

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

Submission to the United Nations Human Rights Council for its Universal Periodic Review of Italy.

Stakeholders:

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## Assessment of recommendations from preceding reviews

### Cycle 1

#### Sweden

##### **Take further steps to ensure the full respect of the fundamental rights of migrants, asylum-seekers and refugees**

Not only this hasn't happened, but there are critical issues in recognizing refugee status to people who declare themselves LGBTI which are exacerbated by the new rules introduced by the Security Decree of 5 October 2018; the decree, in effect, eliminates residence permits for humanitarian reasons, effectively excluding a large slice of applicants from the possibility of having a regular stay recognized in Italy. Moreover, the Italian reception system does not foresee protected environments and paths for LGBTI migrants, not recognizing them as vulnerable categories.

#### Norway

##### **Undertake further campaigns against homophobia**

Since 2009 there hasn't been a national campaign against homophobia, let alone transphobia.

##### **Ensure adequate protection of LGBT people, not only through police forces on the streets, but legally via anti-discrimination law**

No anti-discrimination law tackling discrimination based on sexual orientation, gender identity and expression has been passed so far, with the exception of:

- Legislative Decree no. 44 of 2010, implementing Directive 2007/65/EC on television broadcasting activities, explicitly states that audiovisual commercial communications cannot include or promote any discrimination based on sexual orientation.
- Directive 2000/79/EC establishing a general framework for equal treatment in employment and occupation has been implemented in Italy by Legislative Decree no. 216/2003 and discrimination based on sexual orientation has been explicitly banned for the first time.
- Art. 1468 of Legislative Decree no. 66 of 2010 containing the 'Military Code' prohibits all discrimination against LGB military personnel in access,

recruitment, duty assignments and transfers and no campaigns have been launched to prevent discrimination in housing, especially for trans people whose situation is particularly severe.

**Establish an effective and inclusive process to follow-up on universal periodic review recommendations, bearing in mind that the active participation of civil society is essential to a meaningful review process**

None of the above mentioned stakeholders has been consulted so far on universal periodic review recommendations and their implementations.

**United Kingdom**

**Consult with and involve civil society in the follow-up to the universal periodic review, including in the implementation of recommendations**

None of the above mentioned stakeholders has been consulted so far on universal periodic review recommendations and their implementations.

**Netherlands**

**Strengthen measures to prohibit discrimination based on sexual orientation and gender identity and combat hate crimes on these grounds**

No provision to combat hate crimes on the grounds of sexual orientation and gender identity is in place in Italy.

**Spain**

**Give special attention to cases of possible discrimination for reason of sexual identity or orientation, and ensure that cases of violence against such persons are appropriately investigated and prosecuted**

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, but it wasn't renewed after 2015.

**Cycle 2**

**India**

**Fully involve civil society and other relevant stakeholders in the expeditious establishment of a human rights institution based on the Paris Principles and ensure its functional and financial independence**

In 2018 some LGBTI organisations raised this issue in a consultation with the government.

**Ireland**

**Establish a national human rights institution, in accordance with the Paris Principles, with a broad human rights mandate, and following a participatory process including civil society**

An integrated and independent equality body pursuing a multi-ground equality agenda, also addressing discrimination on grounds of sexual orientation, gender identity and expression hasn't been established yet.

**United Kingdom**

**Ensure the equal rights of lesbian, gay, bisexual and transgender -LGBT- people by legally recognizing same-sex marriage and civil partnerships**

In May 2016 the Law on civil partnership and cohabitation (Law 76/2016) was approved. However, same-sex marriage hasn't been recognised yet and the children of same-sex parents are still not fully recognised and protected.

**Netherlands**

**Take concrete steps to adopt the legislation necessary to follow up to Prime Minister Renzi's announcement to work on the recognition of same-sex relationships in Italy, as part of Italy's efforts to further strengthen measures to combat discrimination and violence based on sexual orientation and gender identity**

In May 2016 the Law on civil partnership and cohabitation (Law 76/2016) was approved.

**Canada**

**Include sexual orientation as grounds for protection against hate speech**

Not only this hasn't happened, but in recent years – and especially in the last 12 months – hate speech against LGBTI persons has directly come from public officials and politicians. Moreover, when incidents occur, there is usually a lack of adequate reaction of leading public officials.

**Accelerate and strengthen legislative and educational actions to combat discrimination in all its forms, particularly discrimination on the basis of sex and sexual orientation**

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. The national research entitled "Be Proud! Speak Out!"<sup>1</sup> shows a hostile environment for LGBTI youth in schools: among derogatory terms, offenses, verbal, and physical harassment, it does not seem to be a priority of Italian

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<sup>1</sup> Centro Risorse LGBTI, *Be Proud! Speak Out!*, May 2018, <http://www.risorselgbti.eu/wp-content/uploads/2019/03/REPORT-CENTRO-GLSEN-ENG.pdf>

schools to welcome and to respect diversity. There are useful tools and good practices which promote inclusion, but these are not a priority.

## **Spain**

### **Allocate the necessary resources to the fight against discrimination on the basis of gender and sexual orientation, so as to accelerate progress on this matter**

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, but it wasn't renewed after 2015.

## **Thailand**

### **Further improve the living conditions in State penitentiaries and juvenile detention centres**

Looking at the condition of LGBTI people, especially of trans detainees, all 58 transsexual detainees hosted in 10 prisons around the country are assigned to men's prisons. Trans inmates complain about many difficulties regarding the access to their personalized hormonal therapy, the lack of cosmetics and garments suitable to their gender orientation, inappropriate prison policies regarding their "yard time" – in terms of location and time – due to their confinement in the trans section of the building.

## **List of questions and recommendations**

### **Right to life, security, equality and protection from violence and discrimination**

**Recommendation 1.** Providing all legal professionals (police, prosecution and judicial services) with systematic training on hate crimes targeting LGBTI people, and organizing 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 (i.e. defense).

**Recommendation 5.** Discrimination on grounds of sexual orientation and gender identity should be prohibited in the access to goods and service (including housing).

**Recommendation 6.** Putting in place provisions to tackle the problems related to family refusal of LGBTI youths and consequent issues such as homelessness.

### **Freedoms of expression and peaceful assembly**

**Recommendation 1.** The charges related to security needs should be charged to the Public Administration so as to guarantee freedoms of expression and peaceful assembly to all.

### **Right to marry and create a family**

**Recommendation 1.** Extend access to civil marriage to same-sex couples so as to guarantee full equality for LGBTI Families.

