate, but for the absence of a hate speech and hate crime monitoring mechanism in our country. The only monitoring institution is OSCAD whose action is hindered by the paradox of trying to monitor police reports of cases that our legislation does not single out. The absence of an effective monitoring mechanism on homo-transphobia in Italy is not a marginal gap: a phenomenon not measured by institutions is a phenomenon that does not exist. Perhaps this is the reason why Italy has not approved a law against homo-transphobia yet.

The fact that the Arcigay report is only based on newspapers implies that the number of cases included only represents the tip of the iceberg: in newspapers, we only find reported incidents in which the homo-transphobic motive is clear and that have passed the filter of newsworthiness. The most recurring case is that of a group attacking a homosexual or transsexual individual, or a same-sex couple. Transgender people are the main target of brutal violence, to the point that, according to Transgender Europe, in 2016 Italy was the European country with the highest number of trans victims, after Turkey. Moreover, transgender people face harsh discrimination in terms of income levels and access to the job market. According to a recent research¹, 33% of trans people interviewed are unemployed, 37.5% live with a low income and 50% stated that they struggle to find the money to get to the end of the month. The comparison with the rest of LGB people interviewed is staggering: 10% (vs il 33%), are unemployed, 17,5% (vs il 37,5%) live with a low income and 35,8% (vs il 50%) stated that they struggle to find the money to get to the end of the month.

The radicalisation of the debate around the civil union bill which was passed in May 2016, brought about a wave of hostility against LGBTI people as if it was the price to pay for the recognition of a right.

¹ *Italian Rainbow Families' Census*, by LGBTI Resource Centre, Famiglie Arcobaleno and Rete Genitori Rainbow, sponsored by ILGA Europe. An online survey - elaborated by doctors Corbisiero and Monaco, University of Naples - raised information from 1392 same-sex families. Among these, 25 individuals out of 1741 identified as transgender. The results of the research will be published by march 2017.

LGBTI organisations offices have recently become a very significant target of explicit hostility and intimidation resulting in several cases of vandalism, damage and even attacks on volunteers.

Institutionalised homo-transphobia is another problem: LGBTI people are often the target of hate speech produced by representatives of the institutions and MPs that symbolically legitimise hateful practices across the country. Not only that, hate speech has become a public and political accreditation strategy: some politicians use hate speech to gain visibility on the media and, therefore, consequently, broad political support.

Of the 104 cases reported by Arcigay, there are even two murders and two suicides to prove that homophobia and transphobia still kill people in Italy. LGBTI people are privileged targets of robberies, beatings and rapes. When closeted, LGB people become targets of blackmailing and extortion.

Question 1. Please indicate what measures the State party plans to take to tackle the wave of hostility against LGBTI people resulting from the radicalisation of the debate around the civil union bill which was passed in May 2016.

Question 2. Please clarify what measures the State party intends to take to grant effective monitoring mechanisms on hate speech and hate crimes based on sexual orientation, gender identity and expression.

Question 3. Please indicate what measures the State party plans to take to deal with the harsh inequality in terms of income levels and access to the job market trans people face.

Recommendation 1. Providing all legal professionals (police, prosecution and judicial services) with systematic training on hate crimes targeting LGBTI people, and organising liaison with LGBTI NGOs.

Recommendation 2. Establishment, and regular financing, of an integrated and independent equality body monitoring the application of laws and pursuing a multi-ground equality agenda, also addressing discrimination on grounds of sexual orientation, gender identity and expression.

Recommendation 3. Adoption of a comprehensive strategy supported by policy documents tackling discrimination against LGBTI people.

Recommendation 4. Completing the legislative and institutional frame to comprehensively address discrimination on grounds of sexual orientation, but also gender identity and expression and to cover areas other than employment.

Recommendation 5. Putting in place provisions to tackle the problems related to family refusal of LGBT youths and consequent issues such as homelessness.

Same-sex parent families

A much-awaited civil unions bill for same-sex couples was finally adopted in 2016², as a result of the ground-breaking judgment in the case of *Oliari and Others v. Italy*³, in which the European Court of Human Rights (ECtHR) held that Italy violated the right to privacy and family life in failing to provide sufficient and reliable legal protection for same-sex relationships.

