



ITALY: The Status of Lesbian, Gay, Bisexual and Transgender Rights

Submission to the United Nations Human Rights Council for its Universal Periodic Review of Italy (7th Session)

INTRODUCTION

1. This information is submitted by ILGA-Europe¹, ArciLesbica², ArciGay³, Crisalide⁴ and ILGA⁵ in the framework of the Universal Periodic Review, to draw the attention of the Human Rights Council to human rights concerns affecting lesbian, gay, bisexual and transgender (LGBT) people in Italy.

2. This report provides information about the situation of LGBT people in Italy. This report draws from the *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Italy*⁶ and *The social situation concerning homophobia and discrimination on grounds of sexual orientation in Italy*⁷ conducted for the European Union Fundamental Rights Agency (FRA Report).

OVERVIEW

Legal protection for lesbian, gay and bisexual (LGB) persons in Italy exists only in the areas of employment, through the transposition of the European Union Employment Framework Directive (2000/78/EC) through *Decreto legislativo* [Legislative Decree] no. 216 of May 7 2003 which was issued by the government acting upon delegation by the parliament. The labour market is the only area in which sexual orientation is explicitly recognised as a ground

1 ILGA-Europe, the European Region of the International Lesbian and Gay Association, enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC) and participative status at the Council of Europe. ILGA-Europe is a European NGO with more than 240 national and local lesbian, gay, bisexual and transgender (LGBT) member organisations in 47 European countries; it receives financial support from the European Commission.

2 ArciLesbica is the national association aimed at promoting social inclusion of lesbian women. ArciLesbica is present around Italy through a network of 21 clubs and local groups and a network that includes 8 focal points, local observatories (municipal or provincial) about sexual orientation, called "Linee Lesbiche" (Lesbian Lines).

3 Arcigay was founded in 1985 and is Italy's foremost national gay rights organisation. In 2007 its membership exceeded 160,000. It acts as an umbrella organization for 114 (50 political/cultural and 64 recreational) local centres, throughout 48 provinces in Italy, from Bolzano in the north to Catania in the south. Arcigay is a non-profit organisation which operates on a voluntary basis. Its aim is to combat homophobia, heterosexism, prejudice and anti-gay discrimination. (<http://www.arcigay.it/arcigay-english>)

4 Crisalide Azione Trans (www.crisalide-azionetrans.it) is an association based in Genova managing the biggest Italian on-line archive on gender identity related issues in Italy. Chaired by Mirella Izzo, Crisalide Azione Trans is a member of ILGA.

5 The International Lesbian, Gay, Bisexual, Trans and Intersex Association is a world-wide network of national and local groups dedicated to achieving equal rights for lesbian, gay, bisexual and transgender and intersex (LGBTI) people everywhere. Founded in 1978, it now has more than 670 member organisations.

6 *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Italy*, Marta Cartabia (February 2008), http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-NR_IT.pdf

7 *The social situation concerning homophobia and discrimination on grounds of sexual orientation in Italy* (March 2009) http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-part2-NR_IT.pdf

for discrimination by Italian legislation. However, according to the European Commission, some parts of the European legislation have not been properly implemented⁸.

Another European Union legislation (Directive 2004/83/EC), which sets out minimum rules governing the award of refugee status, has been implemented by Legislative Decree 251/2007. Article 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 asylum. Official data supplied by the *Ministry for Internal Affairs* regarding the period between 2005 and the start of 2008 showed that at least 29 of the 54 requests for asylum on grounds of sexual orientation persecution have been accepted. In these cases, either refugee status or a separate form of humanitarian protection was granted. LGBT organizations have pointed out that the granting of asylum is partly dependent on the work of lawyers that make an effort collecting information on conditions in countries of origin.