**Recommendation 2.** Extend access to automatic co-parent recognition to same-sex parents.

**Recommendation 3.** Enact general legislation on the recognition of both same-sex parents involved in the growth of a child and the protection of rights and duties of same-sex partners.

**Recommendation 4.** Extend access to joint adoption to singles and same-sex couples.

**Recommendation 5.** Extend access to medically assisted insemination to singles and same-sex couples.

**Recommendation 6.** Enact general legislation on the recognition of trans people's parenthood.

### **Education and youth**

**Recommendation 1.** Develop a comprehensive and clear strategy that includes: training courses for future teachers, educators, health workers and public workers.

**Recommendation 2.** Provide educational, emotional, and sexual education courses for all students of all levels of education and people within social paths (community, family homes, etc.).

**Recommendation 3.** Public funding for shelters for LGBTI adolescents forced out of their homes.

**Recommendation 4.** Enact general regulation and guidelines against bullying which describes and explains discrimination based on sexual orientation, gender identity and expression.

**Recommendation 5.** The introduction of aliases in documents for school, university and workplace.

### **Health**

**Recommendation 1.** Providing health personnel and social workers with systematic training on LGBTI issues in order to avoid any type of discrimination on the ground of sexual orientation and gender identity in the health sector.

**Recommendation 2.** Guaranteeing that sexual health is addressed and barriers are removed all over the country through coherent sexual health services and tailored preventions strategies.

**Recommendation 3.** Guaranteeing that transgender people have access to gender reassignment services all over the country and at the same conditions, in order to reduce territorial and economic inequalities.

**Recommendation 4.** Outlawing reparative therapies for minors.

### **Human Rights of Transgender people**

**Recommendation 1.** Revision of law 164/1982 regarding the transition path for transgender people which foresees a red tape reduction, exemption of payments on drugs and abolition of compulsory surgical reassignment.

**Recommendation 2.** Issuing coherent ID through a fast administrative procedure, anytime the trans person requests it.

### **Human rights of intersex people**

**Question 1.** 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 2.** Please clarify whether the State party funds DSD research projects led by paediatric endocrinologists advocating for medically not necessary genital surgeries on children.

**Question 3.** Please clarify the sort of information paediatric endocrinologists in Italy offer to parents of intersex children.

**Question 4.** Please clarify whether the State party consults NGOs led by intersex people.

**Recommendation 1.** Establishment of data monitoring based on an analysis of the incidence of the single intersex variations.

**Recommendation 2.** Ban unnecessary, non-consensual normalizing surgeries on intersex individuals.

**Recommendation 3.** Allow intersex individual whose gender identity does not correspond to their assigned sex to modify their gender marker and personal data.

**Recommendation 4.** Add the field “sex characteristics” as a ground of protection on the current anti-discrimination law.

### **Sport**

**Recommendation 1.** Adoption of measures to prevent the risk of exclusion from participation in sports on grounds of sexual orientation, gender identity and expression.

**Recommendation 2.** Inclusion in CONI’s ‘Sports Code of Conduct’ of sexual orientation gender identity and expression among the prohibited grounds of discrimination.

**Recommendation 3.** Adoption of effective measures to prevent and counteract the use of discriminatory insults during and in connection with sports events.

### **Right to seek asylum**

**Question 1.** Does the Italian government know the number of LGBTI applicants for asylum and the rate of acceptance of such applications.

**Recommendation 1.** The introduction of the condition of vulnerability for LGBTI asylum seeker as it is foreseen for other categories.

**Recommendation 2.** Adequate training of committee members with respect to the problems resulting from sexual orientation and gender identity and the conditions of the applicant's country of origin.

**Recommendation 3.** The committees begin to collect and release data on the reasons why people apply for asylum, as in other countries, so as to make possible to collect data with respect to the number of applications for international protection by persons declaring themselves LGBTI and data on countries of origin.

**Recommendation 4.** LGBTI organisations working with LGBTI migrants who applies for asylum must be admitted to the committees.

### **Human rights of LGBTI 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. One welcomed measure is the establishment of separated and dedicated cells where LGBTI people can be incarcerated if desired.

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

**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 government's decree 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.

**Recommendation 6.** A government's decree which allows free access to phone and web calls in order to assure emotional stability.

## **Narrative**



The respect of the human rights of LGBTI people in Italy is undermined by often incomplete legislation. During the past decade, under the European Union direction, legislation prohibiting 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, but it wasn't renewed after 2015.

UNAR (the national Office for the promotion of equal treatment and the removal of discrimination on grounds of racial or ethnic origin), which operates within the Department for Equal Opportunity, extended its mission to the removal of discrimination on grounds of sexual orientation and gender identity, since 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 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.

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 – and especially in the last 12 months – hate speech against LGBTI persons has directly come from public officials and politicians. Moreover, when incidents occur, there is usually a lack of adequate reaction of leading public officials.

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. Moreover, since 2017, the Ministry of the Interior has issued new and always more stringent constraints aimed at regulating "for security reasons" public events.

In May 2016 the Law on civil partnership and cohabitation (Law 76/2016) was approved. However, the children of same-sex parents are still not fully recognised and protected.

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. The national research entitled "Be Proud! Speak Out!"<sup>2</sup> shows a hostile environment for LGBTI youth in schools: among derogatory terms, offenses, verbal, and physical harassment, it does not seem to be a priority of Italian schools to welcome and to respect diversity. There are useful tools and good practices which promote inclusion, but these are not a priority.

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.

Transgender people have access to gender reassignment services; however, these are not equally distributed throughout Italy. With the Constitutional Court rulings in 2015 and 2017, gender reassignment is finally placed outside of a "medicalizing" discourse and firmly anchored to the protection of the identity of the person. The two court decisions establish that surgery is not a necessary condition for gender reassignment. However, the Court rules out the possibility that 'the only element of voluntarism may be of priority or exclusive importance in determining the transition', specifying that the judge has the task "of ascertaining the nature and extent of the modifications made to the sexual characteristics, which contribute to determining personal and gender identity".

