REPORT ON IMPLEMENTATION OF THE RECOMMENDATION CM/REC(2010)5 OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE ON MEASURES TO COMBAT DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION OR GENDER IDENTITY IN ITALY

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Monitoring the implementation of the “Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity” approved March 31, 2010, by the Committee of Ministers of the Council of Europe, is important for many reasons and constitutes a fundamental starting point.

It is a photograph of what Italian state institutions have done to promote the rights of LGBT people and protect them from discrimination. It is a way to reaffirm, as does the Recommendation and therefore the states that have approved it, that LGBT rights are human rights and that there are systematic violations in many areas of public and private life. And it is in all those areas that the Member States of the Council of Europe have taken on the task, although not binding given the legal nature of the Recommendation, to promote legislative initiatives and policy measures.

Monitoring is a way to deepen and spread awareness of the institutions responsible for the promotion of LGBT rights, of their means, and of opportunities to promote measures consistent with the content of the Recommendation. It is a starting point because the provisions of the Recommendation are the bases on which to build the political agenda relating to the rights of LGBT people. The agenda, however, is not limited to those measures and will not be limited in its scope until full equality of rights, opportunity, and treatment is guaranteed to all men and women regardless of sexual orientation and gender identity.

It is precisely for this reason that it is necessary to remember that the Recommendation is based on the requirements of the European Convention on Human Rights and on the relevant case law of the European Court of Human Rights. It therefore has a history that, while placing LGBT issues in the context of human rights, is at the same time limited. For example, it does not go so far as to require States to introduce marriage equality and limits assistance on issues related to families of same-sex couples and their children. Yet these issues are at the heart of the political initiative of the LGBT movement in Italy.

Monitoring, again, is a way to call on state institutions to honor their duties and this, in a democratic republic such as Italy, is a fundamental and indispensable role of civil society organizations.

We hope that the many organizations involved in the promotion of human rights find in this work an instrument. Whenever someone, more or less covertly, says that LGBT rights are not violated, that there is no discrimination in Italy, you can remind them that the Italian State recognized the exact opposite in international forums and did this together with 46 other countries. This monitoring includes collection of data, cases and information not only for the purpose of determining what the state has or has not done but also because this information summarizes the status of respect for the rights of LGBT people in Italy, telling us as much as possible about what is happening, what is lacking, and what we have yet to discover.

For these reasons, this is a starting point and not coincidentally a first step taken by multitudes participating in this work. It is in this multitude, its growth and progressive organization that this peaceful revolution succeeds in its intents.
Italian authorities have promoted both legislative and policy measures consistent with the CMCE Recommendation requirements. Nevertheless, a noticeable number of fields covered by the Recommendation lacks proper legislation and policies. Furthermore, legislation is often incomplete and even when policy measures have been adopted these are not structural and, therefore, vulnerable to political will. Oftentimes, even when the existence of such measures is announced, there is a substantial lack of information available on their characteristics so that it is impossible to assess their effectiveness.

During the past decade, under the European Union direction, legislation prohibiting discrimination based on sexual orientation and gender identity in the field of both public and private employment, has been introduced. The jurisdiction of the National Office Against Racial Discrimination (UNAR) has been extended to action against discrimination of LGBT persons. Hence, the Office has promoted a review of existing legislation and administrative measures to recognize the persistence of discriminations based on sexual orientation and gender identity in order to remove them. UNAR also promoted several education and awareness raising measures aimed at tackling discrimination, stereotypes and prejudices against LGBT people.

However, a comprehensive strategy, supported by policy documents, is still missing and the enlargement of UNAR’s jurisdiction is based on a ministerial directive and not on an amendment to the law establishing the Office. Besides, the LGBTI Resource Centre lacks of detailed information on the type of intervention UNAR does to remove discrimination in legislation an administrative measures.

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. Nevertheless, a law prohibiting homophobic and transphobic hate crimes and hate related incidents, including hate speech is still missing. Police forces training is developed and realized by OSCAD together with UNAR; training for police forces on discriminations focusing also on LBGTI-phobic crimes is amongst the OSCAD priority objectives of 2012 being mainstreamed within the on the job and entrance training programmes for police forces. Despite that, the LGBTI Resource Centre is unaware of the policy document explicitly including such objective; moreover, it is unclear the timing for implementing such measure and the specific contents of the training.

Looking at the condition of LGBT prisoners, the ‘extraordinary Senate Commission on human rights protection’ clearly tackles the lack of competence of the prisons staff on issues related to sexual orientation and gender identity and the severe form of discrimination that such prisoners suffer.

In recent years hate speech against LGBT persons has directly come from public officials and politicians. Moreover, when incidents occur, it usually lacks an adequate reaction of leading public officials.

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

Same-sex couples are discriminated against in law compared with different-sex ones, and the state totally dissociates itself from providing solutions to the everyday problems to which this discrimination gives rise. Gender reassignment is legally granted, medical procedures are available free of charge and changes in documents are guaranteed. Nevertheless, lack of specific regulation in procedures causes uncertainty and differentiation within the national territory; furthermore, sterilization is still widely considered a necessary pre-requisite and
the health care system does not provide free hormone therapy for secondary sexual characteristics in all Regions.

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 or transphobia. Few measures have been undertaken against homophobia in school but none of them is structural and transphobia is constantly neglected. Overall, looking at health policies, the health care system fails to consider the special needs of LGBT persons. Training of health personnel and social workers does not include LGBT issues in a structural way with a negative impact on the delivered services and on the overall environment.

No measure has been implemented against discrimination in sports as existing measures and tools do not cover sexual orientation and gender identity motivated discriminations.

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. Nevertheless, cases are going to be discussed by competent authorities in the following period.

I. EXECUTIVE SUMMARY
II. RECOMMENDATIONS TO THE ITALIAN GOVERNMENT

1. To amend Law no. 203 of 1995 (so called Mancino Law) in order to explicitly include sexual orientation and gender identity as reasons for penalising hate crimes and hate speech.

2. To introduce or improve the initial and on the job training programs for the personnel of the public administration such as:
   - Police officers
   - Judiciary
   - Prison staff
   - Public officers
   - Educational staff
   - Health professionals
   in order to guarantee: a) adequate knowledge and skills to act in respect of everyone’s sexual orientation and gender identity; b) full enjoyment of rights irrespective of sexual orientation and gender identity.

3. To introduce specific guidelines to: guarantee that trans prisoners have the right to continue the gender transition while in prison find appropriate solutions in order to avoid solitary confinement of such prisoners while waiting to be located in specific house units.

4. To guarantee adequate and stable funding to repeat on a three years’ basis the survey on attitudes to LGBT people on the level of social acceptance and on discriminations and incidents, conducted by the National Institute of Statistics - ISTAT - and released for the first time in 2012.

5. To introduce sexual orientation and gender identity in the 2013-2015 contract regulating the public broadcast system amongst the Ministry of Economic Development and the broadcaster company RAI as components of the Italian society to be represented in order to guarantee pluralism.

6. To guarantee that ‘Commission on Rights an Equal Opportunities for lesbian, gay, bisexual and transgender’ and the ‘Permanent forum against harassment and violence against women, sexual orientation and gender identity’ or equivalent organisms are permanent and effectively consulted for all policies and bills concerning or impacting on LGBT people.

7. To amend Law n. 164 of 1982 in order to: make it clear that irreversible sterilisation and surgical procedures are not necessary requirements for legal recognition of gender reassignment grant uniform coverage of necessary health care costs and equal services for gender reassignment treatment throughout the national territory.

8. To amend the relevant family law provisions of the Civil Code in order to confer on unmarried couples, both same-sex and heterosexual, the rights and obligations concerning tenancy, succession, alimony, medical assistance, prison assistance.

9. To introduce a law regulating parental rights of partners in same sex relationships over one’s partner’s biological child taking into account the child’s best interests.

10. To amend Legislative decree n. 216 of 2003 to: introduce gender identity as a ground of forbidden discrimination extend its scope to prohibition of discrimination in access and supply of goods and services.

11. To establish a national observatory aimed at monitoring the application of art. 21 Law no. 183 of 2010 providing measures aimed at guaranteeing equal opportunities, the wellbeing of workers and the lack of discrimination in public administration offices.

12. To revise a) ‘General guidelines and measures at the national level for the prevention and fight against bullying’ (prot. no. 16 of February 5, 2007), b) ‘Violence in School. Measures and procedural aspects’ (prot. no. 5393/A3 of March 22, 2007), c)
II. RECOMMENDATIONS TO THE ITALIAN GOVERNMENT

‘Regulation on the Status of Students of secondary schools’ (d.p.r. no. 249 of June 24, 1998) in order to explicitly tackle homophobia and transphobia in school.

13. To include both compulsory sex and health education classes and information on sexual orientation and gender identity within school curricula.

14. To include specific needs related to gender identity and sexual orientation in the National Health Plans. To solicit regional health systems to adopt similar measures.

15. To introduce legislation regulating cases as to when it is permitted to determine the assignment of sex in order to guarantee that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent.

16. To amend art. 6 of the CONI’s ‘Sport code of Conduct’ in order to introduce sexual orientation and gender identity as grounds of discrimination forbidden in sport.

17. All Legislative provisions concerning refugees status and asylum should mention sexual orientation and gender identity amongst the grounds of protection from persecution.

18. To create an independent national human rights structure clearly mandated to address discrimination on grounds of sexual orientation or gender identity even through initiating or participating in court proceedings.

19. To adopt a medium/long term action plan for implementing other aspects of the Recommendation.
i. Background

On 31 March 2010 the Committee of Ministers of the Council of Europe adopted its Recommendation to member states “on measures to combat discrimination on grounds of sexual orientation or gender identity”.

It was an historic moment. The Recommendation is, as Council of Europe Secretary-General, Thorburn Jagland recognised, the world’s first international legal instrument dealing specifically with discrimination on these grounds, which he described as «one of the most long-lasting and difficult forms of discrimination to combat».

In broad terms the Recommendation does three things:
1. It emphasises the key principle, that human rights are universal and apply to all individuals, including therefore LGBT persons;
2. It acknowledges the fact of the centuries-old and continuing discrimination experienced by LGBT persons on account of their sexual orientation or gender identity;
3. It recognises that specific action is required to ensure the full enjoyment of human rights by LGBT persons, and sets out the measures required of member state governments.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation was agreed unanimously by the 47 Council of Europe member states. Although, as a Recommendation rather than a Convention, it is not legally binding, it is based solidly on the existing legally binding international and European human rights obligations of the member states, which therefore have a clear duty to implement its main elements.

The Recommendation has three parts: first, a preamble, which sets out the background to its adoption, and the key principles guiding it; second, the operative section of the Recommendation, which is very brief, listing broad measures to be taken; and thirdly, an Appendix which sets out specific measures to ensure enjoyment of rights and combat human rights violations across a wide range of areas, including hate crimes, hate speech, freedom of association, expression and assembly, right to respect for private and family life, employment, education, health and housing, sports, the right to seek asylum, and discrimination on multiple grounds. It also includes a section on the role of national human rights structures.

The Recommendation is supported by an Explanatory Memorandum, which documents the international human rights instruments and legal precedents on which the individual measures in the Recommendation and the Appendix are based.

ii. The purpose of this report

The purpose of this report is to assess what progress has been made by the Italian authorities in implementing the Recommendation, and to highlight the areas where further action is needed. By documenting which measures have, and which have not been completed, it provides a base line against which to measure further progress in implementing the Recommendation in the coming years.

The report has two main target audiences. First, at national level, the political leaders and civil servants who are responsible for implementing the Recommendation. And secondly, the Committee of Ministers of the Council of Europe, which agreed, on adopting the Recommendation, that it would conduct a review of progress towards its implementation in March 2013. It is intended that this report will contribute to that review.

1. “Council of Europe to advance human rights for lesbian, gay, bisexual and transgender persons” https://wcd.coe.int/ViewDoc.jsp?id=1607163&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE
iii. Actors Involved

The LGBTI Resource Centre has been responsible for coordinating and implementing the monitoring of Recommendation in Italy. In order to support and make substantial the monitoring process, a National Working Group made by LGBT NGOs has been created. Through periodic meetings the National Working Group has provided documentation and a more complete perspective on the current situation of the LGBT people in the country. Moreover, two expert referees have been involved to review the Compliance Documentation Report and guarantee the rigour of the monitoring results.

iv. Methodology

The report’s assessment of progress is based on a checklist of specific detailed measures required by the Recommendation. This list of measures is derived from the text of the Recommendation and its Appendix, supplemented by additional details set out in the Explanatory Memorandum.

This checklist, and the data which LGBTI Resource Centre has compiled in order to assess progress in implementation of the individual measures of the Recommendation, are set out in Appendix to this report, entitled “the Compliance Documentation Report”.

The data used to assess progress in implementation have been obtained from a number of sources:

1. Responses from individual ministries to letters from LGBTI Resource Centre listing the relevant checklist questions, and asking for comments on actions taken to implement the related measures.

2. Information from published sources, such as: reports on Italy commissioned by the Council of Europe Commissioner for Human Rights as documentation for his report, “Discrimination on grounds of sexual orientation and gender identity in Europe”; reports on Italy commissioned by the European Union Agency for Fundamental Rights.


4. Research in European and Italian case law databases as well as in legal literature.

5. Advice from our two expert referees.

v. The process of gathering information from Italian Ministries and Public Authorities

Within the monitoring process the LGBTI Resource Centre sent information requests to sixteen Ministries and Public authorities accountable for the policy fields covered by the Recommendation in the end of April 2012. In the middle of June the LGBTI Resource Centre sent fourteen letters to solicit an answer from the Ministries and Public authorities. Between April and July, the personnel involved in the monitoring process has done eighty-six phone calls to the various Ministries and Authorities in order to receive information on the answer to the information request.

The LGBTI Resource Centre has received eight answers respectively from: Ministry of Labor, Social Policies and Equal Opportunities (18 June 2012 and 2 July 2012), Ministry of Instruction, Universities and Research (28 June 2012), Parliamentary Commission for General Direction and supervision of broadcasting and the broadcasting company RAI (25 July 2012), Ministry of Justice (30 July 2012), Data Protection Authority (3 August 2012), Ministry of Home Affairs (22 October 2012), Ministry of Defense (5 December 2012).
vi. Cases collected

For the purpose of monitoring the implementation of the Recommendation Rec/COM(2010)5 the LGBTI Resource Centre, together with the National Working Group have collected several cases useful to document the Italian institutional, political and social context related to LGBTI persons human rights. The cases have been collected through media reports and publications from LGBTI NGOs. Moreover, the National Working Group member organizations have promoted further researches involving also local branches. When possible, primary sources have been collected (e.g. videos, institutional documents, etc.) in order to further document the cases. Nevertheless, due to a lack of resources available, it has not been possible to proceed with additional researches on the cases collected. Thus, oftentimes the main source for cases remains the media. Cases collected are 76.
The Recommendation

The operative text of the Recommendation includes four main requirements: a review of existing measures to eliminate any discrimination on grounds of sexual orientation or gender identity, introduction of effective measures to act against such discrimination, ensuring that victims have access to effective legal remedies, and ensuring that the recommendation is translated and disseminated as widely as possible. It also requires that member states be guided by the principles and measures contained in the Appendix to the Recommendation.

According to the evidences included in the Compliance Documentation Report, public authorities have promoted some initiatives consistent with the operative text of the Recommendation. However, these are incomplete and several legislative and policy measures still need to be implemented.

The Compliance Documentation Report, which includes information obtained from the Ministry of Labor, Social Policy and Equal Opportunities, refers mainly to the action of the ‘National Office Against Racial Discrimination’ (Ufficio Nazionale Antidiscriminazioni Razziali – UNAR) which is an office under the ‘Department for Rights and Equal Opportunities’ (Dipartimento per i Diritti e le Pari Opportunità) under the Prime Minister’s Office. UNAR’s scope has been extended to action against discrimination based on sexual orientation and gender identity through a ministerial directive, without any amendment to Legislative Decree 215/2003 establishing the Office. This makes UNAR’s action against discrimination on LGBT persons vulnerable to political will and therefore limited. On the other hand, UNAR took the initiative to review existing legislation and other measures to recognize the persistence of discriminations based on sexual orientation and gender identity. Moreover, UNAR has started the monitoring of the administrative measures with the same purposes; the Office intervenes whenever a discriminatory measures is identified. Nevertheless, the LGBTI Resource Centre lacks of specific information on the characteristics of such intervention.

From a legal point of view, Legislative Decree no. 216/2003, implementing Directive 78/2000/EC, explicitly bans for the first time discrimination based on sexual orientation while gender identity is not mentioned as a ground of discrimination. It covers: conditions of access to employed or self-employed activities; vocational training; employment and working conditions; membership of and
involvement in an organisation of employers or workers or any other organisation whose members carry on a particular profession but it does not explicitly ban discriminatory treatments in the access to and supply of goods and services (including housing).

However, Directive 2006/54/EC introduced an explicit reference in relation to discrimination based on ‘gender reassignment’: Recital 3 of the Preamble of this Gender Recast Directive codifies the European Court of Justice’s P. v S. decision by stating that «The Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person». Two years before, Directive 2004/113/EC expanded the scope of application of the principle of equal treatment between men and women to access to and supply of goods and services and even though it does not mention discrimination based on gender identity in its text, the Council of the European Union and the Commission referred to the ECJ case-law for the first time indicating that trans people are to be protected under its scope. These two directives have been both transposed in Italy: but Legislative Decree no. 5 of 2010 implementing Directive 2006/54/EC and Legislative Decree no. 196 of 2007 implementing Directive 2004/113/CE do not explicitly mention the gender reassignment issue.

More recently, Law no. 183 of 2010, known as the ‘Collegato Lavoro’, affected several aspects of public employment law strengthening the fight against all discriminations: sexual orientation is explicitly mentioned as one of the grounds of discrimination forbidden, while gender identity is once again excluded.

With regard to victims’ access to effective legal remedies, Italy lacks an ‘equality tribunal’. UNAR does not have judicial functions and its action is complementary to other legal remedies.

Effectiveness of legal remedies for victims of discrimination might depend on the rules concerning the burden of proof. Italy has recently transposed the shift of the burden of proof required in the EC equality directives with Law no. 101 of 2008, amending art. 4 of Legislative Decree no. 216 of 2003, after the European Commission initiated an infringement procedure. Legislative Decree no. 216 of 2003, at art. 4, provides for simplified and expedited procedures that should ensure that the case is decided within a reasonable time referring to art. 44 par. V of 1998 Immigration Act and artt. 37, par. IV, and 38 of the Equal Opportunity Code providing for special procedures on the grounds of urgency. All these procedures seem to reduce the length of these proceedings which are generally speaking more expedited than normal action brought according to ordinary proceeding established by civil procedure. However, even if reformed, art. 4 does not mention the possibility of presenting statistical data in order to establish a presumption of discrimination anymore thus rendering the proof of discrimination harder for the worker.

In cases where the judge upholds the victim’s petition, he or she can order that the discriminatory conduct stop, that the effects of the discrimination be removed, that the decision be published in a national newspaper, that a company which commits an act of discrimination be denied financial and credit facilities or excluded from contract work for up to two years, that patrimonial and non-patrimonial (the so called non-pecuniary damage) compensation be paid. In particular cases in which it is important to act promptly, there

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is a provision for an interim injunction to be granted. It is not possible to foresee whether the recognition of compensation for ‘moral damages’ on the grounds of the mere evidence of the discrimination, regardless of any real economic loss, will be widely recognised by judges.

Besides legal provisions, UNAR promoted several education and awareness measures aimed at tackling discrimination, stereotypes and prejudices against LGBT people. However, a comprehensive strategy, supported by policy documents, seems to be still missing. UNAR translated in Italian the text of the Recommendation and its appendix. In February 2012 these translated documents have been distributed during the Conference sponsored by UNAR for Italy’s joining to the program of the Council of Europe on ‘Contrasting the discrimination based on sexual orientation and gender identity’ (Contrasto della discriminazione basata sull’orientamento sessuale e sull’identità di genere) to LGBT NGO’s representatives and Trade Unions in the presence of the National Press Federation. The LGBTI Resource Centre is unaware of further initiative of dissemination of the Recommendation and its appendix.

5. Ibid. p. 10.
Appendix to Recommendation CM/Rec(2010)5

i. Right to life, security and protection from violence

a. “Hate crimes” and other hate-motivated incidents

The key recommendations in Section I.A of the Appendix cover training of police officers, judiciary and prison staff, the introduction of independent machinery for investigating hate crimes allegedly committed by law-enforcement and prison staff, and a range of measures to combat “hate crimes” and hate motivated incidents on grounds of sexual orientation or gender identity, including hate crimes legislation. Member states are also required to gather and analyse data on the prevalence and nature of discrimination in this field.

Information gathered in the Compliance Documentation Report, including specification by the Ministry of Justice, the Ministry of Labor, Social Policy and Equal Opportunities and the Ministry of Home Affairs highlights the lack of proper legal provisions to combat hate crimes and incidents against LGBT persons and even if few policy measures has been adopted, a comprehensive strategy to overcome these crimes is still lacking.

Italian law allows hate crimes based on grounds of race, ethnicity, nationality and religion to be punished but the Italian Parliament failed to take action to protect LGBTI people from discriminatory crimes since bills aimed at introducing homophobic and transphobic crimes have been rejected several times. Last year two new bills introducing hate crimes on grounds of sexual orientation and gender identity have been brought before the Chamber of Deputies and are currently being discussed in the Justice Committee but it is very unlikely they will be approved before the next general parliamentary elections of 2013. Besides, public institutions have not disseminated a simple and comprehensive definition of “hate crimes” or “hate related incidents” to the general public. This lack is particularly severe considering that 19.4% of gay men and 18.4% of gay

6. R. Lelleri, Survey nazionale su stato di salute, comportamenti protettivi e percezione del rischio di HIV nella popolazione omo-bisessuale [Arcigay, 2006], p. 53 and 76. This survey covered 4690 questionnaires from gay or bisexual men and 2084 questionnaires from lesbians or bisexual women.
7. Ibid. p. 53
8. 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 of 7725 persons.
9. Ibid. p. 4.
women interviewed in a recent survey have been insulted or harassed because of their sexual orientation; the percentage reach 30% amongst under–25 years old gay men. 24.8% of Italians consider it legitimate to discriminate against trans persons; 30.5% do not want a trans person as a neighbor.

Training programmes for police forces on issues related to hate crimes and incidents against LGBT persons have been recently organized by the ‘Observatory for security against acts of discrimination’ (Osservatorio per la sicurezza contro gli atti discriminatori - OSCAD) together with UNAR. Training for police forces on discriminations focusing also on LBGTI-phobic crimes is amongst the OSCAD priority objectives of 2012 being mainstreamed within the on the job and entrance training programmes for police forces. Despite that, the LGBTI Resource Centre is unaware of the policy document explicitly including such objective; moreover, the timing for implementing such measure and the specific contents of the trainings is unclear. OSCAD has been established in 2010 to help individuals who belong to minorities to enjoy their right to equality before the law and guarantee protection against any form of discrimination. The Observatory collects data on crimes but the data provided to the general public are not disaggregated by type of motivation. Moreover, although there is a procedure to collect data on crimes reported, there is no mention of a way to help police officers to recognize them. OSCAD has direct relations with LGBT organizations but there is no information on personnel appointed by police forces to work with local LGBT groups. An independent and effective machinery which investigates reports of hate crimes and incidents committed by law-enforcement staff is also lacking. Furthermore, LGBTI Resource Centre is unaware of the existence of training programmes and procedures for the judiciary. The vice-chief of the Arma dei Carabinieri Clemente Gasparri – a prominent officer of the armed forces – has intervened during an on the job training course for armed forces officials declaring that homosexuals are psychologically unstable persons. A 2011 manual to prepare the exam for career advancement within the Arma dei Carabinieri - approved by the Colonel Pasquale Santoro - included homosexuality amongst the categories of sexual degeneration together with necrophilia, incest and fetishism. Following the establishment of a parliamentary inquiry, the Arma dei Carabinieri declared that the inclusion of homosexuality amongst the list of sexual degeneration was an ‘editing mistake’. The Arma dei Carabinieri ordered the section of the manual to be deleted.