In Italy, neither pride parades nor homophobic demonstrations can be banned by the public authorities if they are peaceful and unarmed. The right to hold both kinds of meetings is fully protected by the constitution. In 2008, the newly appointed Minister of Equal Opportunities refused to back the Pride March in Rome, arguing that homosexuals are no longer discriminated against in Italy and that she disagrees with the aim of the Pride organisers, which she defined as official recognition of homosexual couples at the same level as marriage. Furthermore recent legislation requires that marches, parades and other events with a religious aspect or that could be against public moral, do not pass nearby certain buildings either because they may be the objective of violent attacks or because the marches may generate public scandal. Among these buildings there are governmental buildings and churches or other import religious buildings. The application of the provisions together with the identification of the buildings and street to be avoided is left to the local authorities. In Rome this has been used to hinder the 2009 Pride march which was considered as potentially generating public scandal. Such a provision in Italy, which is particularly rich in churches and religious buildings, may represent a significant obstacle to the possibility of having Pride marches and similar events, hence representing an obstacle to freedom of assembly and expression. The large autonomy left to local authorities in defining which buildings are relevant to the law represents an additional source of uncertainty, holding both possibilities for a more or less strict interpretation of the law.

LGBT organisations denounce the influence of the Catholic Church on Italian politics. The hierarchies of the Catholic Church have been strongly critical toward the possibility of legal recognition of same-sex partnerships, publicly arguing that such unions are against nature and must not be passed by parliament. Church leaders have also criticized TV broadcasts presenting positive images of gay and lesbian life⁹.

There is often no recognition of the special needs of LGBT patients (for example, lesbians worrying about and avoiding gynaecological examinations). The provision that banned gay men from donating blood has been removed, nevertheless frequently gay men are still refused by hospitals as blood donors on the basis of their sexual orientation. Even though homosexuality is not officially considered an illness, it is still to some extent considered a disorder.

A 2005 survey investigating health and sexuality issues pointed to the need for continuing action on HIV/AIDS prevention specifically targeting gay persons: One third of the male respondents said it was difficult to find information about which sexual behaviours carry risks

8 The gaps in implementation of EU legislation concern the following areas: 1) cases where differences of legal treatment cannot be qualified as discrimination because they are justified as genuine and determining occupational requirements, 2) the role of associations in engaging in judicial or administrative procedures against discrimination, 3) burden of proof, and 4) victimization.

9 See The social situation concerning homophobia and discrimination on grounds of sexual orientation in Italy (March 2009), page 10. http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-part2-NR_IT.pdf

of infection. Women reported a lack of information on practices and prevention regarding sex between women¹⁰.

RIGHT TO SECURITY OF THE PERSON

Article 20 of ICCPR

The level of violence and attacks against lesbian, gay and transgender persons, or those who are perceived as having a different sexual orientation or gender identity, is present and widespread in the country. Associations report a higher level of attacks in the past three years than in the 10 years before against individuals and the offices of homosexual and transgender organizations. Recently, in August and early September 2009, three serious homophobic attacks took place in Rome:

- On 22 August 2009, a gay couple were reportedly assaulted by a far-right activist nicknamed "little swastika" after leaving a nightclub in Rome, and being observed kissing in public. One of the victims was allegedly stabbed with a knife and required life-saving surgery.
- On 29 August 2009, another nightclub in Rome which organises a well-known weekly gay night was subject to an attempted arson attack, when a window was broken and inflammable liquid ignited. Nobody was hurt, as the building was closed for refurbishment at the time and the flames were rapidly extinguished by the fire-brigade.
- On 2 September 2009, two large fire-crackers were thrown by two skin-heads into a crowd of passers-by on San Giovanni in Laterano Street in Rome. The street is well-known for being popular with Rome's LGBT community. Fortunately, only one person was slightly injured. The two attackers were able to escape and a police investigation has been opened.

Associations denounce the difficulties of collaborating with police forces and widespread homophobia and transphobia in police and armed forces. They also denounce the lack of a strong stand by the government against such actions and the lack of interventions both in terms of proposing adequate legislation and realizing educational interventions (e.g. information campaigns). Attached is a report by Arcigay, the national lesbian and gay association, with the cases of violence and homophobia and transphobia reported in the press so far in 2009.