To date, there exists 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. 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 is a ground for obtaining refugee status or humanitarian protection, while gender

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<sup>2</sup> Centro Risorse LGBTI, *Be Proud! Speak Out!*, May 2018, <http://www.risorselgbti.eu/wp-content/uploads/2019/03/REPORT-CENTRO-GLSEN-ENG.pdf>

identity is still neglected. However, there are critical issues in recognizing refugee status to people who declare themselves LGBTI which are exacerbated by the new rules introduced by the Security Decree of 5 October 2018; the decree, in effect, eliminates residence permits for humanitarian reasons, effectively excluding a large slice of applicants from the possibility of having a regular stay recognized in Italy. Moreover, the Italian reception system does not foresee protected environments and paths for LGBTI migrants, not recognizing them as vulnerable categories.

The first European survey on discrimination based on sexual orientation and gender identity in sport shows how the problem of homo-transphobia in sport is widespread in Italy and a little over the EU average.

Looking at the condition of LGBTI people, especially of trans detainees, all 58 transsexual detainees hosted in 10 prisons around the country are assigned to men's prisons. Trans inmates complain about many difficulties regarding the access to their personalized hormonal therapy, the lack of cosmetics and garments suitable to their gender orientation, inappropriate prison policies regarding their "yard time" – in terms of location and time – due to their confinement in the trans section of the building.

## Annexes

### **Right to life, security, equality and protection from violence and discrimination**

Italy lacks proper legal provisions to combat hate crimes and incidents against LGBTI persons. The Italian law allows hate crimes based on race, ethnicity, nationality, religion and since 2016 also “revisionism”, to be aggravated, but the Parliament failed several times to take action to protect LGBTI people from discriminatory crimes and hate speech.

The lack of recognition of the issues related to hate crimes and incidents motivated by sexual orientation and gender identity is particularly severe if compared to the impact that such crimes have on LGBTI people. According to a research carried out by the NGO Arcigay roughly 20% of gay men and lesbians interviewed have been insulted or harassed because of their sexual orientation. The percentage reaches 30% amongst gay men under 25<sup>3</sup>. According to UNAR – the anti discrimination national agency – almost 10% of the cases of discrimination openly denounced concerns LGBTI people. The percentage seems to be underestimated chiefly by the fact that in most cases the victims do not feel safe to denounce the nature of the aggression or the discrimination.

A study reports the overall attitudes towards trans people: 24.8% of Italians would refuse to condemn discriminating behavior against a trans person; 30.5% do not want a trans person as a neighbor<sup>4</sup>.

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<sup>3</sup> R. Lelleri, Survey nazionale su stato di salute, comportamenti protettivi e percezione del rischio di HIV nella popolazione omo-bisessuale (Arcigay, 2006), pp. 53, 76. This survey covered 4690 questionnaires from gay or bisexual men and 2084 questionnaires from lesbians or bisexual women.

<sup>4</sup> 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).

The discrimination based on sexual orientation and gender identity is still an emergency in Italy, notwithstanding the recent introduction of the civil union for same-sex couples.

The new law while enhancing the visibility and empowerment of LGBTI people, has triggered a social and political radicalization within the country that has unleashed discrimination and violence against LGBTI people. The current political environment has been conducive to an increase in violence and homophobic discrimination, fueled also by the words of many politicians.

In the last report on Homophobia that Arcigay has released on May the 17th 2018, 119 stories of homo-transphobic violence, among which 4 murders, were reported.

Along the most vicious and violent cases, homophobia and transphobia seem to have also a direct impact on the daily life of many LGBTI people, in relationship with their parents, friends, neighbours, in their working places and even in restaurants and hotels.

It is possible to single out 5 ways in which homophobic actions can take place:

#### 1 - Homophobic violence against LGBTI associations and activists

We have witnessed an increasing wave of homophobic violence against associations and activists, spanning from physical aggression of the activists, to acts of vandalism against the establishments of the associations. Several activists were also target of cyber bullying and death threats.

#### 2 - Discrimination in the social environment

The increase in visibility and empowerment due to the new law introducing civil unions has also increased the number of overt acts of hostility against openly gay people in their daily life: hotels and restaurants refuse hospitality to same-sex couples, neighbours or landlords make the life of same-sex couples uneasy: not a completely new trend, but it seems that recently it has unranked to a higher level.

#### 3 - Homotransphobia and neo-Nazi movements

Many acts of homo-transphobic violence were perpetrated by neo-Nazi movements, that, although formally illegal according to our constitution, have found new ways to run in public elections. Some of their members have also been appointed in political positions. These movements that target LGBTI people and migrants, have strong liaisons with right wing political parties.

#### 4 - Homo-transphobia and Media

The media in many cases have replaced the court-houses in addressing some cases of homo-transphobic discrimination. And for the sake of the entertainment, the handling of the cases and the concept itself of homo-transphobia, has become a matter of public opinion, with an unfair shift of the burden of evidence. In many cases, the victim gets targeted by violence twice: the first act of violence that has triggered the case and the criticism of the public opinion. This situation seems to mirror what happens to women victims of gender violence.

#### 5 - Anti-gender and homo-transphobia

Italian LGBTI associations have been active in contrasting homo-transphobia in schools through a program of workshops and meetings. These activities have been perceived as a threat by right wing and catholic organizations. In many cases LGBTI groups have been publicly smeared and accused of brainwashing minors with the so called “gender theories”.

Only some incomplete legal provisions and institutional mechanisms allow the Italian authorities to tackle sexual orientation and gender identity related discrimination and violence. These include:

- Legislative Decree no. 44 of 2010, implementing Directive 2007/65/EC on television broadcasting activities, explicitly states that audiovisual commercial communications cannot include or promote any discrimination based on sexual orientation.
- The ‘Observatory for Security Against Acts of Discrimination’ (Osservatorio per la sicurezza contro gli atti discriminatori - OSCAD) which includes representatives from ‘Polizia di Stato’ and ‘Arma dei Carabinieri’, both of which serve as judicial, public order and security police forces on a national scale. OSCAD, together with UNAR, collects data on discrimination cases: between September 2010 and February 2013, 329 cases were reported, 138 of which were classified as crimes. The reports highlight a prevalence of racial discrimination cases (56%), followed by cases of discrimination on the ground of sexual orientation or gender identity (29%). These data provide more evidence of the importance of the problem.
- Directive 2000/79/EC establishing a general framework for equal treatment in employment and occupation has been implemented in Italy by Legislative Decree no. 216/2003 and discrimination based on sexual orientation has been explicitly banned for the first time. More recently, Law no. 183 of 2010 known as the “Collegato Lavoro” affected several aspects of employment law. Besides, Art. 1468 of Legislative Decree no. 66 of 2010 containing the ‘Military Code’ prohibits all discrimination against LGB military personnel in access, recruitment, duty assignments and transfers and no campaigns have been launched to prevent discrimination in housing, especially for trans people whose situation is particularly severe.