Looking at the condition of LGBT prisoners, the extraordinary Senate Commission on human rights protection (‘Commissione straordinaria per la tutela e la promozione dei diritti umani’) clearly tackles the lack of competence of the prisons staff on issues related to sexual orientation and gender identity and asks for the implementation of specific training activities to overcome such lack. The only measure for the protection of LGBT prisoners from assault, rape and other abuses is the segregation from other inmates. While waiting for the destination to apposite sections, prisoners might experience solitary confinement for the majority of the incarceration, thus suffering a severe form of discrimination. Besides, as stressed by the human rights Commission, transgender people in prison may face periods of time without hormone therapy. This may result in a long time without treatment and may cause serious health problems.

10. Senato della Repubblica, Commissione straordinaria per la tutela e la promozione dei diritti umani, Rapporto sullo stato dei diritti umani negli istituti penitenziari e nei centri di accoglienza e trattenimento per migranti in Italia (March 6th, 2012).
11. Ibid.
b. “Hate speech”

Section I.B. of the Appendix requires measures to combat “hate speech” on grounds of sexual orientation or gender identity, including laws penalising such “hate speech”, promotion of good practice within media organisations and by internet service providers, public disavowal of such speech by government officials, guidelines to government officials to refrain from such speech and to promote respect for the human rights of LGBT people.

Italian law does regulate hate speech but it only penalises it if it is based on grounds of race, ethnicity, nationality or religion. In 2009 and 2011 two bills including homophobia and transphobia in Italy’s bias-motivated crime laws were rejected by the Chamber of Deputies on the grounds they were unconstitutional.

With regard to media organizations, however, 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.

According to the information provided by the ‘Parliamentary Commission for general direction and supervision of broadcasting system’ (Commissione parlamentare per l’indirizzo generale e la vigilanza dei servizi radiotelevisivi) and the Company RAI – concessionaire of the public broadcast system – rights of LGBT persons are guaranteed by the overall regulation of the system. However, sexual orientation and gender identity are not mentioned in any regulatory or policy documents as parts of the Italian social reality to be represented.

Italy still lacks an overall strategy against hate speech and proper measures tackling hate speech by public authorities and representatives of institutions. In recent years hate speeches against LGBT persons have directly come from those representatives. Arguments used to look at homosexuality as an illness, caused by mental disorders, from which one can be cured or redeemed, as behaviour that affects in particular children and adolescents who therefore must be away from such people to protect their growth and development.
their development, public use of denigratory names, homosexuality as a sign of moral deg- radation that arouses feelings of revulsion and disgust. These words have been repeat- edly pronounced by public officials, members of government, members of Parliament, local and regional Councillors, etc. Moreover, when incidents occur, it usually lacks an adequate reaction of leading public officials.

The Councillor for the Lombardy Region Security, Romano La Russa, from the Popolo delle Libertà party, has declared in April 2012: «for what concern me gay people are ill and it is an illness that can be cured». As a consequence a motion of censure had been placed by some parties of the center-left concerning the homophobic statements but the Regional Council of Lombardy rejected with 39 against and 28 in favour of the motion of censure.
Section II of the Appendix requires member states to take appropriate measures to ensure that LGBT organisations can gain official registration, are able to operate freely, are involved on a partnership basis when framing and implementing public policies which affect LGBT persons, and are able to access public funding earmarked for NGOs without discrimination; also, that LGBT human rights organisations are protected effectively from hostility and aggression.

According to the information gathered in the Compliance Documentation Report, LGBT organisations do not face legal obstacles with regard to official registration nor are they prevented from operating freely. Besides, public funding earmarked for NGO’s is accessible without discrimination, even if LGBT NGOs report that funding opportunities may depend on the political will of governments and local administrations.

LGBT NGOs are often consulted by policy makers; several institutional actors have been created since 1999 for consultation purposes or have been designed to develop proposals that could go in the direction of overcoming the discrimination faced by LGBT people. Results have been poor on the one hand due to the rapid turnover of governments, on the other hand because of the weak will to enact the legislation by the bodies responsible for promoting LGBT policies.  

Section IV of the Appendix requires member states to guarantee freedom of expression and peaceful assembly to LGBT people, ensuring the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, encouraging pluralism and non-discrimination in the media, protection of lawful assemblies, and condemnation by public authorities of any interference with the exercise of the right to freedom of expression and peaceful assembly by LGBT people.

In summary, there are no legislative measures limiting the freedom of expression and peaceful assembly of LGBT people. However, as clearly reported within the Compliance Documentation Report, although law guarantees the freedom to receive and transmit information and ideas related to sexual orientation and gender identity there are several attempts at violation of such freedom also in the media. The same trend has been observed when it comes to freedom of assembly.

NGOs and media report cases of public authorities limiting the spread of social communication campaigns on issues related to LGBT rights; barriers to the participation of LGBT associations or LGBT human rights supporters organizations in school meetings to inform students about issues related to sexual orientation and gender identity; resistance from the authorities to the presentation in institutional spaces of LGBT themed books - considered morally harmful and not worthy of an audience of young people. Further cases are related with criticism and censure to advertisements for private companies by public authorities, censorships of films and TV series on public television, restricting the access to some LGBT themed websites.

In 2011 the national television broadcaster RAI did not air the episode number 8 of the TV series “Un ciclone in convento” in which the marriage of two men was celebrated. The explanation expressed by the broadcaster for having done so was related to issues of space. A board member of RAI Rodolfo De Laurentis, however, has justified the choice of censoring the TV series episode showing a same sex marriage as contrasting common values of the Italian society and even the Constitutional Law principles.

Similar evidence occurs in the case of the freedom of assembly: law does not limit the enjoyment of such rights but there are episodes proving the attempt of public au-
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Authorities to restrict such freedom through: the denial of support to LGBT pride events; homophobic declarations from representatives of public authorities; attempts to limit the route of parades; limitation to the use of public institution venues.

Both in 2008 and 2009 the route of the LGBT prides organized in Rome was modified because of parallel events organised by the Catholic church that have been considered of prevailing relevance by the city authorities. Particularly significant is the case of 2009 when the police for three times asked the organizers to define the location of the parade. Every proposal was rejected by the authorities. The first because of a religious event too close to the LGBT parade route, the second because of the feast of San Giovanni that would take place four days after the chosen date. The third time the organizers proposed the exact route that had been granted the previous year with special dispensation by the police, but this time it was denied. Until a few days before the date of the event an agreement on the parade route had not reached yet. In the end the police agreed to authorize the final proposed route, with a special dispensation (like the previous year).
iv. Respect for private and family life excluding specific transgender issues (Section IV, paras 18, 19, and 23 – 27 of the Appendix)

These paragraphs of Section IV of the Appendix address criminalisation of same-sex sexual acts, collection of personal data, and discrimination in access to the rights of couples and parenting. There aren’t any legal provisions punishing same-sex sexual acts nor differences in the age of consent.

According to data gathered in the Compliance Documentation Report, included information provided by the Data Protection Authority and the Ministry of Home Affairs, private life is overall respected through appropriate privacy measures. On the contrary, when it comes to family life the Italian legal system does not recognize same-sex marriage nor same-sex civil unions and does not permit adoption nor access to medically assisted procreation to same-sex couples or single men and women: therefore legislation concerning parental responsibility does not take into account sexual orientation or gender identity.

With regard to personal data collection, Legislative Decree no. 196 of 2003 (‘Personal Data Protection Code’) states that those personal data allowing the disclosure of “sex life” are to be considered as “sensitive data” and therefore it requires additional conditions to be met for the processing of such data to be legitimate. Besides, the ‘Court of Cassation’, with decision no. 14390 of 8 July 2005 declared that data allowing the disclosure of “sex life” are to be considered “super-sensitive”, meaning that they have to be more carefully protected.

Sexual orientation and gender identity are not explicitly mentioned in the ‘Personal Data Protection Code’, but data concerning these two aspects have always been considered “sensitive” for the purposes of the law. Besides, with regard to employment law, it must be recalled that Legislative Decree no. 276 of 2003 prohibits public and private job agencies to investigate or manage, even with the explicit consent, any data concerning, among others, the sexual orientation of the job seeker or worker.

LGB persons face many obstacles when it comes to family life and parenting since same-sex couples do not have access to marriage and civil unions are not legally recognized. While the Italian legal system confers
some few rights and obligations on both opposite and same-sex couples - with regard to: freedom of movement within the EU and family reunification; damage compensation; work related benefits and pensions; tenancy rights; workers’ leave and health care. Overall, de facto couple and, most of all, same-sex couples, still lack significant rights in the many areas.

When it comes to parenthood, while children born out of the wedlock to a heterosexual couple have the same rights as legitimate children, a child born to a same-sex couple has only one legal parent: the biological parent. Law no. 184 of 1983 governing the adoption of minors only allows couples who have been married for at least three years (or have been a stable couple for at least three years taking into account the period of pre-matrimonial cohabitation) to adopt and adoption of a child by a single person is not permitted. Therefore, same-sex couples have no possibility to adopt since they may not marry under Italian law and neither may they adopt as single persons.
v. Respect for private and family life and access to health care – specific transgender issues
(Section IV of the Appendix, paras 20, 21 and 22, and Section VII, paras 35 and 36)

These paragraphs of Section IV of the Appendix require member states to guarantee the full legal recognition of a person’s gender reassignment in a quick, transparent and accessible way, to remove any prior requirements for legal recognition that are abusive (including any of a physical nature), and ensure that transgender persons are able to marry once gender reassignment has been completed. The paragraphs of Section VII require member states to ensure that transgender persons have effective access to appropriate gender reassignment services, and that any decisions limiting the costs covered by health insurance should be lawful, objective and proportionate.

The evidence presented in section IV and VII of the Compliance Documentation Report, including information provided by LGBT NGOs, indicates that gender reassignment is allowed by law, medical procedures are available free of charge and change in documents are guaranteed. Nevertheless, lack of specific regulation in procedures causes uncertainty and differentiation within the national territory; furthermore, sterilization is still widely considered a necessary pre-requisite and the health system does not provide free hormone therapy for secondary sexual characteristics in all Regions.

Law no. 164 of 1982 ‘Rules concerning rectification of sexual attribution’ provides a double judicial intervention in the process of sex change: first of all, gender reassignment must be judicially declared; secondly, art. 3 of the Law states that «when a medical – surgical treatment in order to adapt the sexual characteristics is necessary, the court authorises it with a decision. In such case, the court having checked that the authorised treatment has been done, orders the correction of the person’s sex in the records of Registrar’s office» and, moreover, art. 2 allows the judge to «ask for a medical opinion regarding the psycho-physical condition of the person».

According to the law, transgender persons can ask for a judicial order which gives consent to change the details of their sex and name in the records of the Registrar of Civil Status: after such judicial decision procedures for the change of name, gender and gender marker in official documents are granted.

Italian system lacks regulations or guidelines issued by the legislator or by other public authorities establishing prior requirements for legal recognition of a gender reassignment: therefore, such minimum requirements are
established routinely and informally by judges and doctors on the base of their personal sensitivity determining a state of uncertainty and differentiation in the national territory\textsuperscript{14}.
Furthermore, the interviewed LGBT NGOs report that the law and in particular the above mentioned art. 2, has been usually interpreted as if the medical-surgical intervention is necessary in order to obtain the gender reassignment. According to such interpretation and to case law male to female reassignment is usually authorised only when the person has had complex surgery including orchidectomy, penectomy and vaginaplasty. The female to male change is usually authorised when the person has had an surgery including mastectomy and hysterectomy. In contrast, surgery for penile reconstruction is not requested because it is considered a very difficult operation, with a high failure rate. Moreover, the National Working Group shows that irreversible sterilization is considered a prerequisite to reallocate gender. This interpretation of Italian legislation on gender reassignment is confirmed by case-law.

Information gathered from the National Working Group shows that transgender persons have access to gender reassignment services; however, these are not equally distributed throughout Italy. Moreover, quality of services, procedures and expertise are not uniform amongst the gender reassignment services. When it comes to coverage of health care costs, while gender reassignment surgery is available in public hospitals free of charge, the health system does not provide free hormone therapy for secondary sexual characteristics together with surgical procedures in all Regions because of the regionalization of the health care system. This represents a significant obstacle for trans persons and an economic burden that drives towards marginality and social exclusion.

To conclude, transgender people have the right to marry a person of the sex opposite to their reassigned sex as soon as their sex and name details have been changed in the records of the Registrar of Civil Status. Besides, the judicial decision of legal sex change determines the dissolution of the civil marriage and/or the termination of the civil effects of marriage celebrated by ministers of catholic worship. Even if some legal scholars argue that the dissolution should not be automatic but it should be the consequence of an individual choice to file for divorce, case – law seems to confirm that marriage cannot persist if one of the spouses obtains a legal sex change.

Section V of the Appendix requires Member States to provide effective protection against discrimination on grounds of sexual orientation and gender identity in employment, including legislation prohibiting discrimination, other policy related measures to combat discrimination, and specific measures in relation to the armed forces and transgender persons. It also requires Member States to protect the privacy of transgender individuals in employment.

Evidence from the Compliance Documentation Report, including information from Ministry of Labor, Social Policy and Equal Opportunities, indicates the existence of legislation prohibiting discrimination based on sexual orientation in employment. Gender identity is never mentioned in such legislation even if the general prohibition of gender discrimination has to be considered extended to trans persons. Several measures have been adopted but a comprehensive strategy is still missing.

Directive 78/2000/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. Such legislative act aims to combat direct discrimination, indirect discrimination and harassment. It covers: conditions of access to employed or self-employed activities, including promotion; vocational training; employment and working conditions (including pay and dismissals); membership of and involvement in an organisation of employers or workers or any other organisation whose members carry on a particular profession and it applies as much to the public sector as to the private sector including public bodies as well as for paid and unpaid work. More recently, Law no. 183 of 2010 known as the “Collegato Lavoro” affected several aspects of employment law: its art. 21 provides for measures aimed at guaranteeing equal opportunities, the wellbeing of workers and the lack of discrimination in public administration offices. Besides, Art. 1468 of Legislative Decree no. 66 of 2010 containing the ‘Military Code’ prohibits all discrimination against LGBT military personnel in access, recruitment, duty assignments and transfers.

UNAR, set up to work against discrimination based on race and ethnicity, has recently extended its jurisdiction to discrimination based
on religion, disabilities, age, sexual orientation and gender identity. Since 2010 UNAR have been implementing several measures on the issue of discrimination, harassment and victimisation against LGBT persons in employment. Gender identity issues have been tackled by UNAR with specific actions. However, the enlargement of its jurisdiction is not prescribed by law: therefore UNAR’s role in combating discrimination against LGBT people is still impermanent and vulnerable to the political will. Moreover, it seems still lacking a comprehensive strategy supported by policy documents tackling discrimination against LGBT people.

The condition of uncertainty of policy intervention is particularly serious if compared with data available on discrimination against LGBT persons in employment. According to a recent study\textsuperscript{15}, 13% of the sample have been denied access to work, 16.2% have been underpaid, 22.9% have been downgraded, 4.8% have been dismissed because of their sexual orientation or gender identity. Data regard as well the work environment: 54.1% of the sample declares to have heard degrading appellations towards LGBT persons in the workplace, 14% have directly been threaten because of their sexual orientation or gender identity. 45% of trans persons have been denied access to a job position because of their gender identity. Cases of discrimination are reported also in the armed forces.

\textsuperscript{15} R. Lelleri, Report finale di Io Sono Io Lavoro – prima indagine sul lavoro e le persone lesbiche, gay, bisessuale e transgender/transessuali (Arcigay, Bologna, 2011). The survey is based on a sample of 1990 cases.
vii. Education

Section VI of the Appendix requires member states to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity, including measures to provide protection from bullying and social exclusion such as equality and safety policies, codes of conduct and training programmes for staff, and measures to promote mutual tolerance and respect in schools, including objective information in school curricula and educational materials, specific information and support for LGBT pupils and students, and measures to meet the special needs of transgender students.

According to the Compliance Documentation Report which includes information provided by the Ministry of Instruction, Universities and Research, the Italian institutions have been issuing some regulations in the past decade in order to combat violence, bullying and discrimination in schools but they do not explicitly address homophobia or transphobia. Few measures have been undertaken against homophobia in school but none of them is structural and all neglected transphobia.

In 2001 a significant reform of the part of the Italian Constitution dealing with Regions and Local Authorities came into force. Amendments to art. 117 made State and Regions co-holders of the law-making power, «in compliance with the Constitution and the constraints deriving from European laws and international obligations» in the field of education: State is responsible for setting the general principles for education and the minimum standards required that have to be ensured in order to grant the same level of education throughout the whole country (art. 117, 2nd al., letter m)) while Regions are responsible for further specification and for putting in practice the principle set at central level, in respect of «the autonomy of educational institutions and with the exception of vocational education and training» (art. 117, 3rd al.). This makes it difficult to assess to what extent measures are taken to ensure that the right to education can be enjoyed without discrimination on grounds of sexual orientation or gender identity throughout the country.

The Ministry has adopted several measures specifically tackling homophobia in schools such as a social campaign and sporadic education activities also in partnership with LGBT NGOs. However, transphobia and gender identity issues in schools has been neglected within these measures. The university education first and the following e-learning
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System appointed for the new hired teachers does not include any information about issues related to sexual orientation and gender identity in schools. In-service trainings are not systematic and in many cases are organised thanks to the initiative of LGBT NGOs, sometimes in partnership with local and regional institutions.

Data shows that in Italy 24% of LGB persons have been or are discriminated at school or university because of their sexual orientation. The results of a research conducted within students and teachers on these issues highlight that teachers mostly do not intervene in cases of homophobic bullying; when an intervention occurs it is not always effective to reduce episodes of bullying. Even more serious are the cases of teachers intervention to support the bully and not the victim. When interviewed, teachers themselves report the need for training on sexual orientation and gender identity related issues such as: concepts, related phenomenon and pedagogic tools to deal with students.

There are not equivalent data referring to experiences of trans persons in schools and universities.

According to the information available in the Compliance Documentation Report, school curricula do not include information on sexual orientation and gender identity and there are cases where delivery of such information has been explicitly forbidden by school managers.

In 2012 the school manager of the high school ‘Castelli’ in Brescia censored an article meant to be published in the school newspaper including information about initiatives organized by a local LGBT NGO and showing a picture with two men kissing. At Prato a group of students from the high school ‘Livi’ invited the members of an LGBT local group to take part to a students assembly on LGBT rights and related issues. The school manager forbid the assembly affirming that such issues are not feasible within the school because of the high number of students coming from other countries.

17. ISTAT, supra note 8.
19. Ibid. p. 58.
20. C. D’Ippoliti, A. Schuster, supra note 16.
viii. Health - other than transgender specific health issues

These paragraphs of Section VII of the Appendix require member states to ensure that the highest attainable standard of health can be enjoyed without discrimination on grounds of sexual orientation or gender identity. Measures include taking account of the specific needs of LGBT people in the development of national health plans, including suicide prevention measures, health surveys, curricula and training courses, permitting patients to identify their “next of kin” without discrimination, withdrawing medical textbooks and other documents that treat homosexuality as a disease, and ensuring no one is forced to undergo any medical treatment because of their sexual orientation or gender identity.

Evidence from the Compliance Documentation Report, including several researches on the issue of sexual orientation and gender identity health care, indicates that homosexuality is not considered a disease therefore nobody is forcefully submitted to medical treatment, unless cases regulated by law. However, overall the health care system does not consider the special needs of LGBT persons within the design of health policies. Training of health personnel and social workers does not include LGBT issues in a structural way with a negative impact on the services delivered and the environment created. Moreover the lack of legal recognition of same-sex partnerships and parental rights for co-parents in same-sex families creates problems in cases of health emergencies when it comes to identifying the “next of kin”.

According to art. 32 of the Italian Constitution, «(1) The Republic protects individual health as a basic right and in the public interest; it provides free medical care to the poor. (2) Nobody may be forcefully submitted to medical treatment except as regulated by law. That law may in no case violate the limits imposed by the respect for the human being». The health care area is one of those that both the State and the Regions have the power to regulate. It means that, after the constitutional reform of 2001, the Regions are entitled to regulate the organizational structure of health care system but always complying with the State rules, containing the fundamental principles. Some steps have been taken at the regional level. For instance, Tuscany Regional Law n. 63 of 15 November 2004 containing "Norms against sexual discrimination caused by sexual orientation and gender identity" ("Norme contro le discriminazioni determinate dall’orientamento sessuale o dall’identità di..."

21. See Section v above
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genere’), followed by the Regional Decree n. 258 of 10 April 2006, gives the regional general direction in charge of health policies the mandate to develop appropriate measures to train health professionals in order to avoid any type of discrimination on the ground of sexual orientation and gender identity in the health sector and to give appropriate information and services in the area of sexual and reproductive health available to LGBT people and particularly to youth under-25 years old.

On the contrary, national legislation and health measures do not take into account the specific needs of LGBT patients despite data clearly reporting the greater difficulties faced by LGBT persons in approaching the health care system. Consequences on the level of health of LGBT people are severe.

LGB persons experience unequal treatment, harassment or abusive behavior by health professionals. The Italian National Institute of Statistics has recently registered that the 10,2% of LGB people have been discriminated in accessing the health care system by medical and non-medical staff. A 2006 survey promoted by the LGB organization Arcigay and supported by the ‘Istituto Superiore di Sanità’ pointed out that 31,6% of gay or bisexuals men and the 34,6% of lesbians or bisexual women experience fear of discrimination in the health care system. The same study also revealed that the 12,1% of gay or bisexual men and the 10,8% of lesbians or bisexual women testify to a negative reaction of their doctor when informed about their sexuality. LGB persons’ special needs are not recognized as a consequence of their social invisibility. The 17,6% of gay and bisexual men and the 21% of lesbians and bisexual women having psychological therapy do not reveal their sexual orientation to their psychologist. This data greatly increase if related to the relation with doctors in general: the 78% of men and 86,8% of women included in the survey do not reveal their sexual orientation to their doctor. Lesbian and bisexual women that disclose their sexual orientation to their gynecologist are 29,7% of the overall sample.

LGB persons have no access to information on sexual and reproductive health related to their needs. The same study shows that one out of three men included in the sample reports the difficulty to achieve clear information on sexual health, while this difficulty is perceived by the 77,6% of women.

22. ISTAT, supra note 8.
23. The Istituto Superiore di Sanità is the technical and scientific public body of the Italian National Health Service. It is entitled of research, control, training and consultation activities.
25. Ibid.
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ix. Housing

Section VIII of the Appendix requires that access to adequate housing can be enjoyed without discrimination on the grounds of sexual orientation or gender identity through such measures as prohibiting discrimination in the sale or rent of housing, in provision of loans for purchase of housing, in recognition of the rights of a tenant’s partner, and in the case of evictions; also, provision of related information to landlords and tenants, and measures to ensure non-discriminatory access to shelter and emergency accommodation, and to address the risks of homelessness faced by LGBT people, including young persons excluded by their families.