Nonetheless same-sex couples and same-sex families received only partial recognition:

- Law 76/2016 create a separate institution from civil marriage which is open only to same-sex couple, perpetuating the idea that same-sex couples are different from opposite sex ones. Not only that, the provision that allows a married couple to automatically turn their marriage in a civil union in case one of the partners' changes gender, but that forces the same-sex couple in the same situation to end their civil union and then start the process to contract civil marriage, proves that the legislator intended to put civil unions on a lower level than marriage, perpetuating the idea that same-sex couples are not only different, but even inferior to opposite-sex couples.
- Art. 5, which opened stepchild adoption to same-sex couples was not approved, leaving same-sex couples unable to legally exercise any parental role. This perpetuates the idea that homosexuality and parenting are an oxymoron.

But the reality is different. A recent research⁴ shows that 24% of families interviewed have children. Rainbow families with children have - on average - 1.5 children and 4 out of 10 families have more than 1 child. Same-sex relationships last - on average - more than 9 years and 30% of the couples interviewed sought legal recognition overseas before civil unions were approved in Italy. 4.7% of the interviewed families are composed of a single homosexual parent. In these cases the average number of children is 1.5 too and two fifths of them have more than one child. Even in these cases it is still illegal in Italy to share parenthood with the new potential same-sex partner of the biological parent, even if the partner actively contributes to the upbringing of the child.

In addition to its dangerous media and cultural impact, Law 76/2016 has a serious impact on the daily lives of those children who are now living in same-sex families. In 2017 children from same-sex families are still discriminated and their right to a material and emotional community is violated with impunity. They keep being considered by the State as single-parented children. Their relations with their parental network of grandparents, cousins or uncles are not recognised. Two siblings are not recognised as such and one of their two parents are invisible for the school and the healthcare systems.

² Law 76/2016

³ *Oliari and Others v. Italy* ((2015) ECHR).

⁴ *Italian Rainbow Families' Census*, by LGBTI Resource Centre, Famiglie Arcobaleno and Rete Genitori Rainbow, sponsored by ILGA Europe. An online survey - elaborated by doctors Corbisiero and Monaco, University of Naples - raised information from 1392 same-sex families (a union including at least one LGBTI person or a single LGBTI parent). The results of the research will be published by march 2017.

The absence of a law «equal for all» creates uncertainty and different access to rights and protections for children from same-sex families and families: some have their adoption rights recognised by some Courts while others haven't.

It is worth noting that in June 2016, the Supreme Court of Cassation⁵ upheld a lower court's decision to approve a request for a lesbian to adopt her partner's daughter in light of the best interest of the child, setting an important precedent.

According to Law 40/2004, lesbian couples and singles are still denied access to IVF. The law has been challenged multiple times in Court and modified. But these discriminatory provisions still stand.

Question 1. Please indicate what steps will be taken to grant children, already leaving in same-sex families, the right of being fully adopted.

Question 2. Please indicate whether steps are being taken to grant both same-sex couples and singles access to IVF.

Recommendation 1. Enacting general legislation to open civil marriage to same-sex couples and to remove marriage discrimination within the adoption law.

Recommendation 2. Enacting general legislation to same-sex couples to recognise their children at birth, as any opposite-sex couple who accesses heterologous IVF can do.

Education

Few measures have been undertaken against homophobia at school but none of them is structural and all neglected transphobia, despite the existence of regulations combating bullying and discrimination in general, without explicitly addressing homophobia or transphobia. In-service trainings are not systematic and in many cases are organised thanks to the initiative of LGBTI NGOs, sometimes in partnership with local and regional institutions⁶. Data shows that in Italy 24% of LGB persons have been or are discriminated at school or university⁷ because of their sexual orientation. There are not equivalent data referring to experiences of trans persons in schools and universities.

⁵ Cassazione Civile, sez. I, sentenza 22/06/2016 n° 12962.

⁶ C. Ippoliti, A. Schuster (eds.), *DisOrientamenti. Discriminazione ed esclusione sociale delle persone LGBT in Italia* (Armando Editore, Roma, 2011), pp. 155-164.

⁷ ISTAT (Istituto Nazionale di Statistica), *La popolazione omosessuale nella società italiana – Anno 2011* (17 May 2012), p. 3. The research held by the Italian National Institute of Statistics is based on a representative sample of the Italian population (7725 individuals) and G. Prati, M. Coppola, F. Saccà, *Report finale della ricerca nazionale sul bullismo omofobico nelle scuole italiane* (Arcigay, Bologna, 2010).

School curricula do not include information or education on the natural variety of sexual orientation (including asexuality), gender variations (gender identity and expression) or intersexuality and there are cases where delivery of such information has been explicitly forbidden by school managers.