Recommendations:

We urge the Italian Government to:

- Take all necessary legislative measures to impose appropriate criminal penalties for violence, threats of violence, incitement to violence and related harassment, based on the sexual orientation or gender identity of any person or group of persons
- Take all necessary policing and other measures to prevent and provide protection from all forms of violence and harassment related to sexual orientation and gender identity
- Ensure that perpetration of such violence is vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished
- Undertake campaigns of awareness-raising, directed to the general public as well as to actual and potential perpetrators of violence, in order to combat the prejudices that underlie violence related to sexual orientation and gender identity

¹⁰ See The social situation concerning homophobia and discrimination on grounds of sexual orientation in Italy (March 2009), page 10. http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-part2-NR_IT.pdf

PROTECTION AGAINST HATE SPEECH

There is currently no criminal or civil legal provision in Italy regarding hate speech related to homophobia or discrimination on the ground of sexual orientation. Criminal law only penalises hate speech related to discrimination on the grounds of race, ethnicity, nationality or religion. The available information shows that homophobic violence—in terms of physical or verbal attacks—is part of the experience of many LGBT persons. According to a recent Web survey¹¹ half of LGB persons felt less safe because of their sexuality.

According to LGBT organisations, there is limited and distorted media coverage on their issues, and cases of homophobia expressed in media by politicians and church leaders have been identified. A sociological study¹² on media coverage of gay and lesbian parenthood confirmed the limited visibility of LGBT organisations and their arguments

Recommendations:

We urge the Government of Italy to:

- Adopt the explicit legal measures to ensure that the exercise of freedom of opinion and expression does not violate the rights and freedoms of persons of diverse sexual orientations and gender identities;
- Ensure that the outputs of media is pluralistic and non-discriminatory in respect of issues of sexual orientation and gender identity and that speech motivated by homophobia and transphobia does not remain unpunished.

RIGHT TO EDUCATION

(Article 13 of ICESCR)

Surveys point to widespread harassment and bullying in schools. In a 2001 survey from Turin, 48 per cent of gay men and 10 per cent of lesbian women reported harassment or social isolation by other students when they were in school. Similar figures (41 per cent of men and 21 per cent of women) were found in a more recent sample.¹³ Although harassment by teachers seems to be rarer, victims referred to their indifference and lack of support. School curricula is characterised by silence on LGBT issues. The lack of access to sex education in schools is also highlighted as a problem. LGBT teachers' visibility seems to be particularly limited, and perceived as very risky.

Recommendations:

We urge the Government of Italy to:

- Ensure that education is directed to the development of each student's personality, talents, and mental and physical abilities to their fullest potential, and responds to the needs of students of all sexual orientations and gender identities;
- Ensure that education methods, curricula and resources serve to enhance understanding of and respect for, *inter alia*, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds;

11 See The social situation concerning homophobia and discrimination on grounds of sexual orientation in Italy (March 2009), page 6, http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-part2-NR_IT.pdf

12 See The social situation concerning homophobia and discrimination on grounds of sexual orientation in Italy (March 2009), page 11, http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-part2-NR_IT.pdf

13 See The social situation concerning homophobia and discrimination on grounds of sexual orientation in Italy (March 2009), page 9, http://fra.europa.eu/fraWebsite/attachments/FRA-hdgso-part2-NR_IT.pdf

RIGHT TO RECOGNITION BEFORE THE LAW

Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientation and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation, hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.
[Principle 3, Yogyakarta Principles]