According to the information gathered within the Compliance Documentation Report, Italian authorities have not undertaken any legislative or policy measure in order to guarantee the full enjoyment by LGBT people of rights related to housing.

Legislative Decree no. 216/2003 implementing Directive 78/2000/EC prohibits discrimination based on sexual orientation: but this legislation does not extend beyond the scope of the said Directive and therefore does not explicitly ban discriminatory treatments in all areas: the prohibition of discrimination on grounds of sexual orientation and gender identity in the access to goods and services – including housing – is not mentioned.

Housing policies are mostly determined by regional legislators since the 2001 amendments to Art. 117 Const. made State and Regions co-holders of the law-making power: with regard to the field of the social right of housing State is responsible for setting the general principles and the minimum standards required that have to be ensured in order to grant the same level of protection throughout the whole while Regions are responsible for further specification and for putting in practice the principle set at central level.

According to the information available Italian authorities have not yet taken adequate steps to ensure non-discriminatory access to emergency accommodation for LGBT persons and no campaigns have been launched to prevent discrimination in housing. The study of attitudes toward LGBT persons held by the National Institute of Statistics shows that 8% of respondents justify landlord refusal to rent to LGB persons; the average is 24.8% when it comes to rent to a transgender person. 14.3% of LGBT persons have been

26. ISTAT, supra note 8.
discriminated while searching an house to rent or to buy. Situation of transgender persons is particularly severe. Due to the prejudice that links trans persons to prostitution, on one side landlords are reluctant to rent, on the other side the fees requests are usually prohibitively high27.

27. C. D’Ippoliti, A. Shuster, supra note 16.
x. Sports

Section IX of the Appendix requires member states to combat sexual orientation or gender identity discrimination in sports through measures to counteract and punish the use of discriminatory insults, codes of conduct for sports organisations, encouragement of partnerships between LGBT organisations and sports clubs, and anti-discrimination campaigns, and to put an end to the exclusion of transgender persons from sports activity. According to the information gathered homophobic and transphobic chanting around sports events are not criminal offences in the Italian legal system. In addition, any measures that have been adopted to act against discrimination in sports exclude sexual orientation and gender identity motivated discriminations. Coherently, no active policy to include and guarantee participation of LGBT people in sports has been promoted.
xi. Right to seek asylum

Section X of the Appendix requires member states, where they have international obligations in this respect, to recognise a well-founded fear of persecution based on sexual orientation or gender identity as a valid ground for the granting of refugee status and to ensure that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment on grounds of sexual orientation or gender identity. It also requires that asylum seekers be protected from any discriminatory policies or practices on these grounds, and that staff responsible for processing asylum requests are provided with training in the specific problems encountered by LGBT asylum seekers.

Art. 10, para. 3, of the Italian Constitution states that «a foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law».

Up until now there does not yet exist in Italy a comprehensive national law concerning the right to asylum: there are many national legislative sources concerning the refugee status and the asylum right which have been adopted in ratification of international conventions. Italian law provides that persecution on the ground of sexual orientation is a ground for obtaining refugee status or humanitarian protection since the implementation of Directive 2004/83/EC ‘on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted’. Legislative Decree no. 251 of 2007 at art. 8 acknowledges that persecution for belonging to a particular social group characterised by the common feature of sexual orientation is to be considered as among the grounds for protection and the guidelines followed by the ‘National Commission for Asylum Rights’ also contain the same reference. With regard to non EU citizens, Legislative Decree no. 286 of 1998 and subsequent amendments (‘Immigration Code’) at art. 19, para. 1, prohibits a foreigner from being sent to a state in which he may be «persecuted for reasons of race, sex, language, citizenship, religion, political opinions, or personal or social conditions, or if he risks being sent to a state in which he will not be protected from persecution»: sexual orientation and gender identity are not expressly mentioned but this legislation has been usually interpreted as covering these grounds of persecution.

It is important to notice that all these legislative measures as well as judicial decisions only address the problem of sexual orientation.
Some claims concerning the risk of persecution on grounds of gender identity are however pending before the local commissions ('Commissioni territoriali per il riconoscimento della protezione internazionale') which are the appropriate authority to examine the asylum requests and recently, the 'Tribunal of Rome' overturned an expulsion order for an Egyptian transsexual citizen and granted him a stay permit for humanitarian reasons because of the risk of persecution in his country of origin.

There is no information on training in specific problems of LGBT asylum seekers or refugees for staff responsible for processing requests, nor to prevent risks of physical or verbal violence.
xii. National human rights structures

Section XI of the Appendix requires member states to ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity, and in particular should be able to make recommendations on legislation and policies, raise awareness amongst the general public, and – as far as national law provides – examine individual complaints and participate in court proceedings.

The only national structure addressing discrimination is the already mentioned ‘National Office Against Racial Discrimination’ (UNAR) set up by Legislative Decree no. 216 of 2003 for the purpose of working for the promotion of equal treatment and the fight against discrimination based on race or ethnic origin only. Therefore Italy still lacks an integrated equality body pursuing a multi-ground equality agenda even if UNAR has been recently implementing some measures on the issue of discrimination, harassment and victimisation against LGBT persons in employment.
APPENDIX I - Recommendation CM/Rec(2010)5

Recommendation CM/Rec(2010)5
of the Committee of Ministers to
member states on measures to combat
discrimination on grounds of sexual
orientation or gender identity

(Adopted by the Committee of Ministers on 31
March 2010 at the 1081st meeting of the Min-
isters’ Deputies)

The Committee of Ministers, under the
terms of Article 15.b of the Statute of the
Council of Europe,
Considering that the aim of the Council of Europe is to achieve a greater unity be-
tween its members, and that this aim may
be pursued, in particular, through common
action in the field of human rights;
Recalling that human rights are universal
and shall apply to all individuals, and stress-
ing therefore its commitment to guarantee
the equal dignity of all human beings and
the enjoyment of rights and freedoms of all
individuals without discrimination on any
ground such as sex, race, colour, language,
religion, political or other opinion, national
or social origin, association with a national
minority, property, birth or other status, in
accordance with the Convention for the Pro-
tection of Human Rights and Fundamental
Freedoms (ETS No. 5) (hereinafter referred
to as “the Convention”) and its protocols;
Recognising that non-discriminatory treat-
ment by state actors, as well as, where ap-
propriate, positive state measures for pro-
tection against discriminatory treatment,
including by non-state actors, are funda-
mental components of the international
system protecting human rights and funda-
damental freedoms;
Recognising that lesbian, gay, bisexual and
transgender persons have been for centu-
ries and are still subjected to homophobia,
transphobia and other forms of intolerance
and discrimination even within their family
– including criminalisation, marginalisation,
social exclusion and violence – on grounds
of sexual orientation or gender identity,
and that specific action is required in order
to ensure the full enjoyment of the human
rights of these persons;
Considering the case law of the European
Court of Human Rights (“hereinafter re-
ferred to as “the Court”) and of other in-
ternational jurisdictions, which consider
sexual orientation a prohibited ground for
discrimination and have contributed to the
advancement of the protection of the rights
to gender persons;
Recalling that, in accordance with the case
law of the Court, any difference in treatment,
in order not to be discriminatory, must have
an objective and reasonable justification,
that is, pursue a legitimate aim and employ
means which are reasonably proportionate
to the aim pursued;
Bearing in mind the principle that neither
cultural, traditional nor religious values, nor
the rules of a “dominant culture” can be in-
voked to justify hate speech or any other
form of discrimination, including on grounds
of sexual orientation or gender identity;
Having regard to the message from the
Committee of Ministers to steering com-
mittes and other committees involved
in intergovernmental co-operation at the
Council of Europe on equal rights and dig-
nity of all human beings, including lesbian,
gay, bisexual and transgender persons,
adopted on 2 July 2008, and its relevant rec-
ommendations;
Bearing in mind the recommendations
adopted since 1981 by the Parliamentary
Assembly of the Council of Europe regard-
ing discrimination on grounds of sexual ori-
tentation or gender identity, as well as Rec-
nommendation 211 (2007) of the Congress of
Local and Regional Authorities of the Coun-
cil of Europe on “Freedom of assembly and
expression for lesbians, gays, bisexuals and
transgendered persons”;
Appreciating the role of the Commissioner
for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;
Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and "deprivation of economic, social and cultural rights, including the right to health";
Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large.

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.
Appendix to Recommendation CM/Rec(2010)5

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related “hate crimes” and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.
B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such "hate speech" should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.
III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

19. Member states should ensure that personal data referring to a person’s sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

21. Member states should take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible the change of name and gender reassignment in all areas of life, in particular by making possible the change of name and gender recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.
23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor’s pension benefits and tenancy rights.

24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

26. Taking into account that the child’s best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

27. Taking into account that the child’s best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.
VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.
VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.
X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

XI. National human rights structures

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

XII. Discrimination on multiple grounds

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.
Glossary

**Gender identity** refers to a person’s deeply felt individual experience of gender, which may or may not correspond with the sex assigned at birth, and includes the personal sense of the body and other expressions of gender (that is, “gender expression”) such as dress, speech and mannerisms. The sex of a person is usually assigned at birth and becomes a social and legal fact from there on. However, some people experience problems identifying with the sex assigned at birth—these persons are referred to as “transgender” persons. Gender identity is not the same as sexual orientation, and transgender persons may identify as heterosexual, bisexual or homosexual.

**Gender reassignment treatment** refers to different medical and non-medical treatments which some transgender persons may wish to undergo. However, such treatments may also often be required for the legal recognition of one’s preferred gender, including hormonal treatment, sex or gender reassignment surgery (such as facial surgery, chest/breast surgery, different kinds of genital surgery and hysterectomy), sterilisation (leading to infertility). Some of these treatments are considered and experienced as invasive for the body integrity of the persons.

**Harassment** constitutes discrimination when unwanted conduct related to any prohibited ground (including sexual orientation and gender identity) takes place with the purpose or effect of violating the dignity of a person or creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can consist of a single incident or several incidents over a period of time. Harassment can take many forms, such as threats, intimidation or verbal abuse, unwelcome remarks or jokes about sexual orientation or gender identity.

**Hate crime** towards LGBT persons refers to criminal acts with a bias motive. Hate crimes include intimidation, threats, property damage, assault, murder or any other criminal offence where the victim, premises or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support or membership of an LGBT group. There should be a reasonable suspicion that the motive of the perpetrator is the sexual orientation or gender identity of the victim.

**Hate-motivated incident** are incidents, acts or manifestations of intolerance committed with a bias motive that may not reach the threshold of hate crimes, due to insufficient proof in a court of law for the criminal offence or bias motivation, or because the act itself may not have been a criminal offence under national legislation.

**Hate speech** against LGBT people refers to public expressions which spread, incite, promote or justify hatred, discrimination or hostility towards LGBT people—for example, statements made by political and religious leaders or other opinion leaders circulated by the press or the Internet which aim to incite hatred.

**Homophobia** is defined as an irrational fear of, and aversion to, homosexuality and to lesbian, gay, bisexual and transgender persons based on prejudice.

**Intersex people** are persons who are born with chromosomal, hormonal levels or genital characteristics which do not correspond to the given standard of “male” or “female” categories as for sexual or reproductive anatomy. This word has replaced the term “hermaphrodite”, which was extensively used by medical practitioners dur—

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* For a more extensive version of this glossary see Council of Europe Commissioner for Human Rights, Discrimination on grounds of sexual orientation and gender identity in Europe - Background document, (2011).
APPENDIX II - Glossary

During the 18th and 19th centuries, intersexuality may take different forms and cover a wide range of conditions.

LGBT people or LGBT persons is an umbrella term used to encompass lesbian, gay, bisexual, and transgender persons. It is a heterogeneous group that is often bundled together under the LGBT heading in social and political arenas. Sometimes LGBT is extended to include intersex and queer persons (LGBTIQ).

Multiple discrimination describes discrimination that takes place on the basis of several grounds operating separately.

NGO is the abbreviation for "non-governmental organisation".

Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender (heterosexual) or the same gender (homosexual, lesbian, gay) or more than one gender (bisexual).

Transgender persons include persons who have a gender identity which is different from the gender assigned to them at birth and those people who wish to portray their gender identity in a different way from the gender assigned at birth. It includes those people who feel they have to, prefer to, or choose to, whether by clothing, accessories, mannerisms, speech patterns, cosmetics or body modification, present themselves differently from the expectations of the gender role assigned to them at birth. This includes, among many others, persons who do not identify with the labels "male" or "female", transsexuals, transvestites and cross-dressers. A transgender man is a person who was assigned “female” at birth but has a gender identity which is “male” or within a masculine gender identity spectrum. A transgender woman is a person who was assigned “male” at birth but has a gender identity which is female or within a feminine gender identity spectrum. Analogous labels for sexual orientation of transgender people are used according to their gender identity rather than the gender assigned to them at birth. A heterosexual transgender man, for example, is a transgender man who is attracted to female partners. A lesbian transgender woman is attracted to female partners. The word transgenderism refers to the fact of possessing a transgender identity or expression.

Transphobia refers to a phenomenon similar to homophobia, but specifically to the fear of, and aversion to, transgender persons or gender non-conformity. Manifestations of homophobia and transphobia include discrimination, criminalisation, marginalisation, social exclusion and violence on grounds of sexual orientation or gender identity.
Compliance Documentation Report*

Recommendation

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;

The Ministry of Justice has not provided an answer to the LGBTI Resource Centre information request while Ministry of Labor, Social Policy and Equal Opportunities has provided an answer to these questions¹.

   i. Has a review been conducted of existing legislative and other measures which could result directly or indirectly in (a) sexual orientation or (b) gender identity discrimination?

The ‘National Office Against Racial Discrimination’ (Ufficio Nazionale Antidiscriminazioni Razziali – UNAR) promoted a review of existing legislative and other measures to recognize the persistence of discriminations based on sexual orientation and gender identity. Moreover, UNAR has started the monitoring of the administrative measures with same purposes².

   ii. Are processes in place to ensure that the discrimination thus identified is redressed?

As a consequence of the abovementioned monitoring, UNAR intervene whenever a discriminatory measures is identified³. Nevertheless, the LGBTI Resource Centre is lacks of specific information on the characteristics of such intervention.

2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;

The Ministry of Justice has not provided an answer to the LGBTI Resource Centre information request while Ministry of Labor, Social Policy and Equal Opportunities has provided an answer to these questions.

   i. Has legislation against discrimination on the grounds of (a) sexual orientation and (b) gender identity covering employment, social security and health care, education, access to and supply of goods and services, including housing, been introduced?

Directive 78/2000/EC establishing a general framework for equal treatment in employment and occupation has been implemented in Italy by Legislative Decree no. 216/2003; discrimination based on sexual orientation has been explicitly banned for the first time. It covers: conditions of access to employed or self-employed activities, including promotion; vocational training; employment and working conditions (including pay and dismissals); membership of and involvement in an organisation of employers or workers or any other organisation whose members carry on a particular profession and it applies as much to the public sector as to the private sector including public

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* Letters from Ministries and Public Bodies and cases collected by the LGBTI Resource Centre have been used in the preparation of this section of the Report; therefore letters and cases are mentioned as references. These materials are available – only in Italian – at the LGBTI Resource Centre and may be provided on request.

1. Ministry of Labor, Social Policy and Equal Opportunities is responsible for equal opportunities policy; the answer has been provided specifically by the Department for Equal Opportunities and it covers the labor, social policy and equal opportunities policy areas.

2. See the Letter of 02 July 2012.

3. Ibid.
bodies as well as for paid and unpaid work. This legislation does not extend beyond the scope of the said Directive and therefore does not explicitly ban discriminatory treatments in all areas: the prohibition of discrimination on grounds of sexual orientation and gender identity in the access to and supply of goods and service (including housing) is not mentioned.

However, it must be noted that Directive 2006/54/EC introduced an explicit reference in relation to discrimination based on ‘gender reassignment’: Recital 3 of the Preamble of this Gender Recast Directive codifies the European Court of Justice’s P. v S. decision by stating that «The Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person». Two years before, Directive 2004/113/EC expanded the scope of application of the principle of equal treatment between men and women to access to and supply of goods and services and even though it does not mention discrimination based on gender identity in its text, the Council of the European Union and the Commission referred to the ECJ case-law for the first time indicating that trans people are to be protected under its scope. These two directives have been both transposed in Italy: but Legislative Decree no. 5 of 2010 implementing Directive 2006/54/EC and Legislative Decree no. 196 of 2007 implementing Directive 2004/113/CE do not explicitly mention the gender reassignment issue.

More recently, Law no. 183 of 2010, known as the “Collegato Lavoro”, affected several aspects of public employment law strengthening the fight against all discriminations: sexual orientation is explicitly mentioned as one of the grounds of discrimination.

**ii. Has a comprehensive strategy, including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes, been implemented?**

Education and awareness raising initiatives have been promoted by the Equal Opportunity Department within the Ministry of Labor, Social Policy and Equal Opportunities. In 2010 the Department for Equal Opportunities has launched the social communication campaign ‘Refuse Homophobia’ (Rifiuta l’omofobia). The campaign includes several communication materials such as video and radio spots.

Further recent initiatives (2011/2012) addressing specific targets are:

An awareness raising initiative in the field of work aimed at introducing practices of diversity management in the private sector. Training initiatives and workshops within a project aimed at promoting a national anti-discrimination network within local and regional administrations and covering also discriminations on the ground of sexual orientation and gender identity.

An awareness raising initiative launched in collaboration with the Ministry of Instruction, Universities and Research addressing homophobia, homophobic bullying and violence in schools involving more than 100 high schools all over Italy.

These initiatives have involved LGBT NGOs.

Moreover, the UNAR has promoted two researches on Italian and European best practices on the field of anti-discrimination. In this context historical and social dimension of prejudices against LGBT persons have been investigated.

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4. See the Letter of 02 July 2012.
Nevertheless, a comprehensive strategy supported by policy documents including long-term education and awareness raising programmes, aimed at tackling discriminatory or biased attitudes and behaviour within the general public and correcting prejudices and stereotypes against LGBT persons seems to be still missing.

3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;

The Ministry of Justice has not provided an answer to the LGBTI Resource Centre information request while Ministry of Labor, Social Policy and Equal Opportunities has provided an answer to these questions.

i. Do effective legal remedies for victims of (a) sexual orientation or (b) gender identity discrimination exist at national level?

Italy lacks an ‘equality tribunal’. It seems important to stress that the ‘The National Office against Racial Discrimination’ (UNAR) which is an office under the ‘Department for Rights and Equal Opportunities’ (Dipartimento per i Diritti e le Pari Opportunità) under the Prime Minister’s Office does not have judicial functions: the non-judicial procedures in order to obtain redress for discriminatory behaviours, actions and policies are complementary to other legal remedies. Such office was created by Legislative Decree no. 215 of 2003 to promote the principles of equal treatment of individuals, regardless of race or ethnic origin and its area of activity is now broadening to discrimination based on sexual orientation and gender identity.

However, the right of access to justice recognized by Article 24 of Constitution is an inviolable and non disposable right and a fundamental principle of Constitution and the right to access to justice is granted in discrimination cases. Besides, an important role in the Italian civil court system is played by the labour judges, who deal with a wide range of labour matters involving social insurance and social welfare issues as well as civil servants disputes. With regard to effectiveness, it must be recalled that according to art. 24 of the Con-
stitution, legal aid is a constitutional right in Italy and therefore everyone has right to free legal assistance: applicants are entitled to legal aid for their representation in civil cases, which would include discrimination cases (D.p.r. no. 112 of 2002). Legal assistance and support can also be obtained through the ‘National Office Against Racial Discrimination’ (UNAR) who can intervene in judicial proceedings through oral or written observations on the basis of Art. 425 of the Italian Code of Civil Procedure. Besides, effectiveness of legal remedies for victims of discrimination might depend on the rules concerning the burden of proof. Italy has recently transposed the shift of the burden of proof required in the EC equality directives with Law no. 101 of 2008, amending art. 4 of Legislative Decree no. 216 of 2003, after the European Commission initiated an infringement procedure. However, it has been pointed out that such reformed art. 4 does not mention the possibility of presenting statistical data in order to establish a presumption of discrimination anymore thus rendering the proof of discrimination harder for the worker⁶.

ii. Are there effective procedures to make victims aware of, and able to access, such remedies, even where a violation is committed by a person acting in an official capacity?

Yes. Legal actions may be taken against private citizens and employers as well as against public servants.

iii. Are the remedies effective, proportionate and dissuasive?

Legislative Decree no. 216 of 2003 implementing the Employment Framework Directive 2000/78/EC, at art. 4, provides for simplified and expedited procedures that should grant that the case is decided within a reasonable time referring to art. 44 par. V of 1998 Immigration Act and artt. 37, par. IV, and 38 of the Equal Opportunity Code providing for special procedures on the grounds of urgency. All these procedures (the simplified ones as well the ones expressly to be brought on the grounds of urgency) seem to reduce the length of these proceedings which are generally speaking more expedited than normal action brought according to ordinary proceeding established by civil procedure⁶.

iv. Do the remedies include, where appropriate, adequate reparation for victims?

In cases where the judge upholds the victim’s petition, he can order that the discriminatory conduct stop, that the effects of the discrimination be removed, that the decision be published in a national newspaper, that a company which commits an act of discrimination be denied financial and credit facilities or excluded from contract work for up to two years, that patrimonial and non-patrimonial (the so called non-pecuniary damage) compensation be paid. In particular cases in which it is important to act promptly, there is a provision for an interim injunction to be granted. As regards the award of compensation for ‘moral damage’ in particular, to date an absolute majority of judicial decisions have rejected this remedy. It is not possible to foresee whether the recognition of compensation for ‘moral damage’ on the grounds of the mere evidence of the discrimination, regardless of any real economic loss, will be widely recognised by judges⁷.

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7. Ibid. p. 10.
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;

5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible

The Ministry of Justice has not provided an answer to the LGBTI Resource Centre information request while Ministry of Labor, Social Policy and Equal Opportunities has provided an answer to these questions.

i. What steps have been taken to ensure as wide as possible dissemination of the Recommendation and its appendix?

The LGBTI Resource Centre is not aware of such measures being implemented by the Italian institutions.

ii. Have the Recommendation and its appendix been translated?

Yes, the Recommendation and the appendix have been translated in Italian.

iii. Have they been disseminated:
- within the lesbian, gay, bisexual and transgender communities?
- throughout public administration?
- throughout law-enforcement structures, including the judiciary and penitentiary system?
- to national human rights protection structures (including equality bodies)?
- throughout the educational system?
- throughout the health-care system?
- to representatives of public and private sector employees and employers?
- to the media?
- to relevant non-governmental organisations?

The Recommendation and its appendix have been disseminated to the LGBT NGOs representatives, Trade Unions and the National Press Federation invited at the Conference sponsored by UNAR Italy’s joining to the program of the Council of Europe on ‘Contrasting the discrimination based on sexual orientation and gender identity (Contrasto della discriminazione basata sull’orientamento sessuale e sull’identità di genere) held in Rome the 16 February 2012.