Italian authorities have not undertaken any legislative or policy measure either to guarantee the full enjoyment by LGBTI people of rights related to housing or to ensure non-discriminatory access to emergency accommodation for LGBT persons.

**Recommendation 1.** Providing all legal professionals (police, prosecution and judicial services) with systematic training on hate crimes targeting LGBTI people, and organizing 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 (i.e. defense).

**Recommendation 5.** Discrimination on grounds of sexual orientation and gender identity should be prohibited in the access to goods and service (including housing).

**Recommendation 6.** Putting in place provisions to tackle the problems related to family refusal of LGBTI youths and consequent issues such as homelessness.

### **Freedom of association**

Freedom of association is expressly provided for and regulated by art. 18 of the Italian Constitution. There is no form of formal or substantial discrimination against LGBT + organizations within this ambit.

With the Decree of the Undersecretary of State for Equal Opportunities, is recently been established the "Permanent consultation table for the promotion of the rights and protection of LGBT people", it is premature to make a judgment on the effects of the "consultation table" established by the Government.

The taxes for the voluntary associations have doubled, the recent reform of the "third sector" has introduced a new and more binding discipline for the associations, there

is no clear planning to support LGBTI associations through the financing of specific projects, these elements risk discouraging and hindering the freedom of association.

### **Freedoms of expression and peaceful assembly**

There are no legislative measures limiting the freedom of expression and the peaceful assembly of LGBTI people. However, since 2017, the Ministry of the Interior has issued new and always more stringent constraints aimed at regulating "for security reasons" public events. The constraints introduced risk discouraging the organization of great mass events like Pride parades!

Furthermore, the administrative sanction of the "Daspo Urbano" was introduced, that is the motivated order to move away from a certain place, for reasons of urban safety and decor, also by the local police.

A roadblock crime has been reintroduced.

**Recommendation 1.** The charges related to security needs should be charged to the Public Administration so as to guarantee freedoms of expression and peaceful assembly to all.

### **Right to marry and create a family**

In May 2016 the Law on civil partnership and cohabitation (Law 76/2016) was approved and, in October of the same year, the implementing decrees were also approved, making the law effective. Article 1 of Law May 20 n. 76 regarding civil partnership and cohabitation establishes it is limited to same-sex couples. This legislation provides for equality in matters of tax, social security and inheritance.

It is important to highlight that the Civil Unions Act does not erase discrimination: even if a few developments have been made, LGBTI Families are still discriminated. They are not considered as real families. Their union is not a marriage and the stigma on LGBTI families still remains and is even institutionalized with the Civil Union Law.

Moreover, the children of same-sex parents are still not fully recognised and protected.

The children of same-sex parents are denied the right to be maintained, cared for, educated, and instructed by the non-legal parent; to have guaranteed affective



continuity in the event of separation of the same-sex couple or the death of the legal parent; to acquire the kinship (grandparents, aunts and uncles, cousins, etc.) of the non-legal parent; to be the heir of the non-legal parent and the non-legal parent's relatives, except for as provided by will and only for the amount available but with different tax treatment than applied to legally recognized children.

In addition, the non-legal parent is not recognized as the child's parent in the performance of daily activities such as dropping off and picking up from school, accompanying the child to the doctor, etc.

Children of same-sex parents do not have birth certification reporting both parents. Documents give relevance only to the biological parent. When they are both registered (when birth happens in a country where allowed), there is no transcription in the Italian Law (with the exception of some judges who opted for a broad interpretation of the rule).

No law allows for second parent adoption, but there has been important judicial activity in this regard. A high profile case involving the adoption of the birth daughter of a lesbian partner was resolved in the couple's favour in late-2016<sup>5</sup>. The Court of Appeal of Naples ordered full recognition of second-parent adoption on 5 April 2016, and the Court of Appeal in Trento recognised the second father as a co-parent of twins through surrogacy<sup>6</sup>. In September 2018, the Bologna Court of Appeal also affirmed an American adoption order on the basis that it was in the best interests of the child to do so<sup>7</sup>.

**Recommendation 1.** Extend access to civil marriage to same-sex couples so as to guarantee full equality for LGBTI Families.

**Recommendation 2.** Extend access to automatic co-parent recognition to same-sex parents.

**Recommendation 3.** Enact general legislation on the recognition of both same-sex parents involved in the growth of a child and the protection of rights and duties of same-sex partners.

**Recommendation 4.** Extend access to joint adoption to singles and same-sex couples.

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<sup>5</sup> "Supreme Court: Full Recognition of Two Mothers | Italy", European Commission on Sexual Orientation Law (website), 30 June 2016.

<sup>6</sup> "In landmark ruling, Italy recognizes gay couple as dads to surrogate babies", thelocal.it, 28 February 2017.

<sup>7</sup> Elaine Allaby, "Italian appeals court upholds validity of US adoption by lesbian couple", The Local.it, 27 September 2018.

**Recommendation 5.** Extend access to medically assisted insemination to singles and same-sex couples.

**Recommendation 6.** Enact general legislation on the recognition of trans people's parenthood.

### Education and youth

The national research entitled "Be Proud! Speak Out!"<sup>8</sup> shows a hostile environment for LGBTI youth in schools: among derogatory terms, offenses, verbal, and physical harassment, it does not seem to be a priority of Italian schools to welcome and to respect diversity. There are useful tools and good practices which promote inclusion, but these are not a priority.

As far as the the socio-cultural context is concerned, there are very few national initiatives and funds and the national educational guidelines have little concerns about themes such as sexual orientation and gender identity. The little that can be highlighted concerns local initiatives, non-profit associations and private citizens that, in liaison with some schools, manage to provide courses or seminars on these themes. In many cases, the school principals forbid to talk about gender identity or sexual orientation. This hostile climate has surged greatly in the past years boosted by the so called "no gender" movement which – by depicting any attempt to talk about LGBTI rights and identities as a form of brainwashing – aims at forbidding anyone to address these themes within the schools.

LGBTI young people find themselves in school contexts where they do not feel protected and in a family environment that is not sensitive to the topic. There are still many cases of bullying, assaults, problems in accessing the labour market, young people who are forced, from their own families, to leave home and who do not find services to turn to in their social network.