Recommendation 1. Develop a comprehensive and clear strategy to inform on LGBTI issues at school and address homophobic and transphobic violence, bullying and discrimination in schools.

Right to life, violence against women, including domestic violence, and prohibition of torture and cruel, inhuman or degrading treatment (arts. 2, 3, 6, 7 and 26)

Intersex people

In 2015 the Concluding Observations of the UN Committee against Torture (CAT) for Switzerland demanded "legislative, administrative and other necessary measures" to eliminate the practice of Intersex Genital Mutilation (IGM). A similar reprimand came for Austria, Denmark, Hong Kong and China in the CAT 56th Session (2015).

In 2016 the UN Committee on the Rights of Persons with Disabilities (CRPD) reprimanded Italy for IGM practices, denouncing them as a breach of Art. 17 CRPD "Protecting the integrity of the person". Italy openly admitted to "operations" on intersex children most often "conducted [...] under the age of 10", though firmly denied "unnecessary mutilations" and "loss of procreation capacity".

In 2013, there was a veritable 'boom' of cosmetic surgeries on 'children of "uncertain" sex', with '50 % growth rate', and 'during the last five years, over 350 sex change surgeries on children under 6 years' were carried out at the Hospital San Camillo-Forlanini in Rome alone, but due to budgeting problems no qualified psychosocial support was offered, according to director general Aldo Morrone⁸.

In 2016 the press reported that a 2-year-old baby underwent cosmetic surgery at Policlinico universitario Paolo Giaccone di Palermo⁹.

To date, Italy hasn't taken any measure on the matter. Moreover, there is no specific legislation to regulate the modification of personal data for intersex/dsd (disorders of sex

⁸ 'Boom di bimbi con sesso "incerto", a Roma un aumento del 50 per cento', Leggo 20.06.2013, http://www.leggo.it/NEWS/ITALIA/boom_di_bimbi_con_sesso_quot_incerto_quot_a_roma_aumentano_del_50_per_cento/notizie/294638.shtml

⁹ Atto n. 4-06490, <http://www.senato.it/japp/bgt/showdoc/showText?tipodoc=Sindisp&leg=17&id=991855>

development) individuals whose gender identity may not correspond to their medically assigned sex.

Question 1. Please provide information on how the State party intends to comply with the CRPD recommendation to “guarantee bodily integrity, autonomy and self-determination to the children concerned”.

Question 2. Please explain whether the concerns about the persisting practice of irreversible surgery on intersex children, which the Committee on the Rights of the Child demands to stop, have been addressed.

Question 3. Please provide information on the number of children who have had surgery for intersex variation without their consent, as well as other medical treatment without free and informed consent.

Question 4. Please clarify whether the State party funds DSD (disorders of sex development) research projects led by paediatric endocrinologists advocating for medically not necessary genital surgeries on children.

Question 5. Please clarify the sort of information do paediatric endocrinologist in Italy offer to parents of intersex children.

Question 6. Please clarify whether the State party consults NGOs led by intersex people.

Recommendation 1. Establishment of independent data collection and monitoring based on an analysis of the incidence of the single intersex/dsd variations as recommended by the UN Committee on the Rights of Persons with Disabilities (CRPD).

Recommendation 2. Providing families of intersex children with adequate counselling, and support when requested as recommended by the UN Committee on the Rights of Persons with Disabilities (CRPD).

Treatment of aliens and protection of children (arts. 2, 7, 9, 10, 13, 24 and 26)

Asylum seekers

Until now Italy have not had yet a comprehensive national law concerning the right to asylum: Legislative Decree no. 251 of 2007 at art. 8 acknowledges that persecution for belonging to a particular social group characterised by the common feature of sexual orientation is to be considered as among the grounds for protection.

With regard to non EU citizens, Legislative Decree no. 286 of 1998 and subsequent amendments (‘Immigration Code’) at art. 19, para. 1, prohibits a foreigner from being sent

to a state in which he may be «persecuted for reasons of race, sex, language, citizenship, religion, political opinions, or personal or social conditions, or if he risks being sent to a state in which he will not be protected from persecution»: sexual orientation and gender identity are not expressly mentioned but this legislation has been usually interpreted as covering these grounds of persecution. It is important to notice that all these legislative measures as well as judicial decisions only address the problem of sexual orientation. In 2011, however, the Tribunal of Rome overturned an expulsion order for an Egyptian transsexual citizen and granted him a stay permit for humanitarian reasons because of the risk of persecution in his country of origin.