The LGBTI Resource Centre is unaware of further initiative of dissemination of the Recommendation and its appendix.
Appendix to Recommendation
CM/Rec(2010)5

I. Right to life, security and protection from violence

A. “Hate crimes” and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.

The Ministry of Home Affairs has provided an answer to the LGBTI Resource Centre information request.

i. Does the training of police officers ensure that they are aware of the need to make special efforts to investigate any (a) homophobic or (b) transphobic connotations in hate crimes or hate motivated incidents effectively, promptly and impartially, particularly where violence is involved?

In Italy there are five police forces: ‘Policia di Stato’, ‘Arma dei Carabinieri’, ‘Guardia di Finanza’, ‘Polizia Penitenziaria’ and ‘Corpo Forestale dello Stato’. While Guardia di Finanza, Polizia Penitenziaria and Corpo forestale dello stato have functions related respectively to financial investigation, prisons security and environment protection, the Polizia di Stato and Arma dei Carabinieri forces have function of judicial, public order and security policing. Enforcement of public order and security policies falls to the Department of Public Security, headed by the Chief of Police – Director general of Public Security within the Ministry of Home Affairs. Besides, it is relevant to take into consideration the existence of the local police under the municipalities responsibility. Local police supports other police forces in keeping public security, it has judiciary functions and is in charge of traffic regulation. In this report we will usually refer to Polizia di Stato and Carabinieri; when referred to different police forces it will be highlighted in the text.

The answer of the Ministry of Home Affairs underlines the role of the ‘Observatory for security against acts of discrimination’ (Osservatorio per la sicurezza contro gli atti discriminatori - OSCAD). The Observatory was established in 2010 through an administrative act of the Chief of Police Forces to help individuals who belong to minorities to enjoy their right to equality before the law and guarantee protection against any form of discrimination. The Observatory includes representatives from Polizia di Stato and Arma dei Carabinieri; OSCAD tasks are:

- to receive reports of discriminations having criminal relevance on the grounds of race and ethnicity, religion, sexual orientation and disability in order to respond with specific measures and to monitors the cases;
- to propose measures to prevent and combat such discriminations. Gender identity issues are not included in the list of grounds of discrimination covered by OSCAD, even if it is included when specific measures are described.

Moreover, according to the information provided, the OSCAD is entitled of providing spe-
Specific training to police forces on issues related to discrimination. Under this framework, the OSCAD Chief President has also signed a Memorandum of understanding with the 'National Office Against Racial Discrimination' (Ufficio Nazionale Antidiscriminazioni Razziali – UNAR)\(^\text{10}\) including the joined effort to train police forces.

The Ministry of Home Affairs affirms that training on discriminations to police forces are amongst the priority objectives of 2012\(^\text{11}\); based on that, on 18th of January 2012 UNAR and OSCAD have promoted the first experimental seminary on anti-discrimination action including focuses on discrimination based on sexual orientation and gender identity. The course was organized for participants from the XXVII training course for managers of the ‘Polizia di Stato’. Moreover OSCAD affirms that this type of course is going to be replicated in all trainings for the police forces. Despite that, the LGBTI Resource Centre is unaware of the policy document explicitly including such objective; moreover, the timing for implementing such measures and the specific contents of the training focus proposed on sexual orientation and gender identity discriminations is unclear.

Similar information concerning OSCAD work to include these issues into on-the-job training courses for police forces are missing. Although OSCAD extended such trainings to sexual orientation and gender identity related discrimination the LGBTI Resource Centre is unaware of the policy documents referring to such provision and the related timing for implementation. Nevertheless, the Ministry of Home Affairs already promoted courses for Rome police officers and a training module concerning OSCAD competences planned within an European project on gender based violence.

Finally the Ministry of Home Affairs affirms that similar measures have been promoted by the Arma dei Carabinieri; The LGBTI Resource Centre has no details of these type of measures.

\(^{\text{ii. Is there an independent and effective machinery for receiving and investigating reports of hate crimes or hate motivated incidents allegedly committed by law-enforcement staff, particularly where sexual orientation or gender identity constitute one of the motives?}}\)

The LGBTI Resource Centre is unaware of the existence of an independent and effective machinery which investigates reports of hate crimes and hate motivated incidents committed by law-enforced staff.

\(^{10}\) See also the letter of 02 July 2012; to have more information about UNAR and its role in anti-discrimination on the ground of sexual orientation and gender identity see art. 29 and 30. See also www.unar.it .

\(^{11}\) See the letter of 22 October 2012.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.

The Ministry of Justice answered the checklist related to this article of the Appendix to the Recommendation:

i. Do legislative measures to combat “hate crimes” and other hate motivated incidents exist? Do these measures recognise (a) sexual orientation and (b) gender identity as a possible motive in such crimes or incidents?

Law no. 205 of 1993, commonly referred to as the Mancino Law, allows judges to increase the sentence to be imposed for a crime, by up to half, if it was committed «with the purpose of discrimination or hatred based on ethnicity, nationality, race, or religion, or in order to facilitate the activity of organizations, associations, movements, or groups that have this purpose among their objectives».

Grounds for hate crimes such as sexual orientation and gender identity are not included in the law. Lesbian, gay, bisexual and transgender rights groups have been advocating for several years for a broadening of hate crimes.

ii. Does this legislation ensure that a bias motive related to (a) sexual orientation (b) gender identity may be taken into account as an aggravating circumstance when determining sanctions?

The Italian legal system does not take into account – either in its legislation or in its case law (with a few exceptions) – whether a common crime was committed with a homophobic or transphobic motivation.

During the past decade different bills have been presented before Parliament, in order to extend the above mentioned criminal provisions to discrimination on the ground of sexual orientation. However, none of these have yet been approved.

During the period of the XV legislature (April 2006–February 2008), different bills were presented before Parliament, in order to extend these criminal provisions to discrimination on the ground of sexual orientation. However, none of these have been approved because of the government crisis and the subsequent early dissolution of Parliament in February 2008.

On October 13, 2009, the Chamber of Deputies threw out bill AC-1658–1882 brought by some members of the opposition parties to include homophobia and transphobia in Italy’s bias-motivated crime laws on the grounds it was unconstitutional. The preliminary questions moved by the coalition ‘Unione di Centro’ and supported by ‘Lega Nord’ and ‘Popolo delle Libertà’ were approved: doubts of constitutionality concerned the supposed violation of many constitutional norms, among which: «[…] the norm is in contrast with art. 25 Const. because in the absence of a definition of “sexual orientation”, the aggravating circumstance violates the principle of strict legality; it has to be noticed that the term “sexual orientation” is not defined nor is it findable in the criminal system. The term is extremely general since it might refer to specific phenomena such as homosexuality as well as, more generally, to any “sexual tendency” including incest, pedophilia, zoophilia, sadism, masochism and any other kind of sexual choice that have nothing to do with homosexuality […].».

In May 2011 a revised bill against homophobia and transphobia (AC-2802) was introduced in the Chamber of Deputies but it was once again rejected on July 26, 2011.

In September 2011 two other bills aiming at fighting against hate crimes on grounds of sexual orientation and gender identity have been brought before the Chamber of Deputies (AC–2807 and AC–4631) and are currently being discussed in the Justice Committee of the Chamber of Deputies.

Lack of recognition of the issues related to hate crimes and hate motivated incidents motivated by sexual orientation and gender identity is particularly severe if compared to the impact that such crimes have on LGBT persons. According to a research carried out by the NGO Arcigay\textsuperscript{13} 19,4 % of gay men and 18,4% of gay women interviewed have been insulted or harassed because of their sexual orientation. The percentage reach 30% amongst under–25 years old gay men\textsuperscript{14}. There are not available data on hate crimes or hate related incidents motivated by gender identity. However, a study reports the overall attitudes towards trans persons: 24,8% of Italians legitimate discriminating behavior against trans person\textsuperscript{15}; 30,5% do not want a trans person as a neighbor\textsuperscript{16}.

\textsuperscript{13} R. Lelleri, Survey nazionale su stato di salute, comportamenti protettivi e percezione del rischio di HIV nella popolazione omo-bisessuale (Arcigay, 2006), p. 53 and 76. This survey covered 4690 questionnaires from gay or bisexual men and 2084 questionnaires from lesbians or bisexual women.
\textsuperscript{14} Ibid. p. 53
\textsuperscript{15} 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 of 7725 persons.
\textsuperscript{16} Ibid. p. 4.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related "hate crimes" and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.

The Ministry of Home Affairs has answered the LGBTI Resource Centre information request; the Ministry of Justice failed to provide an answer to the LGBTI Resource Centre information request.

i. Has a simple and comprehensible definition of "hate crimes", which includes the motive of (a) sexual orientation and (b) gender identity been disseminated to the general public?

According to the information available to the LGBTI Resource Centre, public institutions have not disseminated a simple and comprehensive definition of 'hate crimes' or 'hate related incidents' to the general public. The only public act considering hate motivated discrimination and violence is the Law no. 205 of 1993 - Mancino Law - that refers to discrimination and violence on the grounds of ethnic, racial and national origins. Although several attempts have been made, this Law never extended the protection from hate crimes to motives of sexual orientation and gender identity (see art. 2 of the Appendix, this report).

ii. Do training programmes and procedures ensure that the police and judiciary possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

Information on training courses for police are included in Art. 1i of the Appendix, this report. The LGBTI Resource Centre is unaware of training programmes for judiciary.

At a local level there are experiences of trainings for local police forces on the issue of hate crimes and hate related incidents motivated by sexual orientation and gender identity. The Turin City Council LGBT Office - an office within the Equal Opportunities, Gender and Time-use Policies Sector - has promoted an experimental training course for the Turin local police on sexual orientation and gender identity. This action has been part of a European-wide project involving the Municipalities of Turin, Barcelona and Koln. The course introduces hate crimes against LGBT people and provided participants with specific tools to recognise such crimes.

The LGBTI Resource Centre is unaware of the adoption of specific procedures amongst judiciary. Regarding police forces, according to the official communication sent by the Department of the Public Security to the provincial police offices, the 'Questure', in March, 25th 2011, the OSCAD has defined a procedure to collect information about cases of discrimination in the field of security against persons belonging to minorities. Cases can be reported by other institutions, civil society’s organisations, and citizens including LGBT persons and NGOs. The communication describes the procedure as follows: when cases of violence or discrimination are directly reported to OSCAD, the Observatory first analyse the cases and, afterwards, transmits them to the appropriate local of-

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17. E.g. through police websites or leaflets distributed in the community.
18. The project’s name is ‘Against Homophobia. European Local Administration Devices - AHEAD’. For more information see www.comune.torino.it/politichedigenere/lgbt.
fice of the Polizia di Stato or Arma dei Carabinieri in order to gather proofs. The Observatory then follows the development of cases. The provincial police offices also have to inform the OSCAD of the discrimination cases reported to them. Nevertheless, according to the abovementioned communication there is neither reference to a procedure that might help police officers to recognise those cases nor explicit criteria that define discrimination in the field of security.

iii. Do training programmes and codes of conduct for the police and judiciary ensure that LGBT persons are treated in a non-discriminatory and respectful manner so that they feel safe to report hate crimes or other hate motivated incidents, whether as victims or witnesses, in relation to their (a) sexual orientation and (b) gender identity?

Information on training courses for police are included in Art. 1 i of the Appendix to this report. The LGBTI Resource Centre is unaware of training programmes for judiciary.

Recent cases reveal the persistence of police officers inadequate behaviour towards LGBT persons. The vice-deputy of the Arma dei Carabinieri Clemente Gasparri – a prominent officer of the armed forces – has intervened during an on the job training course for armed forces officials declaring that homosexuals are psychologically unstable persons (Case 19). A 2011 manual to prepare the exam for career advancement within the Arma dei Carabinieri – approved by the Colonel Pasquale Santoro - included homosexuality amongst the sexual degeneration together with necrophilia, incest and fetishism. After a parliamentary inquiry by a group of members of the Parliament the Arma dei Carabinieri declared that the inclusion of homosexuality amongst the list of sexual degeneration was an editing mistake. The Arma dei Carabinieri ordered to delete the section of the manual (Case 25). Some local police officers have used anti-gay language against a group of persons out of the venue of a concert in Milan; after the group protested an officer threatened the group with exposure for having interrupted the police service (Case 20).

A positive initiative has been adopted by the Italian Forum for the Urban Security – an organisation of over 90 Municipalities, Provinces and Regions focused on local security policies. The Forum has promoted the translation and dissemination of the European Code of Police Forces’ Recommendation Rec(2001)10 adopted by the Committee of Ministers of the Council of Europe. This Code introduces the principle of non-discrimination and the commentary of the Recommendation includes the grounds of sexual orientation and gender identity. However, the LGBTI Resource Centre has not information about procedures of dissemination of such tool.

A local case is the experimental training course for the municipal police promoted by the Turin City Council LGBT Office mentioned before. The course also dealt with issues related to the approach to victims of hate crimes motivated by sexual orientation and gender identity.

iv. Are units within the police tasked specifically with investigating crimes and incidents linked to (a) sexual orientation and (b) gender identity?

According to the information available to the LGBTI Resource Centre, these type of units are nonexistent. The Observatory for security against acts of discrimination does not have an investigative role; OSCAD analyses the cases and supervises the developments being in contact with the Polizia di Stato and Arma dei Carabinieri officers entitled of the various cases.

20. See supra note 18.
21. Supra note 19.
v. Are there special police liaison officers tasked with maintaining contact with local LGBT communities in order to foster a relationship of trust?

As the Ministry of Home Affairs affirms, OSCAD can convene minorities representatives in connection with specific cases of discrimination in the field of security. Such a role has been reaffirmed within the Memorandum of understanding between OSCAD and UNAR. Article 2 of the Memorandum foresees that both the bodies will meet the minorities’ NGOs on a periodic base. However, the LGBTI Resource Centre is unaware of such measures been undertaken by police forces at a local level.

vi. Is there a system of anonymous complaints or on-line complaints, or using other means of easy access, which allow reporting by third parties in order to gather information on the incidence and nature of these incidents?

The Ministry of Home Affairs affirms that OSCAD receives anonymous reports through the e-mail address. However, information gathered on the complaints system of OSCAD throughout the police website and official documents does not mention the possibility to report incidents anonymously. UNAR has an on-line complaints system that allows victims and witnesses to report information on incident of discrimination. The system requires personal data of the person that reports the case of discrimination.

4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.

The extraordinary Senate Commission on human rights protection (‘Commissione straordinaria per la tutela e la promozione dei diritti umani’) has released a report on human rights in penitentiaries and immigration centres. Such report includes a section on the condition of homosexuals and trans persons in prisons based also on information gathered during an audition with an LGBT NGO from Rome – Mario Mieli Circolo di Cultura Omosessuale – and with the Rome City Commission on prisons problems. According to the data of the Dap – Department of Prison Administration, in 2011 the number of male to female trans persons and openly gay men in prisons are 104. There are not information about lesbians and female to male trans persons in prison.

i. Do training programmes and codes of conduct for prison staff ensure that prisoners are treated with respect and without discrimination in relation to their (a) sexual orientation and (b) gender identity?

The LGBTI Resource Centre is not aware of the existence of such programmes and codes. In the above mentioned report the human rights Commission clearly tackles the lack of competence of the prisons staff on issues related to sexual orientation and gender.

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22. Ibid.; see also http://www.poliziadistato.it/articolo/view/23641/, visited the 5th of November, 2012
23. The system is available at the website www.unar.it.
24. Senato della Repubblica, Commissione straordinaria per la tutela e la promozione dei diritti umani, Rapporto sullo stato dei diritti umani negli istituti penitenziari e nei centri di accoglienza e trattenimento per migranti in Italia (March 6th, 2012).
identity and asks for the implementation of specific training activities to overcome such lack\textsuperscript{25}. The Ministry of Labor, Social Policy and Equal Opportunities answer to the LGBTI Resource Centre request of information to the Ministry of Labor, Social Policy and Equal Opportunities\textsuperscript{26} includes information about the realization of these trainings including sexual orientation and gender identity issues. However, it is unknown the number of trainings organized, the number of beneficiaries involved and the detailed curricula.

\textit{ii. Are there effective measures to minimise the dangers of physical assault, rape and other forms of sexual abuse, including effective procedures for determining the disciplinary or criminal liability of those responsible, including for failure of supervision?}

The only measure for the protection of LGBT prisoners from assault, rape and other abuses is the segregation from other inmates (see the Dap – Department of Prison Administration – Regulation no. 500422 of May 2, 2001): transgender and homosexuals are usually placed in specific housing units (the so called ‘sezioni semi-protette’) which are very often located in the male section of the prison, with male prison guards\textsuperscript{27}. While waiting for the destination to these apposite sections, prisoners might experience solitary confinement for the majority of the incarceration, thus suffering a severe form of discrimination.

Italy seemed ready to open a transgender-only prison located in the town of Pozzale, near Florence at the beginning of 2009. With a building capacity of 30 inmates, the prison should have housed only transgender inmates, primarily convicted of prostitution and drug-related crimes\textsuperscript{28}; such prison has not been created yet.

\textit{iii. Is there an independent and effective machinery for receiving and investigating reports of such crimes by prison staff?}

Italy does not have a national ‘prisoner ombudsman’, but Law no. 354 of 1975 on Prison Administration (amended by Law no. 14 of 2009) created the regional, provincial and municipal ‘prisoner ombudsmen’ (‘Garanti dei detenuti’). Prisoners can file complaints regarding mistreatment with these local ombudsmen who will investigate complaints but do not have authority to take corrective measures directly. Besides, the Surveillance Magistracy, a branch of the Italian judiciary, has a specialized competence over the supervision of detainees and prisons.

A case of abuse from prison staff has been reported by media press. A trans woman convicted in a criminal psychiatric hospital have been repeatedly sexually abused by two prison staff members. After several years the woman talked about the abuses to the former medical director of the hospital. The two members of the prison staff have been arrested and accused of sexual violence connected with abuse of authority (Case 24).

\textit{iv. In the case of transgender prisoners, are there procedures to ensure that the gender identity of the individual is respected in regard to interactions with prison staff such as body searches and also particularly in the decisions taken on the placement of a prisoner in a male or female prison?}

\textsuperscript{25} Ibid.
\textsuperscript{26} See the Letter of 2 July 2012.
\textsuperscript{27} On prisoners rights in Italian legal system see: M. Ruotolo, Diritti dei detenuti e costituzione, (Giappichelli, Torino, 2002).

See above, article 4 ii.

Besides, as stressed by the human rights Commission\textsuperscript{29}, transgender people in prison may face periods of time without hormone therapy. This may result in a long time without treatment and may cause serious health problems. A relevant case has been considered by the ‘Surveillance Magistracy of Spoleto’ on 13 July 2011 \textemdash the judge held that the transgender prisoner had the right to receive full and free medical care while in prison in order to continue the gender transition\textsuperscript{30}.

\footnotesize{29. Senato della Repubblica, Commissione straordinaria per la tutela e la promozione dei diritti umani, supra note 24.}
\footnotesize{30. F. Fiorentin, ‘Cure ormonali per i detenuti transessuali in carico all’Asl’ (2011) www.personaedanno.it}

5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on “hate crimes” and hate-motivated incidents related to sexual orientation or gender identity.

Both the Ministry of Home Affairs and the Ministry of Labor, Social Policy and Equal Opportunities have provided an answer to the LGBTI Resource Centre information request.

\textit{i. Is there research into the nature and causes of hostile and negative attitudes to LGBT people, with a view to developing effective policies to combat these phenomena?}

Researches have been promoted or funded by public institutions to understand the nature and the causes of the phenomena of discrimination, intolerance and hate against LGBT people. In particular, by way of example:

The research ‘Io sono, io lavoro’ (I am, I work) promoted by Arcigay - Italian Association of lesbian and gay people within the project ‘Lotta all’omofobia e promozione della non discriminazione sui luoghi di lavoro come strumento di inclusione sociale’ (‘Fight against homophobia and promotion of non-discrimination in the workplace as a tool for social inclusion’) that was funded by the Ministry of Labour and Social Policy in 2009. It has provided guidance on the extension and articulation of the phenomenon of discrimination against LGBT people in the workplace\textsuperscript{31}.

The study aimed to the identification, analysis and transfer of good practices on non-discrimination in the specific context of

sexual orientation and gender identity promoted by the UNAR and commissioned to the NGO ‘Avvocatura per i diritti LGBTI – Rete Lenford’\textsuperscript{32}. This study, conducted in 2009 and 2010, has provided guidance on good practices in the field of non-discrimination for sexual orientation and gender identity. It helped to evaluate its applicability in some Italian regions financed by the European Social Fund. Part of this work has focused on exploring the context of processes of discrimination, on the perception of homosexuals and transgender people have today and on the relevance of the phenomena of discrimination in some areas such as work and family life.

As stated in the Ministry of Labor, Social Policy and Equal Opportunities answer to the LGBTI Resource Centre information request\textsuperscript{33}, the Department for Equal Opportunities of the Presidency of the Council of Ministers has recently commissioned to the National Institute of statistics ISTAT the first survey on discrimination based on sexual orientation and gender identity. The research report ‘La popolazione omosessuale nella società italiana’ (The homosexual population in the Italian society) focuses primarily on the attitudes of the Italian population against homosexuals and transgender people and on experiences of discrimination concerning LGBT people\textsuperscript{34}.

\textit{ii. Are there regular surveys into levels of social acceptance of/hostility towards LGBT people?}

According to the information available to the LGBTI Resource Centre, the research commissioned by public institutions are not current repeatedly. They are individual initiatives that do not cover all areas in which discrimination and hostility towards LGBT people occur.

\textit{iii. Is there an effective system for recording and publishing statistics on hate crimes and hate-motivated incidents related to (a) sexual orientation and (b) gender identity?}

Data on hate crimes for sexual orientation and gender identity are not systematically collected; however, some institutional players collect detailed on discriminations affecting LGBT people on the basis of the reports received by existing services.

Since 2010 UNAR has extended its collection and its handling of reports about discrimination also to that episodes related to sexual orientation and gender identity. Therefore, the 2011 Report to Parliament on the effectiveness of the principle of equal treatment and the effectiveness of the protection tools\textsuperscript{35} has included data on the number of complaints of discrimination related to sexual orientation and gender identity. This information has been confirmed by the Ministry of Labor, Social Policy and Equal Opportunities answer to the LGBTI Resource Centre information request.

According to official communication sent by the Department of the Public Security to the provincial police offices (‘Questure’), in March, 25th 2011\textsuperscript{36}, and looking at the information provided by the Ministry of Home Affairs the OSCAD has, among its own prerogatives, the providing of «a cross-section about the heterogeneous world of discrimination and the will of qualifying as a general collector of reports». Currently, the only data provided by OSCAD the LGBTI Resource Centre is aware of, were presented at the

\textsuperscript{33} See the Letter of 2 July 2012.
\textsuperscript{34} ISTAT, supra note 15
\textsuperscript{35} UNAR, Relazione al Parlamento sull’efficacia del principio di parità di trattamento e sull’efficacia degli strumenti di tutela – Anno 2010 (2011)
\textsuperscript{36} Supra note 19
meeting held in September 5, 2011. These data, reported later in a report published in the website section dedicated to the Centre of the State Police, are not disaggregated. Therefore the number of cases of discrimination related to sexual orientation or gender identity is unknown.

B. “Hate speech”

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such “hate speech” should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

The Ministry of Justice answered to the checklist related to this article as well as the Parliamentary Commission for general direction and supervision of broadcasting system and the RAI – concessionaire of the public broadcast system. On the contrary, the Ministry of Economic Development and the Authority for Communication Guarantees failed to provide any information.

i. Do legislative measures penalizing “hate speech” on certain grounds exist? Do these measures penalize (a) homophobic and (b) transphobic “hate speech”?