Through a memorandum from the Ministry of Education, University and Research all extra-curricular projects now need parents' informed consent. This could be an obstacle to the participation of LGBTI associations in schools to tackle topics related to sexual orientation and gender identity.

According to an ISTAT survey (2011) 24% of the homosexual populations have claimed to have been discriminated during high school and college years, versus the

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<sup>8</sup> Centro Risorse LGBTI, *Be Proud! Speak Out!*, May 2018, <http://www.risorseigbti.eu/wp-content/uploads/2019/03/REPORT-CENTRO-GLSEN-ENG.pdf>

14% of the heterosexual population. There are no available data on the discrimination of transsexual people during this period of life.

The media representation is stereotypical and out of date, young people do not find positive reference models to be inspired and at best, when they have a good familiarity with English and the Internet, they refer to information and cultures of other more progressive countries.

If you grow up and live in Italy you will be immersed in a deeply homo-bi-trans-phobic, sexist, racist and foreclosing culture. You will hear about these issues through the media and social contexts without having a real knowledge of the human variety. At school and in the places of education and training, the promotion of emotional and sexual education courses is based on the sensitivity of the teacher and / or the school itself. A recent survey conducted by Save the Children on the discrimination suffered by young people in Italy shows that homosexuality is one of the most at-risk categories<sup>9</sup>.

**Recommendation 1.** Develop a comprehensive and clear strategy that includes: training courses for future teachers, educators, health workers and public workers.

**Recommendation 2.** Provide educational, emotional, and sexual education courses for all students of all levels of education and people within social paths (community, family homes, etc.).

**Recommendation 3.** Public funding for shelters for LGBTI adolescents forced out of their homes.

**Recommendation 4.** Enact general regulation and guidelines against bullying which describes and explains discrimination based on sexual orientation, gender identity and expression.

**Recommendation 5.** The introduction of aliases in documents for school, university and workplace.

## Health

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<sup>9</sup> Save the Children, *Infanzia: più di 3 ragazzi su 5 vittime di discriminazioni, emarginati o derisi dai loro coetanei; 9 su 10 testimoni diretti di episodi contro i loro compagni*, <https://www.savethechildren.it/press/infanzia-più-di-3-ragazzi-su-5-vittime-di-discriminazioni-emarginati-o-derisi-dai-loro> (seen on March 12, 2019).

Overall the health care system does not consider the special needs of LGBTI people within the design of health policies. Training of health personnel and social workers does not include LGBTI issues in a structural way with a negative impact on the services delivered and the environment created.

Research on this issue is poor, and data are still those reported in 2016: 10,2% of LGB people have been discriminated in accessing the health care system by medical and non-medical staff; 78% of men and 86,8% of women do not reveal their sexual orientation to their doctor.

Often health services are not organized to deliver coherent and tailored prevention services about STIs, due to many factors: sexual health in general is undervalued, access to diagnosis is often fragmented among different services and procedures and there is total lack of strategy about prevention in sexual health. As a consequence, LGBT people have even more limited access to information on sexual and reproductive health related to their needs, firstly because these needs are not recognized or taken into consideration and secondly because they often avoid coming out on their sexual orientation.

Minors (under 18) have no access to HIV and STIs testing without parents consent and this is a stronger barrier for testing and early diagnosis especially for LGBT minors who didn't come out with their parents. HPV and HAV vaccination programs are freely accessible for men who have sex with men only in some parts of the country.

Transgender people have access to gender reassignment services; however, these are not equally distributed throughout Italy. Moreover, quality of services, procedures and expertises are not uniform amongst the gender reassignment services. Gender reassignment surgery is available in public hospitals free of charge. But the health system is mainly a regional responsibility and the level of health care varies significantly from one Region to the other, including significant differences in the procedures followed for gender reassignment treatment and differences in the services provided. Besides, not in all Regions the health system provides free hormonal therapy together with surgical procedures. The fact that most of the 20 Italian Regions do not provide free hormone treatment represent a significant obstacle for trans people and an economic burden that drives towards marginality and social exclusion as well as serious health problems!

**Recommendation 1.** Providing health personnel and social workers with systematic training on LGBTI issues in order to avoid any type of discrimination on the ground of sexual orientation and gender identity in the health sector.

**Recommendation 2.** Guaranteeing that sexual health is addressed and barriers are removed all over the country through coherent sexual health services and tailored preventions strategies.

**Recommendation 3.** Guaranteeing that transgender people have access to gender reassignment services all over the country and at the same conditions, in order to reduce territorial and economic inequalities.

**Recommendation 4.** Outlawing reparative therapies for minors.

### **Human rights of Transgender people**

Law 164/82 regulates gender reassignment and the consequent modification of personal ID. The law leaves room for interpretation, since it doesn't specify whether the correction should concern the primary or secondary sexual traits, and whether a pharmacological treatment is sufficient or surgical intervention is necessary in order for the modification to take place.

With the Constitutional Court rulings in 2015 and 2017, gender reassignment is finally placed outside of a "medicalizing" discourse and firmly anchored to the protection of the identity of the person. The two court decisions establish that surgery is not a necessary condition for gender reassignment. However, the Court rules out the possibility that 'the only element of voluntarism may be of priority or exclusive importance in determining the transition', specifying that the judge has the task "of ascertaining the nature and extent of the modifications made to the sexual characteristics, which contribute to determining personal and gender identity".

This state of things determines difficulties in obtaining a job, signing lease contracts, etc. It also constitutes a privacy violation whenever it becomes necessary to show an ID that does not correspond to the appearance of its bearer. Since sex is also indicated in the Italian fiscal code, a simple modification of birth name is not sufficient to protect the privacy of the individual, and is a rarely used practice.

The entire judicial procedure is at the expense of the transsexual person: lawyers, legal expenses, technical consultancy, for both the initial surgery authorization request and the second personal ID amendment request.

**Recommendation 1.** Revision of law 164/1982 regarding the transition path for transgender people which foresees a red tape reduction, exemption of payments on drugs and abolition of compulsory surgical reassignment.

**Recommendation 2.** Issuing coherent ID through a fast administrative procedure, anytime the trans person requests it.

### **Human rights of intersex people**

In Italy, intersex people of every age are constantly denied their basic human rights: Intersex issues are still purely medical, and not considered as ethical, social and bioethical issues. Intersex and human rights activists are advocating for the rights to self-determination, bodily integrity and health intersex people are often denied to.