Court of Cassation', no. 1598 of 20 September 2012 rules that the existence of penal laws criminalising homosexual intercourses is «per se a general condition of privation of the fundamental right of freely living one sexual and affective life» because it forces the homosexual citizen to choose between violating a penal law or disguising his/her sexual orientation. According to the Court this is serious meddling in private life and a serious violation of personal freedom. On this respect the Italian jurisprudence is therefore more advanced than the one of the European Court of Justice (CJE/13/145 07/11/2013)¹⁰.

Italy failed to meet the deadline for transposition of Directive 2011/95/EU¹¹ which was December 2013.

Recommendation 1. Adoption of a comprehensive national law transposing Directives 2013/32/EU¹² and 2011/95/EU¹³ and providing training in specific problems of LGBT asylum seekers or refugees for staff responsible for processing requests.

Recommendation 3. Modifying the provision according to which it is forbidden to legally apply for a job before six months from the filing of the asylum request. This period of time should be reduced, especially in consideration of the fact that LGBTI asylum seekers cannot count on the solidarity of their communities of origin who share homophobic and transphobic stereotypes with their countries of origin.

¹⁰ Court of Justice - CJE/13/145 07/11/2013, <http://curia.europa.eu/juris/documents.jsf?num=C-199/12>.

¹¹ This is a Directive of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

¹² This is a directive of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

¹³ This is a directive of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

Right to liberty and security of person, treatment of persons deprived of their liberty and right to a fair trial (arts. 9, 10 and 14)

The UN treaty bodies have already addressed problems faced by LGBTI detainees, including discrimination and violence from both prison personnel and other prisoners.¹⁴

Given the very serious violation of inmates' human rights proved by repeated rulings of the European Court of Human Rights and many NGOs' reports according to which the overcrowding rate in Italian prisons is 134.4 percent, meaning that there are more than 134 prisoners per 100 beds, against the European average of 99.6 percent and inmate suicides in Italy are 20 times that of the general population, caused mostly by "environmental factors" and "illegal" detention conditions¹⁵, looking at the condition of LGBTI prisoners, the 'extraordinary Senate Commission on human rights protection' clearly tackles the lack of competence of the prisons staff on issues related to sexual orientation and gender identity and the severe form of discrimination that such prisoners suffer¹⁶.

In prison, it is often not possible to continue the hormonal therapy or to use cosmetics for trans inmates.

Recommendation 1. Providing prison staff with training programmes which include LGBTI issues in a structural way.

Recommendation 2. Measures of protection and security for inmates who may be in danger because of their sexual orientation, gender identity and expression.

Recommendation 3. Full access to hormones therapies for trans inmates.

¹⁴ For example, reviewing Azerbaijan, the Human Rights Committee was concerned about impunity for reported acts of "discrimination and violence against persons based on their sexual orientation and gender identity, including [...] by [...] prison officials" (CCPR/C/AZE/CO/4, para 8).

In its review of Armenia, the Committee against Torture expressed its concerns "about persistent discrimination, hate speech, violence and humiliating and degrading treatment of [...] homosexual prisoners by other prisoners and about their degrading and involuntary segregation from other inmates that may aggravate their detention conditions. The Committee regrets that no relevant measures appear to have been taken to prevent such incidents, to ensure their protection and that such acts occur with impunity." Consequently, the CAT recommended that the State Party "[p]ut an end to the discrimination and violence against homosexual prisoners [...], abolish the practice of their degrading and involuntary segregation and all other degrading and humiliating practices that still persist in the vast majority of prisons; investigate effectively all such allegations, and bring perpetrators to justice" (CAT/C/ARM/CO/4, paras 31-32).

¹⁵ Antigone (2013). X RAPPORTO NAZIONALE SULLE CONDIZIONI DI DETENZIONE, L'EUROPA CI GUARDA, EDIZIONI GRUPPO ABELE 2013, http://www.osservatorioantigone.it/upload/images/6818sintesiXrapporto_LEUROPACIGUARDA_versione5.pdf

¹⁶ Centro Risorse LGBTII (2012). REPORT ON IMPLEMENTATION OF THE RECOMMENDATION CM/ REC(2010)5, cit.

Recommendation 4. Full and free access to regular and qualified psychological assistance. Particular attention should be paid in order that LGBTI inmates are not judged by volunteers who provide psychological assistance for their sexual orientation, gender identity or expression or, worse, be exposed to so called «reparative therapies».

Recommendation 5. A law which imposes the creation, in each Italian prison, of one or more spaces where detainees can spend at least 4 hours per month with their partners without any visual control by prison staff.