Article 3 of Law no. 654 of 1975 which ratifies and implements the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, as amended by the already mentioned Law no. 203 of 1995 (so-called Mancino Law) penalises: a) those who propagandize ideas founded on racial or ethnic superiority or hate, or solicit someone to commit, or themselves commit, acts of discrimination for reasons of race, ethnicity, nationality or religion; b) those who, in every way, solicit someone to commit, or themselves commit, violence or acts which induce to violence for reasons of race, ethnicity, nationality or religion; c) those who
take part or support organizations, associations, movements or groups which aim to solicit discrimination or violence for reasons of race, ethnicity, nationality or religion.\textsuperscript{38}

Such criminal provisions do not punish hate speech related to homophobia and transphobia\textsuperscript{39}.

During the period of the XV legislature (April 2006–February 2008) many bills were presented before Parliament, in order to extend these criminal provisions to discrimination on the ground of sexual orientation. However, none of these have been approved because of the government crisis and the subsequent early dissolution of Parliament in February 2008\textsuperscript{40}. As seen above (art. 2) in 2009 and 2011 two bills including homophobia and transphobia in Italy's bias-motivated crime laws were rejected by the Chamber of Deputies on the grounds they were unconstitutional.

The two bills aiming at act against hate crimes on grounds of sexual orientation and gender identity that have been brought before the Chamber of Deputies in 2011 (AC–2807 and AC–4631) and are currently being discussed in the Justice Committee of the Chamber of Deputies (see art. 2) also aim at act against homophobic and transphobic hate speech through the amendment of Law no. 654 of 1975 (so-called “Reale” Law), ratifying the 1966 UN Convention on the Elimination of All Forms of Racial Discrimination and Law as amended by the Mancino Law (Law no. 205 of 1993).

However, it has to be recalled that the ‘Court of Cassation’, with decision no. 24513 of 17 July 2006, annulled a first instance judgment of acquittal of a man who used the epithet ‘frocio’ against another man: the Supreme Court held that the judgment was «against the logic and social sensitivity» and that the use of such epithet shows «a clear intent of derision and scorn».

\textit{ii. Are media organizations, including those operating on the internet, encouraged to promote in their own practices (e.g. through codes of practice): a culture of respect, tolerance and diversity, and to avoid negative and stereotyped representations of LGBT people?}

Legislative Decree no. 44 of 2010, implementing Directive 2007/65/EC ‘amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities’, states at Art. 10 that audiovisual commercial communications cannot include or promote any discrimination based on sexual orientation. According to the information provided by the ‘Parliamentary Commission for general direction and supervision of broadcasting system’ (Commissione parlamentare per l’indirizzo generale e la vigilanza dei servizi radiotelevisivi\textsuperscript{41}) and the Company RAI - concessionaire of the public broadcast system – in reply to the LGBTI Resource Centre information request\textsuperscript{42}, rights of LGBT persons are guarantee by the overall regulation of the system. Law no. 177 of 2005 includes in article 3 a list of fundamental principles of broadcast system such as pluralism, freedom of expression, openness to different opinions and political, social, cultural and religious orientations, protection of ethnic diversity and respect for freedom and rights.

\textsuperscript{39} M.M. Winkler, G. Strazio, L’abominevole diritto. Gay e lesbiche, giudici e legislatori (Il Saggiatore, Milano, 2011).
\textsuperscript{40} European Union Agency for Fundamental Rights, supra note 12, para. 49.
\textsuperscript{41} The Commission has been established through the Law no. 103 of 1975. Amongst the other duties the Commission is responsible for the elaboration of general directions aimed at guarantee broadcasting system fundamental principles such as “independence, impartiality, openness to political, social and cultural tendency, respecting constitutional liberties” (art. 1).
\textsuperscript{42} See the Letter of 25 July 2012.
of persons such as dignity. Similar principles are included also within the 2010-2012 Contract regulating the public broadcast system amongst the Ministry of Economic Development and the broadcaster company RAI (‘Contratto nazionale di servizio tra il Ministero dello Sviluppo Economico e la RAI - Radiotelevisione Italiana s.p.a.’). The Act addressing pluralism in the public broadcast system (‘Atto di indirizzo sul pluralismo nel servizio pubblico radiotelevisivo’) focuses on social pluralism. Art. 2 requires the RAI, as concessionaire, to represent the Italian society and its diverse components and specifically social and cultural trends such as immigration, feminism, etc. Sexual orientation and gender identity issues are not mentioned; however, Parliamentary Commission and the Company RAI have stated that LGBT issues have been addressed in several programs such as TV series and topical talk shows.

An evaluation of the approach that public broadcasting system has to LGBT issues is not available. However, cases demonstrate limits: in several occasion, movies and TV series showing same sex relationships have been censored (cases 35, 36). The RAI has given technical justifications for such choice; however, a board member of RAI Rodolfo De Laurentis has justified the choice of censored a TV series episode showing a same sex marriage as contrasting common values of the Italian society and even constitutional principles (case 36).

Finally, the Commission and RAI informs also about the promotion of several initiatives aimed at address LGBT issues such as production of documentaries and hosting events in occasion of the 2006 LGBT pride in Turin.

### iii. Has legislation for criminalizing “hate speech” on the internet been implemented, and does this cover (a) homophobic and (b) transphobic “hate speech”?

Yes. The above mentioned Mancino Law punishes as a crime racial, ethnic, national and religious hate speech done through the internet. The Postal Police shall remove all online offensive declarations and statements in forums, blogs, social networks and websites.

Besides, Italy signed (but not ratified yet) the 2003 ‘Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems’ and the Italian Parliament should also implement the European Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia.

All these legal provisions do not cover homophobic and transphobic hate speech on the internet.

### iv. Have internet service providers been encouraged to take measures to prevent the dissemination of (a) homophobic and (b) transphobic material, threats and insults?

The LGBTI Resource Centre has no information on the commitment of the authorities to encourage ISPs to take measures against the spread of homophobic materials.

### v. If there are incidents of “hate speech”, are they publicly disavowed by leading public officials?

The LGBTI Resource Centre has no information about releases or statements by public authorities in response to incidents of hate speech that have occurred in recent years. Contrarily it is significant what happened in April 2012 when the Lombardy Regional Council decided to reject the motion of censure which had been placed by some parties of the center-left concerning the homophobic statements by Romano La Russa, Regional AMM from the Partito delle Libertà in

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Lombardy (the commissioner had said during a radio broadcast: «Gays in most cases are sick»). The Regional Council of Lombardy rejected with 39 yes and 28 no the motion of censure (case 13).

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

The Ministry of Labor, Social Policy and Equal Opportunities provided an answer to the LGBTI Resource Centre request of information.

i. Have guidelines been issued or other measures been taken to raise awareness of public authorities/institutions of their responsibility to refrain from such statements?

As the Ministry of Labor, Social Policy and Equal Opportunities affirms in the answer to LGBTI Resource Centre information request, such guidelines are nonexistent. However, UNAR monitors and collects evidences and reports of hate speech and discrimination on the grounds of sexual orientation and gender identity and activates specific intervention to combat such cases. However, the type of intervention against hate speech has not been described.

ii. Have there been cases of statements by representatives of public authorities and institutions which may reasonably be understood as legitimising such hatred or discrimination?

There are numerous statements by representatives of public authorities and institutions that may be perceived as a legitimization of hatred or discrimination against LGBT people. They come from politicians from different parties and coalitions, even if it seems they are more frequent from politicians belonging to the centre-right parties. Statements can be issued at political events and in pre-election periods, as an argument or counter-argument for a political debate (cases 3, 4, 5, 8, 9) or to comment the legislative choices of other countries (cases 4, 10). Some of these statements are particularly significant since pronounced by Ministers of the Republic (cases...
It is possible to classify these statements on the types of arguments used.

Homosexuality as an illness, caused by mental disorders, from which you can heal or redeem (cases 2, 9, 11, 13, 17, 27).

The Mayor of Spresiano (Treviso), Riccardo Missiato said «Gays are sick and deviant, they need psychological help, we have to find out where they are and identify them, and if they are illegal immigrants they must be deported.» The mayor of this town in northern Italy in 2010 promoted the Estate Sicura (Safe Summer) initiative, involving a security service, which provided a sort of curfew for gays, prostitutes or trans persons that he thought there were along the Piave River (case 17).

The Councillor for the Lombardy Region Security, Romano La Russa, from the Popolo delle Libertà party, has declared: «homosexuality can be a deviation on a psychological level and it is right that you know there are psychologists who can create specific paths to bring you from homosexuality to heterosexuality, as well as they make you be aware of your sexuality.» (case 13).

Homosexuality as behaviour that affects in particular children and adolescents who therefore must be away from gay people to protect their growth and their development (cases 2, 6, 7, 11, 12, 27).

Saverio Romano from the political movement ‘I popolari di italia di domani’, Minister of Agriculture, Food and Forestry in 2011, about the gay marriages that took place in New York says: «those scenes are really creepy. Since my little daughter was close to me I had to change the television channel. This is make sense because my 6 year old girl will ask me why those two men are kissing each other, why they are getting married, and it is difficult to explain when even our televisions give these negative messages.» (case 6).

Homosexuality (male) as a lack of virility and therefore cause for contempt (cases 15, 8) for not being ‘man enough’, in addition to the use of denigratory names like “femminiello”. For example, the deputy of ‘Noi Sud’, Elio Belcastro, said in Calabria gays are very few, less than in the north, because «the man from Calabria, the southern man is a true male» (case 15).

Homosexuality as a sign of moral degradation that arouses feelings of revulsion and disgust (cases 5, 17, 18, 21, 23, 27).

Rocco Buttiglione, president of the political party, Unione di Centro has said that being gay is «objectively wrong. On the political and social plan, I am against discrimination against gays. But I think it is morally wrong. But there are many things that are morally wrong and that the law should not pursue. For example, adultery, being rude to people, not paying taxes, not giving money to the poor people» (Case 23).

Then there are critical issues in relation to public events like the Pride considered as vulgar or offensive events that should not been supported by public authorities (cases 5, 18).

Finally, the issue of same sex families is often subject to speeches of hatred or discriminatory; it is said that homosexual couples can not be a family and, indeed, will affect the deeper meaning of family (cases 1, 3, 4, 6, 12, 36). Sometimes to give support to this thesis, people refer to the definition of family expressed in the Italian Constitution (cases 1). At the National Conference of the Family held in Florence in 2007, LGBT associations were deliberately not invited and about that, Rosy Bindi, then Minister of the Family of ‘Partito Democratico’ said: «I make this choice to be clear. People intended to DICO [an institution legislation proposed by the government of those years and never approved] are not eligible to participate» (case 30).

Still, the former under-secretary to family policies Carlo Giovanardi, criticizing the advertising company IKEA, which depicts two men behind to hold hands under the slogan: “We are open to all families,” says «Against our Constitution, offensive, unpleasant to the taste […] the term ‘Family’ is in direct conflict with our fundamental law that says that the family is a natural society founded on marriage, in a polemic against the traditional family, dated and retrograde» (case 1).
APPENDIX III - Compliance Documentation Report

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

The Ministry of Labor, Social Policy and Equal Opportunities has provided an answer to the LGBTI Resource Centre request of information.

i. Has guidance been issued to public officials and state representatives in this respect?

According to the information provided\textsuperscript{44}, UNAR realized several training courses and awareness raising initiatives for civil servants tackling anti-discrimination on the ground of sexual orientation and gender identity in partnership with LGBT NGOs in 2010 and 2011.

At a local level, there are experiences of training courses for civil servants addressing proper behavior in regard of sexual orientation and gender identity in their workplace. Examples are:

The Turin City Council LGBT service participation to the European project ‘Against Homophobia. European Local Administration Devices – AHEAD’ in 2010. Training course for public administration personnel (operators of the Center for Family Relations and the City of Turin and the employment centers of the Province of Turin) have been experienced\textsuperscript{45}.

The Sicilian Region and Palermo Province project to realize an awareness raising initiative for civil servants addressing sexual orientation and gender identity issues in partnership with UNAR and the NGO ‘Avvocatura per i diritti Lgbt – Rete Lenford’\textsuperscript{46}.

ii. If so, is there evidence of public officials and other state representatives promoting tolerance for LGBT people in their dialogue with civil society, and encouraging the use of responsible and non-violent speech?

Cases of public officials and state representatives promoting tolerance and respect for LGBT persons are available. It is particularly relevant to highlights the declaration of the President of the Italian Republic Giorgio Napolitano in occasion of the International Day Against Homophobia in 2011. In his message the President stressed that using a certain type of language and allusions against persons dignity in public discourse contributes to strengthen homophobia in society\textsuperscript{47}.

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\textsuperscript{44} See letter of 2 July 2012.
\textsuperscript{45} See supra note 18.
\textsuperscript{46} UNAR Newsletter no. 7/July 2012.
\textsuperscript{47} Full message on the webpage: \texttt{www.quirinale.it/elementi/Continua.aspx?tipo=4&key=11688}, visited on 17 August 2012.
II. Freedom of association

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, this including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

i. Are organizations whose publicly stated purpose is to work for the well-being of LGBT people, whether for their human rights, or in other ways, prevented from gaining official registration?

According to Italian Constitution, art. 18, «Citizens have the right to form associations freely and without authorization for those ends that are not forbidden by criminal law. Secret associations and associations that, even indirectly, pursue political aims by means of organizations having a military character shall be forbidden». In accordance to the Italian Civil Code, associations may be recognized and non-recognized: associative bodies of the first kind have acquired recognized legal status and enjoy some prerogatives, as the so-called "perfect patrimonial autonomy", by which the assets of the association are considered separate and independent from the properties of the associates and administrators and the limited liability of administrators for the obligations undertaken on behalf of the association Generally, according to civil law, the legal status of an association is not recognized, except for few cases in which it is legally obligatory.

The question of "official registration" is therefore here intended as concerning all volunteer organizations, social promotion associations, NGOs and social cooperatives (either recognized or non-recognized) whose inclusion in specific national or regional registers might be a prerequisite for gaining access to public aid as well as for stipulating agreements and benefiting from tax concessions.

With regard to volunteer organizations, Law 11 August 1991, No. 266, 'General Policy Law on Volunteerism' states that the inclusion in the registers established by the regions and autonomous provinces. The regions and autonomous provinces decide the criteria for periodical review of the registers in order to verify the continuing possession of requirements and performance of the volunteer work by the organizations included therein. Regions and Autonomous Provinces can order removal from the register with a justified measure. Appeals are permitted against orders of refusal of inclusion and against orders of removal within the time limit of thirty days from notification, to be made to the regional administrative court which will rule in chambers within thirty days from the expiry of the time limit for lodging the appeal, having heard the counsel for the parties making the request. The court's decision is appealable within thirty days from the notification and decided using the same procedures and terms. Social promotion associations, (organizations with members who perform activities concerning general public interest or specific groups of citizens, cultural interest such as many LGBTI organizations), are governed by Law no. 383 of 2000 establishing a formal national Register at the Department of Social Affairs of the Presidency of the Council of Ministers, for associations which have been working for at least one
year, at a national level or at least in five Regions and twenty Provinces. Furthermore, the Presidency has an “associations fund,” established to provide financial support for training programs and projects developed by registered associations. Associations that have been registered for at least six months may stipulate agreements with public administration authorities (municipality, province, region, or state), in order to receive the funding required to carry out the operations described in the by-laws, in providing assistance to third parties. Only registered associations may have access to subsidized loans in addition to benefiting from various tax breaks. Moreover, in order to receive specific funding stipulate agreements with government bodies (regions, provinces, or municipalities), social promotion associations must apply to be included in a register held by the appropriate regional council. Organizations whose publicly stated purpose is to work for the well-being of LGBT people are not prevented from gaining official registration and there is no evidence of the use of discriminatory administrative procedures.

It may be considered a form of indirect discrimination the refusal of registration of the ‘Arclesbica’ lesbian social promotion association that the Autonomous Province of Trento opposed because of its only-women composition since Provincial Law 13 February 1992, no. 8, implementing the above mentioned Law 7 December 2000, no. 383, states that «associations contemplating membership restrictions of any kind» cannot be included in the provincial register.

ii. If so, is this through the use of discriminatory administrative procedures, through restrictions based on public health, public morality or public order, or through other means?

In the abovementioned case the reason for the restriction is not related with public health, public morality or public order but on the bases of a specific interpretation of the rules of the registration.

iii. Are there examples of measures taken to: ensure that LGBT organisations can operate freely, defend their interests when necessary, facilitate and encourage their work?

Some of the cases described below in point iv) can be considered as examples of measures taken by national and local institutions to facilitate and encourage LGBT organisations work. However, the LGBTI Resource Centre is not aware of specific and systematic adoption of such measures at a national level.

iv. Are LGBT organisations involved on a partnership basis when framing and implementing public policies which affect LGBT persons?

Recently there are a few examples of consultations of LGBT NGOs from public institutions. In 2010 UNAR established the 'Working group on equal treatment and non-discrimination of transsexual and transgender people in the work field' (Tavolo nazionale per la parità di trattamento e la non discriminazione nei confronti delle persone transessuali in ambito lavorativo). It is a consultative body composed by representatives of the trans people NGOs; it is appointed to draft a report on the access to employment and working conditions of transgender persons in order to define a specific annual action plan.

At a local level there are a few cases of involvement of LGBT organization in policy design and implementation. By way of example:

In 2011 in Naples the City Council has established a round table discussion with local LGBT organizations aimed to «report on the persistence of a culture of discrimination

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48. Fieldwork with the National Working Group.
49. UNAR, supra note 35.
to the detriment of LGBT people; highlighting the absence of efficient means to affirm the dignity of LGBT people; promoting an integrated plan of actions to combat homophobia; initiating a training program aimed at promoting a culture of respect for differences.\(^{50}\)

In 2001 in Turin, the City Council LGBT Office – an office within the Equal Opportunities, Gender and Time-use Policies Sector – has appointed a confrontation roundtable that brings together members from regional and local Public Administration and the GLBT Turin Pride Coordination Board, made of the local LGBT associations. The confrontation roundtable meets regularly to define and plan various initiatives. Moreover, a Training Group within the GLBT Turin Pride Coordination Board has been created to co-operate with the LGBT Office for training School and Public Administration staff. The Training Group has a pivotal role in the implementation of the local administration awareness raising action\(^{51}\).


\(^{51}\) Ibid., p. 102
10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

The Ministry of Labor, Social Policy and Equal Opportunities has provided an answer to the LGBTI Resource Centre request of information.

i. Is public funding earmarked for NGOs accessible to LGBT organisations without discrimination?

There are not cases of explicit discrimination and exclusion of LGBT organisation from public funding earmarked for civil society’s organisation. This condition has been confirmed by Ministry of Labor, Social Policy and Equal Opportunities answer to LGBTI Resource Centre information request52.

ii. Has such funding been made available to LGBT organisations?

LGBT NGOs have access to public funding both at a national and local level. However, National Working Group reports that funding opportunities for LGBT organisations may depend on the political will of governments and local administrators.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their activities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

i. Does the state provide effective protection from hostility and aggression for LGBT human rights organisations?

According to NGOs members of the National Working Group authorities usually guarantee protection to LGBT organisations.

ii. Are there examples of measures taken by the state to create an environment conducive to the work of such organisations, enabling them freely to conduct their activities, and promoting respect for their work?

LGBTI Resource Centre is not aware of such type of measures adopted by Italian authorities.

iii. Are LGBT human rights organisations able to work with - national human rights institutions and ombudsmen, - the media, - other human rights organisations?

LGBT human rights organisations are able to work with human rights institutions, media and other human rights organisations. However, National Working Group stressed that collaborations depends on the will of such actors.

52. See the Letter of 2 July 2012.
iv. Are they able to take part in training sessions, international conferences and other human rights activities?

Based on the information available to the LGBTI Resource Centre and the National Working Group, there are no limits to the participation of LGBT human rights organisations and defenders to activities and events related to human rights.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

   i. Are LGBT organisations consulted on the adoption and implementation of measures affecting the rights of LGBT persons?

Since 1999, several attempts have been done to include LGBT associations in the planning and in the implementation of public policies related to the LGBT population. The last body was created in 2007 by the Minister Pollastrini, Minister for Rights and Equal Opportunities, part of the center-left government led by Romano Prodi. It is the ‘Commission on Rights and Equal opportunities for lesbian, gay, bisexual and transgender’ (Commissione per i diritti e le pari opportunità delle persone lesbiche, gay, bisessuali e transgender) made up of seven experts appointed by the Minister in collaboration with four experts from trans associations53. The Minister also foresees the creation of a ‘Permanent Forum against harassment and violence against women, sexual orientation and gender identity’ (Forum permanente contro le molestie gravi e la violenza alle donne, per orientamento sessuale e identità di genere) as the seat of permanent dialogue between institutions and civil society organizations on issues of violence and harassment that is convened at least twice a year. Since 2008 with the return to the Berlusconi’s center-right government, the Minister for Equal Opportunities, Mara Carfagna, reaffirms the organs previously created but she had never summons them54.

53. Decree of the Prime Minister 13 December 2007, GU n. 21 del 25-1-2008
In general the different institutional actors created since 1999 have been for consultation purposes or have been designed to develop proposals that could go in the direction of overcoming the discrimination faced by LGBT people. Results have been poor on the one hand due to the rapid turnover of governments, on the other hand because of the weak will to enact the legislation by the bodies responsible for promoting LGBT policies.

There are as well cases of exclusion from public consultation. In 2007, the Ministry of the Family Rosy Bindi deliberately excluded the LGBT organisations from the National Conference on Family. To justify her decision the Ministry declared that LGBT organisations could not participate because «it [was] a conference on the family, the one defined by article 29 [of the Constitution] based on marriage». The only LGBT organisation invited has been the association of parents, families and friends of LGBT persons: Agedo (case 30).

ii. Have there been such consultations regarding the implementation of this Recommendation?

On 16 February 2012, the Italian - national and local - LGBT organizations have been invited to the presentation of the Conference sponsored by UNAR for Italy's joining to the program of the Council of Europe on 'Contrasting the discrimination based on sexual orientation and gender identity' (Contrasto della discriminazione basata sull'orientamento sessuale e sull'identità di genere). On that occasion, the Italy's participation to a project sponsored by the Council of Europe - Unity LGBT for the implementation of the Recommendation was announced in the presence of the Ministry of Labour and Social Affairs responsible for Equal Opportunities, in presence of the Project Manager of the LGBT Unit of the Council of Europe and in the presence of the Head of the Unit. The afternoon session of the conference was devoted to a first debate on the needs of LGBT people. After the consultation some questionnaires by UNAR with the following questions were sent:

- What is the situation for LGBT people in your area of action? What have you done?
- What are the main problems / challenges today?
- What should be the goals for the future? Which kind of activities / measures should be implemented to achieve them? What are the key factors needed to ensure their success and achieve these goals?

Moreover, in June 2012 UNAR has requested an expression of interest to organizations interested in taking part to the design of the Recommendation implementation strategy. A National Working Group made of several LGBT and human rights NGOs has been established with a consultative role; the 12th of December 2012 the Group have met for the first time.

Those initiatives are based on Ministry of Labor, Social Policy and Equal Opportunities Directive on the administrative action of the Equal Opportunities Department that authorized the participation to the Council of Europe Program.