The Italian medical data collecting system is still based on a binary gender structure, and this makes it impossible to have consistent data on treatments and surgeries performed on intersex people. In addition, it is not possible to have data on number of intersex variations among newborns. There is no systematic follow-up data on the long-term results of precocious medicalization of intersex children, both at a local and national level.

In 2014 an Italian LGBTI lawyers association drafted the D.D.L. 405, a law proposal similar to the Malta GIGESC Act. The art. 13 includes a ban of unnecessary, non-consensual normalizing surgeries on intersex individuals as well as a simple path to modification of personal data for intersex people whose gender identity do not correspond to their medically assigned sex.

This law-proposal seats untouched in the parliament waiting for its discussion since 2015.

**Question 1.** 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 2.** Please clarify whether the State party funds DSD research projects led by paediatric endocrinologists advocating for medically not necessary genital surgeries on children.

**Question 3.** Please clarify the sort of information paediatric endocrinologists in Italy offer to parents of intersex children.

**Question 4.** Please clarify whether the State party consults NGOs led by intersex people.

**Recommendation 1.** Establishment of data monitoring based on an analysis of the incidence of the single intersex variations.

**Recommendation 2.** Ban unnecessary, non-consensual normalizing surgeries on intersex individuals.

**Recommendation 3.** Allow intersex individual whose gender identity does not correspond to their assigned sex to modify their gender marker and personal data.

**Recommendation 4.** Add the field “sex characteristics” as a ground of protection on the current anti-discrimination law.

## Sport

Some very interesting new data emerged from the still unpublished results of the first European survey on discrimination based on sexual orientation and gender identity in sport made by the German Sport University of Cologne for the project Outsport<sup>10</sup>.

□ Main target of the survey is to collect reliable data about the experiences of discrimination based on sexual orientation and gender identity of LGBTI athletes in different fields of sport in Europe.

In Italy the survey has been taken by 625 people over a total of 5524 units.

Of this 625 people 68,8 % are Female and 31,2% are Male, 6,1% are Intersex (table 6 and 7).

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<sup>10</sup> **Outsport** – “Innovative and educational approaches to prevent violence and tackle discrimination in sport based on sexual orientation and gender identity” – is a project co-financed by the European Commission through the Erasmus Plus program. □ It is led by AICS, Italian Association for Sports and Culture and its LGBTI department GAYCS, and involves five European countries: Italy, Scotland, Germany, Austria and Hungary. The project partners are: LEAP (LEAP Sports Scotland), DSHS (Deutsch Sporthochschule Köln – the German Sport University of Cologne, Institute of Sociology and Gender Studies), VIDC (Fonds wiener Institute für Internationalen Dialog und Zusammenarbeit – the Vienna Institute for International Dialogue and Cooperation), FRIGO (Friss Gondolat Egyesület – Organization for Fresh Ideas). It is the first initiative at European level to gather scientific evidence on the phenomena of homophobia and transphobia in sport, and to enhance sports world as a place of training and contrasting discrimination in continuity with school and family. □

Table 6 Assigned sex at birth

	Austria	Germany	Hungary	Italy	Scotland	Other EU Countries	EU Total
Female	80,5	83,3	78,6	68,8	49,4	59,8	59,9
Male	19,5	16,7	21,4	31,3	50,6	40,3	40,1
N	159	498	304	625	176	1402	3524

Question A1: "What sex were you assigned at birth?" Single choice, figures in percent. Data base: all (preliminary questions)

Table 7 Interspecificity

	Austria	Germany	Hungary	Italy	Scotland	Other EU Countries	EU Total
Yes	1,3	1,8	1,7	6,1	1,1	3,3	3,6
No	98,7	98,2	98,3	93,9	98,9	96,7	96,4
N	159	491	303	625	176	1398	3314

Question A1b: "Are you interspec?" Single choice, figures in percent. Data base: all

Almost half of them (45,2%) came out, 39,3% still have some issue to come out while 15,5% is still closeted (table 11).

Table 11 Openness

	Austria	Germany	Hungary	Italy	Scotland	Other EU Countries	EU Total
"I don't care if people know about my sexual orientation /gender identity."	52,2	43,6	29,1	45,2	58,2	38,0	39,9
"In some contexts I am trying to hide my sexual orientation /gender identity."	37,5	46,8	51,6	39,3	37,0	46,7	40,8
"In most contexts I am trying to hide my sexual orientation /gender identity."	10,3	8,8	20,4	15,5	4,8	15,3	14,2
N	146	414	289	595	165	1218	3267

Question F4: "Please select the statement which suits you best." Single choice, figures in percent. Data base: all

The average age is 25,7 (minimum is 16 and maximum is 76). □

At the question if there is a problem with homophobia in sport more than a half (56,5%) answered that there is a problem (24% answered a big one, answer that raises at 29,2% considering only Heterosexual and Cisgender people, tables 23 and 24).

Table 23 General assessment of homophobia in sport

	Austria	Germany	Hungary	Italy	Scotland	Other EU Countries	EU Total
1 (no problem)	4,8	5,5	5,9	5,9	3,7	3,3	3,0
2	9,4	6,1	8,9	8,3	6,3	7,3	7,4
3	29,8	28,3	19,7	26,6	22,7	24,1	24,8
4	39,0	40,2	36,2	32,5	36,4	31,9	33,8
5 (big problem)	18,8	21,0	20,7	24,0	29,0	21,7	21,6
don't know	7,5	2,9	9,6	9,8	4,0	11,7	9,2
ME	3,52	3,75	3,62	3,73	3,88	3,88	3,71
SD	1,02	0,92	1,13	1,01	0,97	1,05	1,02
N	159	498	304	625	176	1398	3520

Question A2: "Do you think there is a problem with homophobia in sport?" Scale from 1 "no problem" to 5 "big problem". Figures in percent (top), mean and standard deviation (bottom). Data base: all

Table 24 General assessment of homophobia in sport [heterosexual & cisgender people]

	Austria	Germany	Hungary	Italy	Scotland	Other EU Countries	EU Total
1 (no problem)	7,4	4,0	10,0	10,8	7,7	10,3	10,3
2	22,2	19,3	9,0	10,8	15,4	10,2	11,9
3	25,9	24,3	30,0	16,9	30,6	21,3	21,9
4	29,6	33,7	30,0	24,6	23,1	21,3	23,3
5 (big problem)	11,1	15,7	15,0	29,2	15,4	16,2	17,3
don't know	3,7	1,2	10,0	7,7	7,7	12,7	9,8
ME	3,35	3,34	2,67	3,55	3,25	3,06	3,17
SD	1,36	1,15	1,53	1,36	1,22	1,39	1,35
N	27	89	20	65	12	171	379

Question A2: "Do you think there is a problem with homophobia in sport?" Scale from 1 "no problem" to 5 "big problem". Figures in percent (top), mean and standard deviation (bottom). Special data base: heterosexual & cisgender people only. For further explanations please refer to "Table legends Part C".