In Italy, gender reassignment surgery is available in public hospitals free of charge but the procedure is subject to the authorisation of courts. A transsexual person must make two requests to a judge before he/she is authorised to have the required surgery. Qualitative sociological research on transsexual and transgender persons' living conditions has also highlighted the many forms of social and economic distress which characterize the transition period before legal sex reassignment. This period can last several years or be a permanent status for those who do not want to undergo sex reassignment surgery. Trans people also still experience difficulty in accessing treatment since hormone therapy and gender reassignment surgery procedures are provided only by few regions in the country. The health system is mainly responsibility of the 20 Italian regions and the level of health care varies significantly from one to the other, including significant differences in the procedures followed for gender reassignment and differences in the services provided. The fact that most regions do not provide free hormone treatment for the secondary sexual characters represent a significant obstacle for transsexual persons and an economic burden that drives towards marginality and social exclusion. Many transsexual persons (male-to-female) are de facto forced to operate as sex workers in order to afford the costs of secondary treatments given the high level of discrimination that impedes access to regular jobs. Another issue is that the use of a tax code assigned to every Italian citizen (known as "codice fiscale"), which contains specific coding for the sex of the person, makes any proposal allowing the name change only (as currently done in Germany) ineffective as far as the right to privacy is concerned, as the person seeking gender reassignment would still retain the old gender assignment in the coding of the tax code.

In Italy, judicial authorisation is required to change the details of sex and name in the records of the *Ufficio dello Stato civile* [Registrar of Civil Status]. However, Italian case law does not grant to transgender people the possibility of changes in the identity cards and similar papers unless the same people undergo Sex Reassignment Surgery (SRS). This current interpretation of the law of 14 April 1982 no. 164 goes well beyond the text of art. 2 of the same law, where there is no mention of any medical/surgical intervention in connection to the applicant's request for gender reassignment: art. 2 simply states that the local court has jurisdiction on the matter and that the judge may request a consultancy aimed at verifying the psycho-sexual condition of the applicant (see attachment). Art. 3 of the same law mentions authorisation to medical treatment and surgery only "in case of necessity", without specifying whether primary or secondary sexual characteristic are concerned and without specifying what conditions qualify as necessity, therefore leaving room for the applicant to decide whether she or he wants to undergo treatment and/or surgery.

Moreover, work is one of the main areas of distress for trans people in Italy. Research has shown the high risk of being a victim of harassment at the workplace or being fired, and the difficulty of transsexual persons in finding a job when their appearance does not fit with their documents¹⁴.

¹⁴ See The social situation concerning homophobia and discrimination on grounds of sexual orientation in Italy (March 2009), pages 12-13. http://fra.europa.eu/fraWebsite/attachments/FRA-hdgs0-part2-NR_IT.pdf

Recommendations:

We urge the Italian Government to:

- a) Take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity
- b) Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity of the person concerned
- c) Take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of gender identity in public and private employment.

RIGHT TO EQUALITY AND NON-DISCRIMINATION

(Article 26 of ICCPR and Article 2 of ICESCR)

The Italian legal system does not recognise same-sex marriage or any other form of same-sex partnership, nor does it offer legal recognition for the relation between children and co-parents in LGBT families. This lack of legal recognition of diverse forms of family often results in discrimination in a number of areas of life. For example, in the context of health care, same-sex partners are often not recognised as next of kin, and therefore denied information and participation in decisions about a partner's state of health and required care.

Because of lack of official recognition of same-sex partnerships, LGBT persons do not have access to reunification with partners who are not Italian citizens. Data about family reunification do not exist, since the Italian legal system provides family reunification only for spouses, therefore excluding same-sex marriage (Art. 2 e Legislative Decree 5/2007, Art. 29 a Legislative Decree 286/1998). Moreover, same-sex partners are not eligible to residence permits on the basis of their partnership. Within the European Union, freedom of movement is fully assured to single persons, regardless of personal conditions or sexual orientation. However, Italian law does not consider same-sex marriage, registered partnership or durable relationship, duly attested, as autonomous entitlement to enjoy freedom of movement equal to heterosexual married persons.

Recommendations:

We urge the Government of Italy to:

- Ensure that laws and policies recognise the diversity of family forms, including those not defined by descent or marriage, and take all necessary legislative, administrative and other measures to ensure that no family may be subjected to discrimination on the basis of sexual orientation or gender identity of any of its members, including with regard to public benefits and immigration.