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55. Ibid.
56. European Union Agency for Fundamental Rights, Homophobia and discrimination on the grounds of sexual orientation in the EU member states Part II – The social situation, (2009)
57. European Union Agency for Fundamental Rights, The social situation concerning homophobia and discrimination on the ground of sexual orientation in Italy (2009)
58. Ibid.
59. The LGBTI Resource Centre participated to the meeting in Rome. For such a reason the Centre received the communication with the questionnaire.
III. Freedom of expression and peaceful assembly

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.

The Parliamentary Commission for general direction and supervision of broadcasting system and the RAI – concessionaire of the public broadcast system have provided an answer to the checklist relative to this article. On the contrary Ministry of Economic Development and the Authority for Communication Guarantees has failed to provide any information.

i. Have the authorities ensured the freedom to receive and transmit information and ideas relating to sexual orientation and gender identity, including:
- activities that support the human rights of LGBT persons
- publication of material
- media coverage
- organisation of/participation in conferences
- dissemination/access to information on safe sexual practices?

According to art. 21 of the Constitution, «Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication. The press may not be subjected to any authorisation or censorship. Seizure may be permitted only by judicial order stating the reason and only for offences expressly determined by the law on the press or in case of violation of the obligation to identify the persons responsible for such offences. In such cases, when there is absolute urgency and timely intervention of the Judiciary is not possible, a periodical may be confiscated by the criminal police, which shall immediately and in no case later than 24 hours refer the matter to the Judiciary for validation. In default of such validation in the following 24 hours, the measure shall be revoked and considered null and void. The law may introduce general provisions for the disclosure of financial sources of periodical publications. Publications, performances, and other exhibits offensive to public morality shall be prohibited. Measures of preventive and repressive measure against such violations shall be established by law». Although law guarantees freedom to receive and transmit information and ideas related to sexual orientation and gender identity there are several attempts of violation of such freedom.

ii. Or, on the contrary, have there been cases where restrictions have been placed on freedom of expression?

The cases LGBTI Resource Centre is aware of are mainly related to the freedom to receive and transmit information about sexual orientation and gender identity, and in particular:

Limiting the spread of posters and social communication campaigns.
In May 2012 the City of Battipaglia (Salerno) banned the publication of a poster proposed by the Equal Opportunity Commission of the City showing the kiss of two men - it was prepared on the occasion of the International Day Against Homophobia. According to the statements of Pasquale Quaranta, a member of the Committee on Equal Opportunities (resigned from the office as a result of this censure) the poster was rejected not to affect the relationship with the 'Unionie dei democratici e cristiani di centro', the leading party of the coalition of the City (case 30). Moreover, in 2010 the posters of the communication campaign against homophobia sponsored by Arcigay and by the city of Udine were repeat-
edly covered, damaged and ruined. Ernesto Pezzetta, a member of the political party ‘La destra’, admitted «the intention to cover the posters and accept the consequences of the law» (case 34). In 2010 the Municipality of Bergamo denied the authorization for a picture exposition in the city center on the theme of visibility of LGB persons showing couples kissing; the motivation used was the protection of elderly and children sensibility (case 54).

Barriers to the participation of LGBT associations or LGBT human rights supporters organizations in school meetings to inform students about issues related to sexual orientation and gender identity (cases 40, 41, 42, 43). The presence of representatives of these associations during the meetings organized by the students is hampered by principals and school boards that cite formal reasons (e.g. lack of communication with the school board, the lack of authorization to enter the school), or related to the topics considered too much sensitive for some students, such as those foreigners whose sensitivity would result offended (case 41); other times the prohibition to participate is motivated by explicit homophobic positions by teachers or principals (case 42).

The resistance from the authorities to the presentation in institutional spaces of LGBT - themed books, considered morally harmful and not worthy of an audience of young people.

In 2011, the Department of Culture of the Province of Olbia, Giovanni Pileri asked for the exclusion of LGBT - themed book ‘Mia figlia follia’ by Savina Dolores Massa from a review aimed at high school students (case 44). In March 2012, the town of Busto Arsizio made no reply to the grant request of the town hall for the presentation of a book about LGBT parenting, despite the integration of detailed information and despite the reminders from the organizers of the event. (case 45)

iii. Have the authorities encouraged pluralism and non-discrimination in the media in respect of issues of (a) sexual orientation or (b) gender identity?

Information on the promotion of pluralism and non-discrimination in the media related to sexual orientation and gender identity are explained in Art. 6 ii.

The LGBTI Resource Centre is aware of cases of restriction of pluralism and discrimination in the media related to sexual orientation and gender identity:

Criticism and censure to advertisements for private companies by public authorities, such as the Secretary of Family, Carlo Giovanardi, who in 2011 judges the Ikea commercial as offensive, unmoral and against the Italian Constitution since it depicts two men holding under the slogan ‘We are open to all families’ (‘Siamo aperti a tutte le famiglie’) (case 1). The advertising of the clothing brand RA-Re showing two men kissing in intimate attitudes has been censored in 2005 by the Monitoring Committee of the Institute of advertising self-regulation (Istituto dell’autodisciplina pubblicitaria - IAP), which has banned the posting, as a consequence of some protests by citizens (case 38).

Censorships of films and TV series on public television: in 2008, the national television broadcaster RAI aired the film Brokeback Mountain, cutting gay scenes (case 35). The same station in 2011 did not air the episode number 8 of the TV series “Un ciclone in convento” which celebrated the marriage of two men (case 36). The explanation expressed by the broadcaster for having done so was related to issues of space. A board member of RAI Rodolfo De Laurentis has justified the choice of censored the TV series episode showing a same sex marriage as contrasting common values of the Italian society and even the Constitutional Law principles (Case 36).

Restricting the access to some websites: in February 2012, the wi-fi audience of Palazzo Marino, the town of Milan blocked the
access to the gay news sites and portals of the LGBT community because of a filter-navigation provided by the online security company which the City relies to for the traffic management (case 37). The City of Milan, after the report, removed the block to the access to these sites, in obedience to the principle of non-discrimination and free access to the Internet.

14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.

i. Have the authorities ensured freedom of peaceful assembly for LGBT people?

According to art. 17 of the Constitution, «Citizens have the right to assemble peaceably and unarmed. No previous notice is required for meetings, including those held in places open to the public. In case of meetings held in public places, previous notice shall be given to the authorities, who may prohibit them only for proven reason of security or public safety». Further regulations to control public assemblies are set down in the legislation on public safety: the Testo Unico delle Leggi di Pubblica Sicurezza, known as TULPS (Single Text of the Laws of Public Safety). This law was established under the Royal Decree on Public Safety no. 773, and was originally introduced in 1931. Threats to public safety are therefore considered a necessary requirement for restricting the right to gather peacefully. The notion of public safety is linked to the need to ensure the prevention of violence while aiming at the maintenance of a peaceful coexistence for all sections of the community: any threat to a peaceful condition can be dealt with by preventing events that may contribute to its breach. The potential disturbance of public safety justifies measures that may be taken by the authorities to restrict the rights of citizens.

The basic requirement for holding a public assembly is to give three days notice to the authorities. The standard details that are required in the notice are the date, the time, the place and the route of the proposed event. The notification must also include details of the individuals responsible for the organization and it must also
include personal details of any speakers when speeches are to be held. The notice must be given in to the ‘questore’, the police superintendent in charge of the local province. The ‘questore’ has the power to prohibit public assemblies but only for valid reasons of security or public safety. If the ‘questore’ wishes to make changes to the organizers plans, then he must notify them within 24 hours, but if he does not contact the organizers within this time, then they can legally assume that the demonstration can go ahead as planned. Thus the notification is not a request for permission, but is a communication that an assembly or a meeting is going to take place on a certain date, at a set time and along a specific route. Once notice has been given, the authorities can refuse to allow a demonstration or they can place restrictions on grounds of concern for public safety or security. Therefore, LGBT assemblies and parades cannot be banned by the public authorities if they are peaceful and unarmed and the right to hold such meetings is fully protected by the Constitution.

During the past years the freedom of peaceful assembly has been generally respected: «no bans or administrative impediments regarding freedom of assembly have been identified since 2004»60. Recently an increasing number of LGBT pride parades and festivals and other LGBT public demonstrations and events have been organized in several cities all around the country. In these occasions the police forces usually guarantee security system and public order during the events and demonstrations61. Moreover, numerous local authorities have given their official support to the parades and festivals. In 2012 institutional patronage was accorded to LGBT events in Torino, Bologna, Viareggio, Palermo, Cagliari and Salerno.

Nevertheless, several episodes highlight limits connected to the behaviour of public authorities regarding freedom of assembly. The episodes regard: a) denial of support to the LGBT pride events; b) homophobic declarations from representatives of public authorities, c) attempts to limit the route of parades d) limitation to the use of public institution venues.

In 2008 the former Equal Opportunity Minister – Mara Carfagna – denied the support to the Rome LGBT pride because, according to her declaration, lesbians, gays, bisexuals and transgender people are no longer discriminated in Italy (case 50). The following year, in 2009, the Mayor of Rome Alemanno did not grant the patronage of the City in the event (case 51). In 2010, the President of the Piedmont Region, Roberto Cota, immediately after his election, announced his intention to revoke the patronage to the event that would be held in Turin granted by the previous presidency although the support was not requested by LGBT NGOs so far (case 53). In 2012, the President of the Province of Salerno, Edmund Cirielli, did not grant the patronage of the pride since he believed that the issue of the event affects only the individual and concerns «tastes and sexual orientations which must be covered by privacy and which the State must stay away from» (case 52)

Both in 2008 and 2009 the route of the LGBT prides organized in Rome was modified because of parallel events organised by the catholic church that have been considered of prevailing relevance to the city authorities (cases 47, 48). In 2012 the local Catholic church strongly criticized the route of the national LGBT pride in Bologna because the demonstration was planned to pass by significant

60. Council of Europe Commissioner for Human Rights, Discrimination on grounds of sexual orientation and gender identity in Europe – Background document, [2011], p.69
61. Field work with the National Working Group.
Catholic venues; in this case local authorities did not modify the route according to the local Catholic church request and the demonstration maintained the route proposed (case 39). In March 2012, the town of Busto Arsizio made no reply to the grant request of the town hall for the presentation of a book about LGBT parenting (case 45). In April 2010 the Bergamo Municipality denied the authorization for a picture exposition in the city center on the theme of visibility of LGB persons showing couples kissing; the motivation used was the protection of elderly and children sensibility (case 54).

15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.

i. If there has been hostility to LGBT freedom of assembly events, have the law enforcement authorities taken reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully?

LGBTI Resource Centre is unaware of episodes of hostility against LGBT events.

ii. In particular, have the police protected participants in peaceful LGBT demonstrations effectively?

LGBTI Resource Centre is unaware of such measures.

iii. Have the police acted with integrity and respect towards LGBT people and their supporters when policing LGBT freedom of assembly events?

LGBTI Resource Centre is unaware of episodes related to police disrespectful behavior towards LGBT people in policing LGBT freedom of assembly events.
16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.

i. Have the authorities placed restrictions on freedom of assembly events? If so, what have been the grounds?

As previously mentioned in art. 14.i, in general, the freedom of peaceful assembly is guaranteed, but in these years there are still limitations by the authorities, in particular related to the route of peaceful demonstrations or by inviting organizers to impose rules of conduct and dressing. The reasons were due to public policy, to avoid overlapping with other religious events that would take place in the surroundings or in the following days (cases 47, 48). See also Art. 16.ii.

ii. Have conditions been placed, for example, with regard to the route or timing of demonstrations, which are not generally applied to other demonstrators?

Yes, in some cases limitations that are not normally applied to other protesters have been imposed - for example in the Roma Pride in 2008 and 2009 (see cases 47 and 48) the police several times denied the authorization to conclude the parade in one of the most important squares (Piazza S. Giovanni), due to religious events that would take place close to the area. Particularly significant is the case of 2009 when the police for three times asked the organizers to define the location of the parade. Every proposal was rejected by the authorities. The first because of a religious event too close to the LGBT parade route, the second because of the feast of San Giovanni that would take place four days after the chosen date. The third time the organizers proposed the exact route that had been granted the previous year with special dispensation by the police, but this time it was denied. Until a few days before the date of the event an agreement on the parade route had not reached yet. In the end the police agreed to authorize the final proposed route, with a special dispensation (like the previous year).

It is also important to point out that there are some cases in which restrictions or attempted restrictions are the result of conflict with members of civil society who are putting pressure on institutions. One case is provided by the Pride of Bassano del Grappa in 2012: originally the parade would have to go through the old bridge of the mountain, which immediately sparked controversy among many citizens, politicians and members of the Associazione Nazionale Alpini (ANA) Monte Grappa that considered the passage on the bridge a provocation and insult to the memory of the Alpines died in war. The organizers finally decided not to let the Pride pass on the old bridge for “technical reasons”: the procession was opened by a truck for the sound system and the bridge is pedestrian (46).

Finally in 2012 at the National Pride of Bologna, some citizens and some members of the clergy of the city criticized the choice of the starting point of the Pride route (Port Zaragoza) because it is considered very sacred and very important for the Church. Despite attempts to change the place of the departure of the National Pride, the event is then performed without any change of the route (case 39).

iii. If restrictions have been placed on freedom of assembly events, has it been possible to challenge them in the courts or through other independent review mechanisms?

Yes. Organizers can bring actions before the administrative courts against the police superintendent’s decisions. For example, as a result of another denial from the route of the Pride of Rome in 2009, the association Mario Mieli, as organizer and promoter of the event, said it would appeal to the ‘Regional Administrative Court’ (TAR) in order to prevent similar situations in the future.
17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.

The Ministry of Labor, Social Policy and Equal Opportunities has provided an answer to the LGBTI Resource Centre request of information.

i. If there have been unlawful interferences with the right to freedom of expression and peaceful assembly, has there been encouragement to public authorities to condemn such interferences? Have public authorities actually condemned such interferences?

The Ministry of Labor, Social Policy and Equal Opportunities answer to the LGBTI Resource Centre information request affirms the constitutional protection to freedom of expression and assembly. It also states that, whenever a case of violation of such rights have occurred UNAR has intervened to stigmatize it. However, according to the information available it is impossible to fully assess such intervention.

ii. Where there has been public hostility towards the exercise of freedom of assembly by LGBT people, have the authorities upheld this right publicly?

LGBTI Resource Centre is unaware of such measures adopted from Italian authorities.

iii. Or, on the contrary, have the authorities endorsed or supported hostility towards LGBT freedom of assembly events?

There are cases of authorities supporting hostility towards LGBT freedom of assembly; see art. 16

62. See the letter of 2 July 2012.
IV. Right to respect for private and family life

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.

The Ministry of Justice failed to provide an answer to the LGBTI Resource Centre information request.

i. Does legislation criminalise same-sex sexual acts? Are there any differences in the age of consent? If either applies, what steps are the authorities taking to repeal the legislation?

No. There aren’t any legal provisions punishing same-sex sexual acts nor differences in the age of consent.

ii. Are there any criminal law provisions which, because of their wording or scope are liable to be applied in a discriminatory manner regarding (a) sexual orientation or (b) gender identity?

No.

iii. If so, what steps are the authorities taking to remedy this situation?

19. Member states should ensure that personal data referring to a person’s sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.

The ‘Data Protection Authority’ and the Ministry of Home Affairs provided an answer to the LGBTI Resource Centre request of information. The Ministry of Justice failed to provide an answer to the LGBTI Resource Centre information request.

i. What steps have been taken to ensure that public authorities comply with this requirement, in respect of (a) sexual orientation and (b) gender identity particularly with regard to records held by law enforcement authorities?

As the ‘Data Protection Authority’ pointed out63, data concerning sexual orientation and gender identity are to be considered as “special categories of data” for the purposes of art. 8 of Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, prohibiting Member States the processing of personal data revealing an individual’s sex life unless some specific conditions are satisfied.

As pointed out by the Ministry of Home Affairs64, according to art. 4 d) of Legislative Decree no. 196 of 2003 (‘Personal Data Protection Code’), those personal data allowing the disclosure of “sex life” are to be considered as “sensitive data”. This privacy legislation requires additional conditions to be met.

63. See the Letter of 3 August 2012
64. See the Letter of 22 October 2012.
for the processing of such data to be legitimate: usually this will be the consent of the person about whom the data relates. Besides, processing of sensitive data by public bodies shall only be allowed where it is expressly authorized by a law specifying the categories of data that may be processed and the categories of operation that may be performed as well as the substantial public interest pursued (Art. 20). Moreover, public bodies shall process sensitive data in accordance with arrangements aimed at preventing breaches of data subjects' rights, fundamental freedoms and dignity (Art. 22) and a data controller has a responsibility to notify the 'Data Protection Authority' (DPA) of the processing of personal data if it concerns data disclosing health and sexual orientation and activity where processed for certain health-related reasons or data disclosing sexual orientation and activity and the psychological profiles where processed by not-for-profit associations, bodies or organisations, that have a political, philosophical, religious or trade-union character. Data subjects have many specific rights: for instance, a data subject is entitled to obtain confirmation as to whether or not personal data concerning him exists, regardless of this already being recorded, and the communication of the data in an intelligible form (Art. 7); data subject has the right to obtain updating, rectification or integration of data as well as erasure, anonymisation or blocking of data that have been unlawfully processed, including data whose retention is unnecessary for the purposes for which they have been collected or subsequently processed.

The Authority also recalled that the 'Court of Cassation' with decision no. 14390 of 8 July 2005 declared that data allowing the disclosure of "sex life" are to be considered "super-sensitive", meaning that they have to be more carefully protected. It seems important to stress that even if sexual orientation and gender identity are not explicitly mentioned, data concerning these two aspects are considered "sensitive" for the purposes of the law.

With regard to employment law, it must be recalled that Legislative Decree no. 276 of 2003, at Art. 10, prohibits public and private job agencies to investigate or manage, even with the explicit consent, any data concerning, among others, the sexual orientation of the job seeker or worker. Besides, Law no. 890 of 1997, at art. 1, prohibits the diffusion of all information concerning the reasons for discharge from the military service: this was very important before 2005, when the military service was compulsory and homosexual conduct was grounds for being discharged.

Case law:
'Court of Appeal of Catania', judgment of 11 April 2011 -> the second instance judge held the Italian Minister of Defense and the Minister of Transport liable to compensate an Italian citizen without the driving license because of his sexual orientation for damage. The man declared he was homosexual when he was summoned to the army medical and the military hospital informed the national office that issues driving licenses and registers vehicles that he was not in possess of the "psychophysical requirements" for driving. As a result, the driving license was revoked and the man brought the case before the 'Tribunal of Catania' which decided in favor of him condemning the Italian State to pay him 100 000 Euro as damage compensation. In second instance, the Court of Appeal of Catania confirmed the decision but reduced the sum of compensation to 20 000 Euro.
20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.

The Ministry of Justice failed to provide an answer to the LGBTI Resource Centre information request.

i. Has a review of such prior requirements been conducted?

The LGBTI Resource Center is not aware of any specific research on the basic conditions for the legal recognition of gender reassignment. Law no. 164 of 1982 ‘Rules concerning rectification of sexual attribution’ (as amended by Legislative Decree no. 150 of 2011) provides a double judicial intervention in the process of sex change: first of all, gender reassignment must be judicially declared; secondly, art. 3 of the Law states that «when a medical – surgical treatment in order to adapt the sexual characteristics is necessary, the court authorises it with a decision. In such case, the court having checked that the authorised treatment has been done, orders the correction of the person’s sex in the records of Registrar’s office» and, moreover, art. 2 allows the judge to «ask for a medical opinion regarding the psycho-physical condition of the person».

There are no regulations nor guidelines issued by the legislator or by other public authorities concerning the procedure of gender reassignment laid down by Law no. 164 of 1982 and establishing prior requirements for legal recognition of a gender reassignment.

ii. Are there still requirements which might be considered disproportionate or even abusive, such as irreversible sterilisation, hormonal treatment, preliminary surgical procedures, or proof of a person’s ability to live for a long period of time in the new gender?

In the absence of guidelines or regulations, minimum requirements are established routinely and informally by judges and doctors. This seems to leave plenty of space to the sensitivity of individual practitioners and judges and it determines a state of uncertainty and differentiation from center to center.

Furthermore, the trans organisations involved in the National Working Group report that the law and in particular the above mentioned art. 2, has been usually interpreted as if the medical-surgical is necessary in order to obtain the gender reassignment.

The structures of the ‘National Health Service’ (NHS) dealing with transgendemism tend to refer back to the work of the ‘National Observatory Gender Identity’ (ONIG). The ONIG is an association that «aims to foster dialogue and collaboration of all stakeholders to the issues of transsexuality and transgenderism to understand others realities at scientific and social levels and to promote cultural openness towards the freedom of expression of transsexual and transgender people in all their aspects».

The ONIG is also responsible for defining «guidelines of medical, surgical, psychological and legal assistance to guarantee the quality of care for people who undertake gender reassignment.

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66. The Explanatory Memorandum draws attention to Committee of Ministers Recommendation Rec(2007) 17 on gender equality standards and mechanisms, which affirms that “both women and men must have a non-negotiable right to decide over their own body, including sexual and reproductive matters. Such acknowledgement must be reflected in the development, implementation, access to, monitoring and evaluation of health-care services and in research priorities.”
67. Also see art. 35.
69. See www.onig.it.
70. ONIG charter, art. 3.
gender reassignment». The structures of the NHS that refers to the ONIG standard guidelines on the programs what ONIG calls ‘gender identity disorder’ created by ONIG itself. Although not binding, they are a benchmark for facilities that adopt them. As a consequence, it is important to emphasize that the guidelines consider that «the life experience in the role of gender lived as the closest to their own inner feeling [...] as an integral part of the program of surgical sex reassignment [moreover this path] must have an adequate duration that allows the acquisition of psycho-physical characteristics desired. [ONIG] recommends a minimum period of 8–12 months».

Moreover, the National Working Group shows that irreversible sterilization is considered a prerequisite to reallocate gender. This interpretation of Italian legislation on gender reassignment is confirmed by case-law.

For instance:
‘Tribunal of Pavia’, 2 February 2006 it is «necessary and sufficient, for a man intending to become a woman, to go into surgery for the total and irreversible removal of all organs allowing man to procreate (as a man), therefore the complete removal of both testicles».
‘Tribunal of Bologna’, 5 August 2005 the judge held that irreversible sterilization is necessary and sufficient for a female to change her sex to male.

In conclusion gender recognition for male to female transgender persons is usually authorised only when the person has had complex surgery including orchidectomy, penectomy and vaginaplasty. Recognition for female to male trans persons is usually authorised when the person underwent mastectomy and hysterectomy which are considered as minimum requirements. In contrast, surgery for penile reconstruction is not requested because it is considered a very difficult operation, with a high failure rate (but see art. 35).

71. ONIG, ibid.
73. Fieldwork with National working group.
74. ONIG, Standard sui Programmi di Adeguamento nel Disturbo dell’identita’ di Genere, art. 3. Available at http://www.onig.it/drupal6/node/19, visited on 17 August 2012
21. Member states should take appropriate measures to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.

The Ministry of Justice failed to provide an answer to the LGBTI Resource Centre in formation request.

i. Are there procedures in operation which ensure the full legal recognition of a person’s gender reassignment?