The answers to the same question about Transgender People raises to 86,9% (but decreases to 72,3 for Heterosexual and Cisgender people) while the EU average is 80,2%. 66,5% answered a big problem against the EU average that is down at 57,8% (tables 25 and 26).



Table 25 General assessment of transphobia in sport

	Austria	Germany	Hungary	Italy	Scotland	Other EU Countries	EU Total
1 (no problem)	1,3	0,5	5,9	1,0	1,3	2,1	1,7
2	2,5	1,4	3,0	1,6	1,1	1,4	1,5
3	11,4	7,7	6,6	5,4	6,8	7,0	7,4
4	23,8	28,1	21,9	20,4	17,0	21,7	21,4
5 (big problem)	37,0	37,5	38,8	46,1	48,8	36,1	37,8
don't know	4,4	4,9	11,8	5,1	5,1	11,1	8,1
M	4,38	4,48	4,35	4,58	4,55	4,44	4,46
SD	0,89	0,75	1,00	0,76	0,78	0,89	0,86
N	156	858	302	624	178	1090	3517

Question A8: "Do you think there is a problem with transphobia in sport?" Scale from 1 "no problem" to 5 "big problem". Figures in percent (top), mean and standard deviation (bottom). Data basis: all

Table 26 General assessment of transphobia in sport [heterosexual &amp; cisgender people]

	Austria	Germany	Hungary	Italy	Scotland	Other EU Countries	EU Total
1 (no problem)	7,4	2,2	15,0	7,7	0,0	15,1	11,1
2	11,1	10,8	0,0	1,5	13,4	5,1	5,9
3	32,2	19,1	25,0	13,8	23,1	25,4	26,6
4	29,6	33,7	3,0	24,6	23,1	29,4	27,1
5 (big problem)	17,7	29,3	20,0	47,7	30,8	29,8	30,4
don't know	7,4	3,6	15,0	4,4	7,7	15,4	11,9
M	3,52	3,61	2,71	4,08	3,75	3,51	3,58
SD	1,23	1,21	1,05	1,21	1,14	1,47	1,40
N	27	81	20	40	13	171	379

Question A8: "Do you think there is a problem with transphobia in sport?" Scale from 1 "no problem" to 5 "big problem". Figures in percent (top), mean and standard deviation (bottom). Special data basis: heterosexual & cisgender people only. For further explanations please refer to "Table legends Part C".

The Survey reports that 35,5% witnessed homo and transphobic language in sports, EU average is 31,4%; 56,1% witnessed homo-transphobic language in other leisure activities, EU average is 39,4%, and 52,1% witnessed homo and transphobic language at work or in educational system 37,7% (tables 28, 29, 30).

Table 28 Homo- and transphobic language in sport (witnessed)

	Austria	Germany	Hungary	Italy	Scotland	Other EU Countries	EU Total
1 (never)	15,1	17,7	14,3	11,9	15,9	16,0	15,7
2	14,5	15,1	17,4	17,9	18,8	18,3	16,8
3	22,0	21,7	21,4	24,0	27,3	32,1	27,5
4	17,6	18,6	21,1	19,7	19,3	16,1	17,3
5 (very often)	10,7	8,4	13,8	15,8	10,8	15,6	14,1
not applicable	10,1	7,4	11,8	11,1	8,0	11,4	10,6
M	2,83	2,73	3,03	3,12	2,90	2,96	2,94
SD	1,26	1,24	1,31	1,28	1,25	1,35	1,32
N	159	815	304	620	176	1092	3506

Question A10: "In the last 12 months, have you witnessed the use of any homophobic or transphobic language?" Scale from 1 "never" to 5 "very often". Figures in percent (top), mean and standard deviation (bottom). Data basis: all

Table 29 Homo- and transphobic language in other leisure activities (witnessed)

	Austria	Germany	Hungary	Italy	Scotland	Other EU Countries	EU Total
1 (never)	14,3	8,5	9,9	6,8	15,4	11,5	10,6
2	27,0	28,3	15,5	12,1	26,3	18,5	19,6
3	30,8	29,4	34,7	30,3	30,3	26,4	26,0
4	19,5	22,4	14,0	27,8	18,1	21,1	22,1
5 (very often)	16,4	20,2	20,4	28,2	5,1	17,4	17,3
not applicable	1,9	1,2	5,4	4,3	4,6	5,2	4,4
M	2,96	2,97	3,31	3,61	2,70	3,15	3,04
SD	1,32	1,13	1,27	1,23	1,17	1,27	1,26
N	159	856	304	620	175	1080	3499

Question A10: "In the last 12 months, have you witnessed the use of any homophobic or transphobic language?" Scale from 1 "never" to 5 "very often". Figures in percent (top), mean and standard deviation (bottom). Data basis: all

Table 30 Homo- and transphobic language at work / in the educational system [witnessed]

	Austria	Germany	Hungary	Italy	Scotland	Other EU Countries	EU Total
1 (never)	26.4	28.1	22.2	22.9	21.7	14.3	16.6
2	26.5	24.0	19.1	15.1	22.9	20.4	22.0
3	22.6	16.0	18.8	16.8	23.4	22.8	21.3
4	25.1	11.3	25.7	25.0	14.1	19.6	19.0
5 (very often)	9.8	7.5	23.4	27.3	12.9	20.6	18.7
not applicable	1.9	3.4	3.2	2.1	5.7	2.3	2.6
M	2.56	2.35	3.26	3.81	2.70	3.12	3.01
SD	1.30	1.22	1.34	1.35	1.32	1.35	1.32
N	159	855	504	623	175	1390	3506

Question A20: "In the last 12 months, have you witnessed the use of any homophobic or transphobic language?" (Scale from 1 "never" to 5 "very often". Figures in percent (first), mean and standard deviation (bottom). Data source: ad.

Also very interesting the answer at the question about what could be useful to tackle discrimination based on sexual orientation and gender identity.

