

# 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.

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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 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.

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

## 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.

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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>

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 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.