Legal sex change is granted by Law no. 164 of 1982 ‘Rules concerning rectification of sexual attribution’ (as amended by Legislative Decree no. 150 of 2011). According to Law no. 164 of 1982 transgender persons can ask for a judicial order which gives consent to change the details of their sex and name in the records of the Registrar of Civil Status. It seems important to notice that after the entry into force of Law no. 164 of 1982, the Italian ‘Court of Cassation’ invoked the intervention of the ‘Constitutional Court’, arguing that the act was unconstitutional with reference to many constitutional provisions, such as art. 29 and 30 concerning marriage and parental rights and duties because of the effects of gender reassignment on the individual’s family life (see art. 22), as well as art. 32 of the Italian Constitution, which guarantees the right to health: in this regard, the Court argued that surgical treatments compromise the procreative capacity of the individual and «complicate the abnormality of the person». The ‘Constitutional Court’, in its decision no. 161 of 1985, not only declared that the law was not unconstitutional, but recognized the existence of a fundamental right to the gender identity, acknowledging the «contrast between pyschological and biological sex» in transsexual persons, but, above all, it admitted the fact that the law had accepted a new concept of sexual identity based not only on a person’s sexual attributes, but also on psychological and social factors, from which there descends the concept of «Sex as a complex feature of an individual’s personality, determined by a set of factors; those factors must be balanced in order to find and give priority to the dominant factor(s)».

ii. Do these make possible the change of name and gender in official documents including birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, electoral, land and text registers in a quick, transparent and accessible way?

The procedures for the change of name and gender marker in official documents are granted after the judicial decision ordering to change such details in the records of the Registrár of Civil Status has been issued. The National Working Group points out, however, that such procedures are not always fast, transparent and accessible. Even though the change of the name and gender marker is ensured, there is no guarantee of the processing time, which depends on the slowness of the different courts.

iii. Are there procedures to ensure corresponding changes in key documents originated by non-state actors, such as
- diplomas,
- certificates of employment, and
- insurance or banking documents?

The change of the name and gender marker in all other documents is not submitted to specific procedures. It is the single person who, once obtained the name change of the key documents such as identity documents, is responsible to forward the request to each relevant office. According to the information available, trans persons are able to obtain change in such documents.

iv. If yes, do these procedures include the protection of the person’s private life, so that no third party can become aware of the gender reassignment?

Privacy protection is guaranteed by the ‘Personal Data Protection Code’ (Legislative Decree no. 196 of 2003): such legislation does not cover how proceedings under Law no. 164 of 1982 are dealt but since personal data allowing the disclosure of “sex life” are to be considered as “sensitive data” additional conditions are required to be met for the processing of such data (see art. 19). However, the lack of clear procedures for a careful protection of transgender persons and the need for the individual to ask personally about some documents to the relevant departments can generate significant violations of privacy.
22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.

The Ministry of Justice failed to provide an answer to the LGBTI Resource Centre information request.

i. Is the right of a legally recognised transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

Yes. Transgender people have the right to marry a person of the sex opposite to their reassigned sex as soon as their sex and name details have been changed in the records of the Registrar of Civil Status as provided by Law no. 164 of 1982 ‘Rules concerning rectification of sexual attribution’.

It seems important to recall that while the Italian legal system recognizes the right of transsexuals to marry in accordance with their post-operative sex, Law no. 164 of 1982, at art. 4, states that the judicial decision of legal sex change determines the dissolution of the civil marriage and/or the termination of the civil effects of marriage celebrated by ministers of catholic worship. Even if some legal scholars argue that the dissolution should not be automatic but it should be the consequence of an individual choice to file for divorce, case law seems to confirm that marriage cannot persist if one of the spouses obtains a legal sex change and, therefore, that there is no need to go through the divorce process and to ask for a judicial decision of divorce.

For instance:
- 'Court of Appeal of Bologna', 18 May 2011 -> the second instance judges change the decision of the ‘Tribunal’ of Modena regarding the divorce of a married couple where one of the spouses has changed sex and states that the marriage is no longer valid, since the difference of sex of the spouses is a fundamental requisite for the validity of the marriage.
- ‘Tribunal of Fermo’, 28 February 1997 -> the gender reassignment judicial decision automatically determines the marriage dissolution.

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77. G. Palmeri, supra note 68, pp. 762-767.
23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor’s pension benefits and tenancy rights.

The Ministry of Justice failed to provide an answer to the LGBTI Resource Centre information request.

i. Does legislation confer rights and obligations on unmarried couples? If so, have steps been taken to ensure that these rights and obligations apply to same-sex couples?

Although civil unions are not legally recognized, the Italian legal systems confers some few rights and obligations on both opposite and same-sex de facto couples81. It is however important to notice that Italy is a civil law legal system and therefore judicial decisions only affect the parties in conflict and not third parties in future cases: precedents are not legally binding and they have no more than persuasive power.

− Freedom of movement within EU / Family Reunification -> on February 13, 2012, the ‘Tribunal of Reggio Emilia’ ruled that the freedom of movement within the European Union territory must be granted also to a non-EU citizen married to a same-sex EU citizen: the Court recognized for the first time in Italy the right for a non EU same sex partner married in Spain to an Italian citizen, to be granted the permit of stay. The couple had initially been refused the permit by the Police. They appealed against the denial and the Court recognized their rights in compliance with the EU rules which regulate the freedom of movement. The Court recognized the rights of the applicants according to Legislative Decree no. 30 of 2007 implementing Directive 2004/38/CE on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. The applicants asked the application of the decision of the ‘Court of Cassation’ no. 1328 of January 19, 2011, which affirmed that the notion of spouse must be determined in accordance to the laws of the State where the marriage was celebrated and that the foreigner who married in Spain with an EU citizen of the same sex must be considered a dependent for the purpose of the right of stay in Italy.

But the ‘Court of Cassation’ with decision no. 6441 of 17 March 2009 had rejected the claim of a homosexual couple composed of an Italian citizen and his partner from New Zealand concerning the conversion of his Italian residence permit from studying to family reunification, as their partnership had been officially recognised by the New Zealand law. The Court stated that the status of an unmarried partner doesn’t fall under the term “family member” within the Italian legal order and that any extensive interpretation is not allowed.

− Damage compensation -> on September 12, 2011, the ‘Tribunal of Milan’ ruled that also a homosexual person is entitled to receive a compensation from someone who, by intent or negligence, commits the homicide of his/her partner.

− Work related benefits / Pensions -> some private employment contracts (e.g. journalists) as well as the pension and insurance system concerning Italian deputies and senators and civil service managers grant pension and insurance benefits to de facto couples without specifying if same-sex or heterosexual couples. The judicial interpretation of such contracts shall take into account some supra-national decisions, such as Young v. Australia82, where the UN Human Rights Committee found that it was

81. B. de Filippis, G.M. Felicetti, G. Friso, F. Gallo, Certi diritti che le coppie conviventi non sanno di avere (Stampa Alternativa, Torino, 2012), passim.
unlawful discrimination to deny pensions to surviving same-sex partners of veterans, when unmarried different-sex partners qualified: as such this was an instance of direct discrimination on the grounds of sexual orientation. The ‘Tribunal of Milan’, on 15 December 2009 held that when a private job agreement assigns some benefits to common-law husband or wife, these must be granted also in case of same-sex relationship

- Tenancy rights -> the ‘Constitutional Court’ held that it was irrational to withhold from the surviving cohabiting partner the right to assignment of a lease as provided for by Law no. 392 of 1978 (decision no. 404/1988). Besides, according to Law no. 179 of 1992, Art. 17 on public housing, the surviving cohabiting partner has the right to succeed to the tenancy.

- Workers’ leaves -> according to Law no. 53 of 2000, art. 4, workers have the right to a paid three days’ leave of absence yearly in the event of serious illness or loss of a partner.

- Health care -> the informed consent for medical treatment can be given by the cohabiting partner of the patient if the patient is determined to be incapacitated to make health care decisions.

However, de facto couple and, most of all, same-sex couples, still lack significant rights in the many areas.

When it comes to parenthood, while children born out of the wedlock to a heterosexual couple have the same rights as legitimate children, a child born to a same-sex couple has only one legal parent: the biological parent.

Besides, with regard to the right of assistance of the disabled partner, Law no. 104 of 1992 ‘Framework Law on assistance and social integration and the rights of disabled people’ provides specific benefits to family members, such as leaves on a daily or monthly basis and the chance to transfer to workplaces nearer their home in order to ensure that disabled persons can receive assistance and care at home: the ‘Constitutional Court’ with decision no. 35/2009 ruled that the exclusion of de facto partners from the enjoyment of these assistance rights is not unconstitutional.

84. A few differences between ‘natural’ and ‘legitimate’ children still remained after the 1975 ‘Family Law Reform’, but they are about to be eliminated by Bill no. S -2805 which has been approved by the Senate on May 16th, 2012.
24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

The Ministry of Justice failed to provide an answer to the LGBTI Resource Centre information request.

i. Does legislation recognise registered same-sex partnerships? If so, have steps been taken to ensure that their legal status and rights and obligations are equivalent to those of heterosexual couples?

No. Notwithstanding a long history of legislative proposals for civil unions, Italy does not recognize any type of same-sex unions. In February 2007 the centre-left Government approved a draft bill to recognise domestic partnerships under the name 'Diritti e doveri delle persone stabilmente Conviventi' (DICO) ('Rights and duties of stable co-habitants'). The bill proposed to give unmarried couples, including same-sex couples, health and social welfare benefits, and provide an entitlement to inherit after a couple has been living together for at least nine years. The bill faced considerable opposition and was eventually stopped from reaching the floor for a conclusive vote. Later in the year, the DICO bill was merged with other civil union proposals and the Senate's Judiciary Committee discussed a new draft known as 'Solidary Union Contract' ('Contratto di Unione Solidaire').

Besides, it must be recalled that a legislative measure contained in the so-called 'Circonare Amato', no. 55 of 18 October 2007, prohibits the transcription in the Italian Registrars of Civil Status of same-sex marriages celebrated abroad for reasons of 'national public order'.

Case law on civil unions and same-sex marriage:
- 'Court of Cassation', no. 4184/2012 -> on March 15, 2012, the Supreme Court determined that a gay couple who married outside of Italy could not be considered legally wed in Italy, but did have a "right to a family life." Sex diversity cannot be considered as a necessary requirement of marriage; nonetheless, a specific law is required in order to extend marriage to same-sex couples. In any case, these couples have the right to respect for their family life, according to article 8 and 14 of the European Convention on Human Rights. The case had been brought by two men who married in The Hague in 2002; when they attempted to register the relationship in the small town near Rome in which they live, they were denied registration by the town council. The Supreme Court ruling did not overturn that council decision.
- 'Constitutional Court', no. 138/2010 -> on April 14, 2010, the Constitutional Court upheld the Italian implicit prohibition of same-sex marriages. The question brought before the Court by the 'Court of Appeal of Trento' and the 'Tribunal of Venice' was whether provisions in the 1942 Civil Code which — in making express reference to 'husband' and 'wife' as the only individuals who could request publication of the bans and be subject to the legal effects of marriage — systematically interpreted, allowed marriage exclusively between persons of the opposite sex conflict with article 2 (on the recognition and guarantee of inviolable rights of the person) and 117 (on vesting of legislative powers «in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations») of the Italian Constitution.

In a brief statement, the Court declared the question inadmissible with regard to articles 2 and 117 and unfounded in connection with articles 3 (on equality of citizens before the law, without discrimination) and 29 (on marriage and the family).
However, this decision does not seem to close the door to recognition of same-sex unions and possibly marriages, since the constitutional judge declared that « social grouping must be deemed to include all forms of simple or complex communities that are capable of permitting and favouring the free development of the person through relationships, within a context that promotes a pluralist model. This concept must also include homosexual unions, understood as the stable cohabitation of two individuals of the same sex, who are granted the fundamental right to live out their situation as a couple freely and to obtain legal recognition thereof along with the associated rights and duties, according to the time-scales, procedures and limits specified by law» and affirmed that the Italian Parliament should enact legislation recognizing some form of protection to same-sex relationship, be it civil unions or marriage.

On July 3, 2012 the political party 'Italia dei Valori' introduced before the Chamber of Deputies bill no. AC-5338 ("Modifiche al codice civile in materia di eguaglianza nell'accesso al matrimonio in favore delle coppie formate da persone dello stesso sesso") aiming at amending the Civil Code in order to grant equal access to marriage to same-sex couples. The bill hasn’t been referred to the appropriate committee for review yet.
25. Where national legislation does not recognize nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.

The Ministry of Justice failed to provide an answer to the LGBTI Resource Centre information request.

i. If same-sex couples enjoy no rights or obligations, either through access to registered partnership or through their status as unmarried couples, have the authorities considered the possibility of implementing legal or other means to address the practical problems arising from this lack of recognition?

Some town councils, though it is not possible to list exactly which and how many, have been creating the so-called ‘registers of public civil unions’, while others offer de facto couples, including same-sex couples, the opportunity to obtain the so-called ‘certificate of affective family’ on the basis of the ‘Personal Data Law’ no. 1228 of 1954 and DPR no. 223 of 1989. The value of these registers is only symbolic, since no rights, duties or new legal status follow from this registration, although being part of an ‘affective family’ could be used as proof in order to enjoy the few rights already legally recognized to cohabiting partners (see art. 23) or all other rights and services that local authorities might decide to grant within their sphere of competence.

26. Taking into account that the child’s best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.

The Ministry of Justice failed to provide an answer to the LGBTI Resource Centre information request.

i. What steps have been taken to ensure that decisions regarding the parental responsibility for, or guardianship of a child, are taken without discrimination based on (a) sexual orientation or (b) gender identity?

The Italian legal system does not recognize same-sex marriage nor same-sex civil unions and does not permit adoption nor access to medically assisted procreation to same-sex couples or single men and women: therefore legislation concerning parental responsibility does not take into account sexual orientation or gender identity.

There are no laws regulating LGBT parental rights and parental rights of partners in a same-sex relationship over one partner’s biological child.

Case law:
Italian case law, after the adoption of Law no. 54 of 2006 on shared parental custody, when dealing with a declaration of homosexuality from one of the two parents, has always rejected the request for exclusive custody by the heterosexual parent. In fact, judges have found that there are no reasons for interfering with the sharing of parental authority and responsibilities towards the development of their children.

It seems important to notice that on 21 December 1999, in the case of Salgueiro da Silva Mouta v. Portugal, the ECtHR ruled that the negation of custody to a homosexual parent is a violation of art. 14 of the ECHR, which prohibits discrimination in exercising rights and freedoms guaranteed by the same Convention.

For example:
- ‘Tribunal of Nicosia’, 14 December 2010 -> after legal separation, joint parental custody can be denied only if it’s in the child’s best interests and the mother’s homosexual relationship cannot be considered an obstacle to the sharing of parental custody and to the domiciliation of the child at his mother’s home.
- ‘Tribunal of Milan’, 20 October 2009 -> lesbian couples and the biological child of one of two women constitutes a “typical familial scheme” that should be protected.
- ‘Tribunal of Bologna’, 15 July 2008 -> the simple fact that one of the two parents is homosexual doesn’t justify – and does not permit any justification- to decide for exclusive custody in favour of the heterosexual parent in case of separation and divorce.
- ‘Tribunal of Naples’, 28 June 2006 -> homosexuality of a parent is not an obstacle to award child custody in case of separation and divorce and is the outcome of stereotypes that have no place in a legal reasoning. This decision was confirmed by the ‘Court of Appeal’ on 11 April 2007.

Besides, Italian judges have been trying to assess children’s best interests founding that the homophobic behavior of a parent can interfere with the sharing of parental authority.

For example:
- ‘Juvenile Court of Milano’, 25 March 2011 -> the judge ordered the departure from the familial home of the homophobic father.

who was found guilty of using a denigratory language against his homosexual son and of preventing him from living his life freely in a safe and peaceful domestic environment.
- ‘Juvenile Court of Catanzaro’, 27 May 2008
  -> the participation in parental authority was denied to the homophobic father.

When it comes to social parenthood, the situation is slightly different. Single individuals (heterosexuals or homosexuals) and same-sex couples cannot adopt (see after, art. 27) while, with regard to transsexual parents it may seem that, for those who have already obtained the sex and name change in the records of the Registrar’s office, the Italian legal system provides parity of treatment with people of the newly acquired sex89.

For example:
- ‘Juvenile Court of Perugia’, 22 July 1997
  -> a married transsexual can adopt a child, if the other requirements requested by law are satisfied90.

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89. European Union Agency for Fundamental Rights, supra note 12, p. 20.
27. Taking into account that the child’s best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.

The Ministry of Justice failed to provide an answer to the LGBTI Resource Centre information request.

i. What steps have been taken to ensure that decisions regarding adoption of a child by a single person (where such adoption is permitted by national legislation), are taken without discrimination based on (a) sexual orientation (b) gender identity?

Adoption of a child by a single person is not permitted in the Italian legal system. The adoption of minors is governed by Law no. 184 of 1983 which has been amended by several acts, the latest being Law no. 149 of 2001. Only couples who have been married for at least three years or have been a stable couple for at least three years taking into account the period of pre-matrimonial cohabitation may adopt. Generally, single persons may not adopt. There are exceptions in special cases: if, during the probationary period, one spouse dies and if the couple separated during the same period but only if it is found to be in the best interest of the child. Finally, it is regarded as “special adoption” the case of a person adopting the children of his or her spouse (Art. 44, d) of Law No. 184 of 1983).

Therefore, same-sex couples have no possibility to adopt since they may not marry under Italian law and neither may them adopt as a single person.

Case law:

‘Court of Cassation’, judgment no. 3572 of 14 February 2011 -> Italian first instance juvenile courts (which are competent on the matter) cannot recognize a foreign full adoption order in favour of a single parent, as no Italian law bestows to single parents the right to full adoption. This is a consequence of the fact that in this case, pursuant to Article 41, Para. 2, of the law No. 218/1995, special provisions of law No. 476/1998 should become relevant. The latter is the Italian statute of ratification of Hague 1993 Convention, (‘Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption’), according to which also Italian provisions of the law on adoption have been amended. So, according to Article 35 of Italian law of 1984 on adoption, as amended, following the ratification of the 1993 Hague convention, Italian court cannot recognize a foreign adoption order which is “contrary to fundamental principles regarding family and juvenile law.”

It has to be added that the same Supreme Court ruling stated that the first instance court could however recognize “minor” effects to that order, converting it into a special adoption, the already mentioned “adoption in special cases,” on adoption. This kind of adoption produces less relevant effects than the full adoption (e.g. all legal ties to the family of origin are not legally cut off, as it happens with the full adoption).

‘Tribunal of Naples’, judgment of 1 July 2011 -> the judge held that the transcription of the birth certificates in the records of the Italian ‘Registrar of Civil Status’ of two children born through surrogacy in the US is not against ‘public order’ as the Civil Status Office had argued, even if heterologous artificial procreation is not allowed in Italy.

ii. In practice, are such decisions taken on a non-discriminatory basis?

28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

The Ministry of Justice failed to provide an answer to the LGBTI Resource Centre information request.

i. What steps have been taken to ensure that access by single women to assisted reproductive treatment (where permitted by national legislation), is without discrimination based on sexual orientation?

Italian legislation does not permit assisted reproductive treatment for single women. Law no. 40 of 2004 explicitly ban sperm donation and, according to art. 5, only heterosexual couples—whether married or living together—in which both persons are aged ≥18 years and of potentially fertile age have access to assisted reproductive treatment93.

ii. In practice, is such access granted on a non-discriminatory basis?

Single women, both heterosexual and homosexual, have no access to medically assisted procreation.

V. Employment

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.

The Ministry of Labor, Social Policy and Equal Opportunities and the Ministry of Defense have provided an answer to the LGBTI Resource Centre request of information.

i. Does legislation exist which prohibits discrimination in employment in the public and private sector on grounds of (a) sexual orientation and (b) gender identity?

Directive 78/2000/EC establishing a general framework for equal treatment in employment and occupation has been implemented in Italy by Legislative Decree no. 216/2003: discrimination based on sexual orientation has been explicitly banned for the first time. Such legislative act, issued by the government acting upon delegation of the Parliament, aims to combat both direct discrimination (differential treatment based on a specific characteristic) and indirect discrimination (any provision, criterion or practice which is neutral on its face but is liable to adversely affect one or more specific individuals or incite discrimination). Harassment, which creates a hostile environment, is deemed to be discrimination too. It covers: conditions of access to employed or self-employed activities, including promotion; vocational training; employment and working conditions (including pay and dismissals); membership of and involvement in an organisation of employers or workers or any other organisation whose members carry on a particular profession and it applies as much to the public sector as to the private sector including public bodies as well as for paid and unpaid work.

More recently, Law no. 183 of 2010 known as the “Collegato Lavoro” affected several aspects of employment law: its art. 21 provides for measures aimed at guaranteeing equal opportunities, the wellbeing of workers and the lack of discrimination in public administration offices. It strengthens the fight against all discriminations and sexual orientation is mentioned as one of the grounds of discrimination. It also established a new Committee (‘Comitato Unico di Garanzia per le pari opportunità, la valorizzazione del benessere di chi lavora e contro le discriminazioni – Single Ward Committee for equal opportunities, for enhancing the worker’s wellbeing and against discriminations’) named CUG, which will substitute the CPO absorbing all its functions with the additional tasks of working against discrimination in all public workplaces. Besides, Art. 1468 of Legislative Decree no. 66 of 2010 containing the ‘Military Code’ prohibits all discrimination against LGBT military personnel in access, recruitment, duty assign-

94. Under the European Social Charter this legislation should cover both direct and indirect discrimination. It should also provide for the burden of proof in discrimination cases to rest with the employer. (See the Digest of Case Law of the European Committee of Social Rights -- Interpretation of the Different Provisions -- Article 1 -- right to work -- http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf). The EU Employment Directive provides the following definition of indirect discrimination: “where an apparently neutral provision, criterion or practice would put persons having a […] particular sexual orientation at a particular disadvantage compared with other persons […]”.

ments and transfers.
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. For example, rejection of discrimination on the ground of sexual orientation is affirmed by the Statutes of Tuscany, Umbria and Emilia-Romagna, while the Tuscany Regional Law no. 63 of 2004 provides for specific actions in favour of LGBT persons in relation to employment and many other issues. More recently, Liguria Region enacted Law no. 52 of 2009 containing norms against the discriminations due to sexual orientation and gender identity and Marche Region followed with Law no. 11 of 2010.

ii. Does it cover:
access to employment (including recruitment); -
- promotion,
- dismissals,
- pay,
- harassment and other forms of victimisation?

Yes.

iii. Have the authorities promoted other measures to combat discrimination, harassment and victimisation, in both the public and private sectors, for example:
- adoption of codes of conduct for both employers and employees;
- training and awareness raising programmes for both employers and employees;
- distribution to employees of materials explaining their rights, complaints mechanisms and remedies;
- recruitment efforts directed at LGBT persons;
- the adoption of non-discrimination policies explicitly referencing sexual orientation and gender identity;
- co-operation with and support for employee groupings of LGBT persons?

National anti-discrimination measures are developed by the ‘National Office Against Racial Discrimination’ (UNAR). UNAR was set up in accordance with Legislative Decree no. 215 of 2003 implementing Directive 43/2000/EC in order to work for the promotion of equal treatment and the fight against discrimination based on race or ethnic origin. Nonetheless, since 2010 UNAR acts also against discrimination based on religion, disabilities, age, sexual orientation and gender identity. According to the 2010 UNAR Annual report the enlargement of the scope is related to a Directive of the former Minister of Equal Opportunities – Mara Carfagna – of 21 July 2010 that entrusted UNAR with the implementation of the strategic objective «Countering of all forms of discrimination through the establishment of a national network to monitor the phenomenon and raise awareness in the younger generations»96. The current Minister – Elsa Fornero – has reaffirmed the extension of UNAR action scope in the Directive of 31 May 201297. This type directives determine the priorities of the Equal Opportunities Department and it is periodically issued by the Minister. In the actual context the enlargement of UNAR competences is not stated by law; this lack makes the UNAR role on combating discrimination against LGBT people impermanent and vulnerable to the political will.