Waiting for the publication of the results of the Survey by the university of Cologne for detailed discussions, these simple numerical data indicate how the problem of homo-transphobia in sport is widespread in Italy and a little over the EU average, while homo-transphobia in other leisure activities and at work (or school) is much higher than the UE average.

**Recommendation 1.** Adoption of measures to prevent the risk of exclusion from participation in sports on grounds of sexual orientation, gender identity and expression.

**Recommendation 2.** Inclusion in CONI's 'Sports Code of Conduct' of sexual orientation gender identity and expression among the prohibited grounds of discrimination.

**Recommendation 3.** Adoption of effective measures to prevent and counteract the use of discriminatory insults during and in connection with sports events.

### Right to seek asylum

In Italy International Protection (Political asylum and subsidiary protection) – as foreseen by the UNHCR guidelines which include sexual orientation and gender identity, considering the importance of identity, among the elements relevant to the refugee definition – is recognized to the LGBTI asylum seekers.

An LGBTI person has the right to International Protection when there is a well-founded reason to suffer persecution by the State of origin or even by the family and in a broader sense by the community to which it belongs. The LGBTI person who is forced to hide his gender identity and sexual orientation is therefore entitled to political asylum. The recognition can take place both for those who come from the 69 countries in the world in which homosexuality is a crime, and from those countries in

which laws have been adopted against the "promotion of non-traditional sexual behavior" or against the so called "homosexualist propaganda".

In fact, however, in Italy there are critical issues in recognizing refugee status to people who declare themselves LGBTI. Criticalities that are attributable to:

- Poor preparation of the members of the committees with respect to the concepts of sexual orientation and gender identity;
- Difficulty in collecting memoirs from the applicants;
- The harshness of the questioning about the truthfulness of the story and the memoirs by the committee members
- Negative and prejudicial attitude on the side of the committee members;

These critical issues are exacerbated by the new rules introduced by the Security Decree of 5 October 2018; the decree, in effect, eliminates residence permits for humanitarian reasons, effectively excluding a large slice of applicants from the possibility of having a regular stay recognized in Italy. This has led to an amplification of the phenomenon of false declarations relating to one's sexual orientation and gender identity. A phenomenon sometimes endorsed by the same lawyers who invite the applicant to apply to LGBTI associations as proof of their sexual identity or orientation.

The migrant offices of LGBTI associations are increasingly having to manage this phenomenon, trying to discern between reliable or unreliable statements. However, the phenomenon has led to an increase in requests for recognition of international protection for reasons of sexual orientation and gender identity, but also an increase in denials, to the detriment of those who have suffered persecution or risk of persecution and / or have been expelled, excluded , marginalized by their communities and families.

There are also critical issues related to the Italian reception system which does not foresee protected environments and paths for LGBTI migrants, not recognizing them as vulnerable categories.

The psychological and social aspects, determined by a poor acceptance of one's sexual identity, as well as by the breakdown of family and friendship ties due to one's own orientation and / or gender identity or the fear that one's sexual identity is discovered in the community in which one has been inserted (reception facilities) – fear due to the perpetuation of highly discriminatory behaviours that can also lead to violence by applicants appealing to one's own community of origin and / or to other homophobic communities – are not taken into account.

**Question 1.** Does the Italian government know the number of LGBTI applicants for asylum and the rate of acceptance of such applications.

**Recommendation 1.** The introduction of the condition of vulnerability for LGBTI asylum seeker as it is foreseen for other categories.

**Recommendation 2.** Adequate training of committee members with respect to the problems resulting from sexual orientation and gender identity and the conditions of the applicant's country of origin.

**Recommendation 3.** The committees begin to collect and release data on the reasons why people apply for asylum, as in other countries, so as to make possible to collect data with respect to the number of applications for international protection by persons declaring themselves LGBTI and data on countries of origin.

**Recommendation 4.** LGBTI organisations working with LGBTI migrants who applies for asylum must be admitted to the committees.

### Human rights of LGBTI inmates

There are very serious violation of inmates' human rights proved by repeated rulings of the European Court of Human Rights and many NGOs' and official reports, according to which the overcrowding rate in Italian prisons is 124,64 percent<sup>11</sup>, meaning that there are more than 124 prisoners per 100 beds.

Inmate suicides in Italy<sup>12</sup> - 67 cases in 2018, 9 since the beginning of 2019 - are caused mostly by "environmental factors" and "illegal" detention conditions.

Looking at the condition of LGBTI people, especially of trans detainees, the ombudsman for the protection of people deprived of their liberty Mauro Palma, informed in his last annual report<sup>13</sup> the Parliament on the presence of 58 transsexual detainees hosted in 10 prisons around the country. All of them were assigned to men's prisons.

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<sup>11</sup> Last official update 28th february 2019

[https://www.giustizia.it/giustizia/it/mg\\_1\\_14\\_1.page;jsessionid=LvG-ZGIGR8UKz2FOKzgWRnsC?cont entId=SST173662&previousPage=mg\\_1\\_14](https://www.giustizia.it/giustizia/it/mg_1_14_1.page;jsessionid=LvG-ZGIGR8UKz2FOKzgWRnsC?cont entId=SST173662&previousPage=mg_1_14)

<sup>12</sup> Last update by Ristretti Orizzonti in its annual report "Morire di Carcere", 22nd february 2019

<http://www.ristretti.it/areestudio/disagio/ricerca/index.htm>

<sup>13</sup> "Garante Nazionale persone private della libertà personale, Relazione al Parlamento 2018", pages 178-179

<http://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/bbb00eb9f2e4ded380c05b72a2985184.pdf>

In 2017 Mr. Palma supported a draft decree by the former Minister of Justice Andrea Orlando that aimed to relocate “male to female” inmates in women’s prisons and vice versa. Unfortunately the decree in question has not been issued, and the question regarding the respect of human rights linked to gender identity in criminal enforcement seem now to be permanently out of the Government's political agenda.

During an on-site inspection in the prison of Rebibbia in Rome held by Senator Monica Cirinnà in december 2018, trans inmates complained about many difficulties regarding the access to their personalized hormonal therapy, the lack of cosmetics and garments suitable to their gender orientation, inappropriate prison policies regarding their “yard time” – in terms of location and time – due to their confinement in the trans section of the building.

Such issues are almost the rule in most of the prisons meant to host 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. One welcomed measure is the establishment of separated and dedicated cells where LGBTI people can be incarcerated if desired.

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

**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 government’s decree 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.

**Recommendation 6.** A government’s decree which allows free access to phone and web calls in order to assure emotional stability.