Nevertheless, it is also relevant to add that the Prime Ministry Decree of 13 November 2011 regarding the scope of the action of the actual Minister of Labor and Social Policy on the field of equal opportunities includes the action against discrimination based on sexual orientation, while gender identity is not explicitly included.

Nevertheless, UNAR has been implementing several measures on the issue of discrimination, harassment and victimisation against LGBT persons in employment since 2010.

96. UNAR, supra note 35, p. 227
97. See the letter of 2 July 2012. However, according to the information available to the LGBTI Resource Centre the Directive is not available to the general public.
- Since 2010, the UNAR action to monitor and remove discrimination has been widened to the above mentioned grounds of discrimination including sexual orientation and gender identity. The UNAR service to collect discrimination reports has extended its scope of action and the analysis of discrimination cases is made in collaboration with the LGBT NGO Arcigay.

- The enlargement of UNAR competences has been extended to the regional and local anti-discrimination networks promoted by the National Office together with local administrations and NGOs working in the field of equality promotion.

In 2011 UNAR published a research report on discrimination based on sexual orientation and gender identity at work. The study analysed the phenomenon and collected best practices from local and regional institutions to act against discrimination. Following the results of the above mentioned report, UNAR established the 'Working group on equal treatment and non-discrimination of transsexual and transgender people'. Such consultative body is composed by representatives of the trans people NGOs; it is appointed to draft a report on the access to employment and working conditions of transgender persons in order to define a specific annual action plan.

In 2011 UNAR extended to trans persons the project "Diversity at Work" involving several important firms. The project aim at facilitating access to employment through specific initiatives. Looking at the gender identity, UNAR obtained the elimination of the request of gender details from the Curricula.

In 2012 UNAR has finally been engaged in a project aimed at implementing the Council of Europe Recommendation Rec(2010)5; several initiatives are going to be promoted also in the field of work.

At the local level several efforts have been done to combat discrimination based on sexual orientation and gender identity at work. A significant example is the service ISELT for social and working inclusion of trans persons; such service has been developed by the Turin municipality in order to support trans persons looking for employment. Recently the service has been closed and the Municipality personnel has been trained in order to accomplish to specific needs of trans persons. A similar experience has been done in Naples, where the Service LGT works to support LGT persons in case of discrimination and harassment in employment.

Nevertheless a recent study highlights the strong level of discrimination against LGBT persons in the work field. According to the study 13% of the sample have been denied access to work, 16,2% have been underpaid, 22,9% have been downgraded and 4,8% have been dismissed because of their sexual orientation or gender identity. Data regard as well the work environment: 54,1% of the sample declare to have heard degrading appellations towards LGBT persons in the workplace, 14% have directly been threaten because of their sexual orientation or gender identity. Cases also reveal lack of employers compe-
The Italian transposition of Directive 78/2000/EC created many significant exceptions to the principle of non-discrimination: with regard to sexual orientation, Legislative Decree no. 216/2003 originally stated in its art. 3 that it could not apply to the armed forces or the police, contrary to the EU directive. This controversial part has then been amended by Law no. 101/2008, art. 8 septies.

Regulations and practices still need to be reviewed as cases demonstrate that discrimination can still occur. A recent communication from the Department of Public Security regulating the geographical relocation of the police officers explicitly excluded the fact of being part of a same sex couple from the reasons admitted to ask the relocation. On the contrary, a similar condition was admitted for heterosexual couples even when not married. OSCAD changed the regulation removing the discriminatory provision after the NGO Associazione Radicale Certi Diritti reported the discrimination to both OSCAD and UNAR.111

Recent cases stress the persistence of an hostile environment for LGBT persons in the military. The vice-chief of the Arma dei Carabinieri Clemente Gasparri – a prominent officer of the armed forces – intervened during an on the job training course for armed forces officials declaring that homosexuals are psychologically unstable persons. The vice-chief also declared that publicly admitting of being homosexual is not appropriate for a member of the Arma dei Carabinieri (Case 19).

According to the information provided by the Ministry of Defense in the letter of 5 December 2012, sexual orientation does not represent a reason of exclusion from the military service – unless it is connected with psychiatric pathologies - nor a motive for investigation. On the contrary, as defined in Art. 16 of the Decree of the Ministry of Defense no. 5 of 5 December 2005, the so called ‘gender identity disorder’ is a reason for exclusion from the military force since it is considered a psychiatric disorder. However it seems important to stress that the Ministry of Defense considers this provision as non-discriminatory.

Issues related to LGBT persons within the armed forces fall within the overall measures against investigations, warnings, harassment, bullying, cruel initiation rites, humiliation and other forms of ill-treatment. The Ministry of Defense stressed that the military personnel is provided with specific trainings on the abovementioned issues that cover sexual orientation and gender identity. However, the specific contents of such trainings are unknown. The Ministry also mentioned the elaboration of a directive covering equal treatment and equal opportunities issues within the military personnel.

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110. ‘Circolare’ no. 557/RS/01/78/3981 of 14 May 2012.
111. The Associazione Radicale Certi Diritti has reported such a discrimination to UNAR and OSCAD in May 22nd. OSCAD has invited the NGO to a meeting in order to discuss the case; in September 20th, OSCAD communicated to the Associazione Radicale Certi Diritti that the discrimination reported was removed – fieldwork with NGOs, Associazione Radicale Certi Diritti.
Case law:

‘Regional Administrative Tribunal (TAR) of Liguria’, decision no. 1593 of November 23, 2011 the judge found that the dismissal of an of- ficer of the Italian Navy because of his sexual orientation was unlawful since it violated Legislative Decree no. 216/2003 and ordered the reintegration of the officer in his job. The Navy captain had been fired because it was found out that he had uploaded some personal pho- tos on a gay website and his conduct was deemed to be indecorous112.

vi. Do measures designed to combat discrimi- nation in employment fully and effectively cover transgender persons?

Although there are no national laws explic- itly forbidding discrimination based on gender identity or referred to trans people, discrimi- nation against such individuals are to be con- sidered legally forbidden because of the gen- eral prohibition of gender discrimination as the European Court of Justice ruled in the case ‘P. v. S. and Cornwall Council County’.

However, as the Ministry of Labor, Social Policy and Equal Opportunities answer to the questionnaire clearly stresses, lack of a specific law yield to a lower level of protec- tion of trans persons and may reinforce the condition of invisibility of their condition of discrimination.

Such condition is particularly serious ac- cording to recent study: 45% of trans persons have been denied access to a job position because of their gender identity113. Cases reveal situations of dismissal motivated by the gender identity of workers or even part- ners (Cases 58, 64).

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113. R. Lelleri, supra note 31.
30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

The Ministry of Labor, Social Policy and Equal Opportunities has provided an answer to the LGBTI Resource Centre request of information while Minister for Public Administration and Innovation.

i. Have measures been taken to avoid disclosure of transgender persons’ gender history or former name in the context of employment?

In 2011 UNAR extended to trans persons the project ‘Diversity at Work’ involving several important national and international firms and other private partners such as job agencies. The project aims at facilitating access to employment people with disabilities, immigrants and trans persons through facilitating the connections between employers and employee\(^{114}\). Looking at the gender identity, UNAR obtained the elimination of the request of gender details from the Curricula\(^{115}\).

\(^{114}\) For further information see www.diversitalavoro.it
\(^{115}\) Ibid.
VI. Education

31. Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

According to art. 33 of the Italian Constitution, the Republic shall lay down general rules for education and establish public schools of all kinds and grades. The law, in laying down the rights and obligations of private schools which apply for official recognition, must ensure for them full liberty and for their pupils conditions equivalent to those of the public schools. With regard to institutions of higher learning, universities and academies have the right to draft their own regulations within the limits laid down by State legislation. Art. 34 states that education is available to everyone and that elementary education, imparted for at least eight years, is compulsory and free.

In 2001 a significant reform of the part of the Constitution dealing with Regions and Local Authorities came into force. Amendments to art. 117 made State and Regions co-holders of the law-making power, «in compliance with the Constitution and the constraints deriving from European laws and international obligations». With regard to the field of education it must be stressed that State is responsible for setting the general principles for education and the minimum standards required that have to be ensured in order to grant the same level of education throughout the whole country (art. 117, 2nd al., letter m)\(^\text{116}\). Regions have concurrent legislative powers: that means that they are responsible for further specification and for putting in practice the principle set at central level, in respect of «the autonomy of educational institutions and with the exception of vocational education and training» (art. 117, 3rd al.)\(^\text{117}\).

The Ministry of Instruction, Universities and Research (MIUR) has answered the LGBTI Resource Centre information request.

i. Have
- equality and safety policies, codes of conduct and
- handbooks
for educational staff been introduced or updated to ensure that LGBT pupils and students receive their education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment?

The Ministry of Instruction, Universities and Research issued in its letter\(^\text{118}\) three decrees and regulations concerning the action against discrimination in all public elementary and secondary schools:

- ‘General guidelines and measures at the national level for the prevention and fight against bullying’ (prot. no. 16 of February 5, 2007)
- ‘Violence in School. Measures and procedural aspects’ (prot. no. 5393/A3 of March 22, 2007)
- ‘Regulation on the Status of Students of secondary schools’ (d.p.r. no. 249 of June 24, 1998)

\(^\text{116}\) C. Pinelli, ‘Sui livelli essenziali delle prestazioni concernenti i diritti civili e sociali (art. 117, c. 2, lett. m, Cost.)’ (2002) Diritto pubblico 881.
\(^\text{118}\) See the Letter of 28 June 2012.

However, it should be stressed that all these regulations refer to violence, bullying or discrimination without addressing explicitly homophobia or transphobia.

Further measures are:

On International Day Against Homophobia (May 17th, 2012) the Ministry sent an official communication (‘circolare’) to all public schools asking for support for the mounting of campaigns and events against all forms of discrimination. The communication addresses the need to act against homophobia and highlight some tools provided by the Ministry to this purpose. On the contrary, there are not specific indication on action needed and it results as a non-binding recommendation. Moreover, it is missing a similar institutional intervention against transphobia. Besides, the Ministry also highlights the cooperation with the ‘Agedo – Associazione genitori di omosessuali’ (Italian Homosexual People’s Parents Association) for the fight against homophobic bullying.

The Ministry of Labor, Social Policy and Equal Opportunities has highlighted the ‘A week against the violence’ initiative promoted together with the MIUR. The project finance NGOs educational activity in more than a hundreds of schools all over the country on the issue of violence and bullying and includes LGBT related issues.

**ii. Do initial and in-service training programmes for teachers and other educational staff address the need for them to**

- treat their LGBT pupils and students with respect
- be able to detect, analyse and effectively respond to and combat discrimination on these grounds in schools?

Data shows that in Italy 24% of LGB persons have been or are discriminated at school or university because of their sexual orientation. There are not equivalent data referring to experiences of trans persons in schools and universities. Several cases of homophobic bullying are still reported by students; teachers and scholastic managers are not always reacting promptly to combat such form of violence or discriminations (cases 70, 71, 72).

Although the National Working Group mentioned several actions of LGBT NGOs to train teachers on issues related to sexual orientation and gender identity, researches highlight lack of teachers adequate preparation on sexual orientation and gender identity issues and on how to prevent and react to homophobic and transphobic bullying. The university education first and the following e-learning system appointed for the new hired teachers does not include any information about issues related to sexual orientation and gender identity in schools. In-service trainings are not systematic and in many cases are organised thanks to the initiative of LGBT NGOs, sometimes in partnership with local and regional institutions.

Lack of competences on detect, analyse and effectively respond and combat sexual orientation and gender identity motivated discrimination and bullying clearly emerged by the results of a research conducted within students and teachers on these issues. Teachers mostly do not intervene in cases of homophobic bullying; when an intervention occurs it is not always effective to reduce episodes of bullying. Even more serious are the cases of teachers intervention to support the bully and not the victim. When interviewed, teachers
themselves report the need for training on sexual orientation and gender identity related issues such as: concepts, related phenomenon and pedagogic tools to deal with students.\textsuperscript{125}

The Ministry of Instruction, University and Research answer to the LGBTI Resource Centre information requests provided information on a communication campaign and related training materials described in the following section (See 3\textsuperscript{iii}).

\textit{iii. Is there support for the mounting of school campaigns and cultural events against homophobia and transphobia, including the participation, where appropriate, of representatives of LGBT organisations?}

Some initiatives have been undertaken. As the Italian Ministry of Instruction, University and Research affirms\textsuperscript{126}, in 2007 the social communication campaign ‘Smonta il bullo’ (Take down the bully) has been launched and it is still on-going. Several communication materials have been produced together with a website of the campaign and information materials for students, parents and teachers. The communication campaign is part of the strategy that includes the establishment of regional observatories against bullying and a toll free number to support victims of bullying. The campaign website\textsuperscript{127} includes a section on homophobia and homophobic bullying. The campaign does not clearly address transphobia in school.

As mentioned above, the information provided by the Ministry covers also the occasion of the 2012 International Day Against Homophobia (IDAHO) in which the Ministry of Instruction, University and Research addressed a letter to Italian schools. In the letter the Ministry affirmed the fundamental role that schools have in supporting the education of child and youth and the relevance of the action against homophobia in schools. The letter also asked for collection of projects on the issue of homophobia and bullying implemented by schools. The LGBTI Resource Centre is not aware of the follow up of this initiative.

During the Conference sponsored by UNAR for Italy’s joining to the program of the Council of Europe ‘Contrasting the discrimination based on sexual orientation and gender identity’ (‘Contrasto della discriminazione basata sull’orientamento sessuale e sull’identità di genere’), held in Rome the 16th of February 2012, a staff member of the under-secretary technical office responsible for instruction policies has recognized the still limited numbers of campaigns and awareness raising activities in schools as well as the lack of a related strategy. To cover the gap she announced the creation of a round table with NGOs to discuss about needs and issues related with sexual orientation and gender identity in schools in order to develop actions.\textsuperscript{128} However, the LGBTI Resource Centre is not aware of such a round table being created and NGOs involved in this monitoring have not information about it as well.

\begin{itemize}
\item \textsuperscript{125} C. D’Ippoliti, A. Schuster, supra note 32.
\item \textsuperscript{126} See the Letter of 28 June 2012.
\item \textsuperscript{127} www.smontaibullo.it
\end{itemize}
32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

The Ministry of Instruction, Universities and Research (MIUR) has answered the LGBTI Resource Centre information request.

i. Is information on
- sexual orientation
- gender identity provided in school curricula and sex and health education classes?

According to information available to LGBTI Resource Centre school curricula do not include information on sexual orientation and gender identity. Sex and health education classes are not mandatory and single schools or even single classes or teachers can decide if to address such issues and the approach to adopt.

The Ministry of Instruction, Universities and Research (MIUR) has not provided information on this issue. Nevertheless, as stated by a staff member of the technical office responsible for instruction policies\(^{129}\), while information about sexuality is quite spread, specific training and competences are more rare.

There are cases where circulation of information about sexual orientation and gender identity is explicitly forbidden by school managers (cases 69).

\(i.\) Is it provided in a respectful and objective manner?

Lack of data and high level of fragmentation amongst schools and even classes approach to such topics make it difficult to evaluate the objectiveness of the information given about sexual orientation and gender identity. However, information on sexual orientation and gender identity might be highly influenced by religious, cultural, sometimes ethnic values so that it is not provided objectively\(^{130}\).

As National Working Group confirmed, LGBT NGOs are sometimes invited to give non-formal trainings on such topics in schools e.g. during students assemblies. However, in some cases school managers refuse to give their approval and NGOs cannot enter schools (cases 40, 41, 43); in other cases NGOs have been allowed to participate to students assemblies exclusively if ecclesiastics were invited (case 42).

\(ii.\) Are LGBT pupils and students provided with the necessary information, protection and support to be able to live in accordance with their sexual orientation and gender identity?

It is not possible to assess the degree of information and support given to students because of the lack of data. However, the exclusion of information on sexual orientation and gender identity in school curricula, the independency of schools and single

\(^{129}\) Ibid.
\(^{130}\) Ibid.
classes to choose if and how to address such topics and the lack of initial and in-service trainings for teachers indicate the absence of a comprehensive and clear strategy to address such issues into schools. The need to develop such a strategy has been expressed by the Ministry\textsuperscript{131}; however, the LGBTI Resource Centre has no information about when and how such strategy will be issued.

\textit{iv. Are measures taken to adequately meet the special needs of transgender students in their school life, for example with regard to change of name or gender in school documents?}

The LGBTI Resource Centre is not aware of any measure taken to adequately meet special needs of transgender students in their school life. Gender identity issues are not addressed by the tools adopted by the Ministry – such as the campaign ‘Smonta il bullo’\textsuperscript{132}. Moreover, information provided by the Ministry of Instruction, Universities and Research (MIUR) do not address gender identity.

\textsuperscript{131.} Ibid., see article 31 iii this report.
\textsuperscript{132.} For more information on the campaign see art. 31 iii this report.
VII. Health

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

According to art. 32 of the Italian Constitution, «(1)The republic protects individual health as a basic right and in the public interest; it provides free medical care to the poor. (2) Nobody may be forcefully submitted to medical treatment except as regulated by law. That law may in no case violate the limits imposed by the respect for the human being».

The health care area is one of those that both the State and the Regions have the power to regulate. It means that, after the constitutional reform of 2001 (see above, art. 31), the Regions are entitled to regulate the organizational structure of health care system but always complying with the State rules, containing the fundamental principles. Besides, the Constitutional Court held in 2002 (Decision 26 June 2002, no. 282) that there are no specific areas which belong to the exclusive competence of the State, but instead there is a general power of the State to legislate about all the areas, in order to guarantee the everybody’s right to get the health care, throughout the country, without the regional legislative power being able to narrow that right133.

The Ministry of Health has failed to answer to the LGBTI Resource Centre information request.

i. Do
- the design of national health plans,
- health surveys,
- suicide prevention programmes,
- medical training programmes,
- training courses and materials
- the monitoring and quality assessment of health-care services
take into account specific needs in relation to (a) sexual orientation and (b) gender identity?

The LGBTI Resource Centre is not aware of a systematic inclusion of specific needs in relation to sexual orientation and gender identity into any of the abovementioned policy areas and health measures at a national level. On the contrary, «many studies report the higher risk of poor health for LGBT persons than for their heterosexual peers»134.

Several studies analysing LGB persons health in Italy highlight the persistence of:

- Unequal treatment, harassment or abusive behaviors by health professionals and a scarce level of training of the health staff135. The Italian National Institute of Statistics has recently registered that the 10,2% of LGB people have been discriminated in accessing the health system by medical and non-medical staff136. A 2006 survey promoted by the LGB organization Arcigay – Italian Lesbian and Gay Association and

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134. Council of Europe Commissioner for Human Rights, supra note 60, p. 191.
135. C. D’Ippoliti and A. Schuster, supra note 32.
136. ISTAT, supra note 15.
supported by the 'Istituto Superiore di Sanità'\(^\text{137}\) pointed that 31.6% of gay or bisexual men and the 34.6% of lesbians or bisexuals women experience fear of discrimination in the health system\(^\text{138}\). The same study also revealed that the 12.1% of gay or bisexual men and the 10.8% of lesbians or bisexual women testify a negative reaction of their doctor when informed about the sexuality of the patient. A study carried out by Tuscany Region about attitudes of health professionals regarding sexual orientation and gender identity shows that the 21% of the sample declare of seeing health staff making joke of a persons’ sexual orientation into hospitals\(^\text{139}\). Recently a male victim of an homophobic hate crime, once admitted into the hospital, was offered to be cured of his homosexuality through a psychological therapy (case 73).

- Lack of recognition of special needs of LGB patients\(^\text{140}\). The guidelines for medical and non-medical staff dealing with sexual orientation affirm that «As a consequence of the social invisibility, the presence of homosexual and bisexual patients in medical studies is not planned»\(^\text{141}\). The 17.6% of gay and bisexual men and the 21% of lesbians and bisexual women having psychological therapy do not reveal their sexual orientation to their psychologist. This data greatly increase if related to the relation with doctors in general: the 78% of men and 86.8% of women included in the survey do not reveal their sexual orientation to their doctor. Lesbian and bisexual women that disclose their sexual orientation with their gynecologist is 29.7% of the overall sample\(^\text{142}\).

Lack of adequate training of the medical and non-medical staff, fear of discrimination, episodes of unequal treatment and abuse and fear of disclosure can lead to physical and psychological consequences of discrimination and exclusion of LGB persons from the health system\(^\text{143}\). The research and the guidelines for medical and non-medical staff addressing problems and correct behaviours in relation to sexual orientation, both promoted by Arcigay and supported by the Istituto Superiore della Sanità, are two attempts made to overcome the abovementioned limits. Nevertheless, the Centre is not aware of the follow-up of such initiatives: it is unknown the level of circulation of the reports within the health system, the organisation of training courses based on the results of such projects and so on.

Problems related to gender identity and health system are going to be specifically addressed later in this section. Nevertheless, studies and tools mentioned above and supported by public institutions do not address health condition of trans persons.

Looking at regional level it is worth to describe the case of Tuscany as an interesting example of inclusiveness of such issues into the health care system at a regional level. The Regional Law n. 63 of 15th of November 2004 is the first regional law addressing ‘Norms against sexual discrimination caused by sexual orientation and gender identity’ (‘Norme contro le discriminazioni determinate dall’orientamento sessuale o

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\(^\text{137}\) The Istituto Superiore di Sanità is the technical and scientific public body of the Italian National Health Service. It is entitled of research, control, training and consultation activities

\(^\text{138}\) R. Lelleri, supra note 13.

\(^\text{139}\) E. Piz, Atteggiamento del personale sanitario, verso la popolazione lesbica, gay, bisessuale e transessuale (LGBT) (Regione Toscana – Servizio Sanitario della Toscana, 2011). The survey is based on a sample of 1200 health professionals working in several hospitals in Tuscany.

\(^\text{140}\) European Union Fundamental Rights Agency, supra note 57.

\(^\text{141}\) Arcigay Nazionale, Pazienti Imprevisti – Pratica medica e orientamento sessuale (2008), p. 3.

\(^\text{142}\) R. Lelleri, supra note 13.

\(^\text{143}\) C. D’ippoliti and A, Schuster, supra note 32.
dall’identità di genere"). In accordance to this law and looking at the evidences emerged by the 2006 survey from Arcigay the Tuscany Regional Council approved the Regional Decree n. 258 of 10th of April 2006 giving to the regional general direction in charge of health policies the mandate to develop appropriate measures: a) to train health professionals in order to avoid any type of discrimination on the ground of sexual orientation and gender identity in the health sector and b) to give appropriate information and services in the area of sexual and reproductive health available to LGBT people and particularly to youth under-25 years old. Following the Decree prescription a study has been carried out to explore behaviours and attitudes of health staff regarding sexual orientation and gender identity.

ii. Do training programmes for health professionals enable them to deliver the highest attainable standard of health-care to all persons, with full respect for (a) sexual orientation and (b) gender identity?

The LGBT Resource Centre is not aware of systematic inclusion of such a perspective within training programmes delivered to health professionals. Within universities the possibility to address needs and specificities related to sexual orientation and gender identity is left to the autonomy, and consequently to the will, of professors. LGBT organisations report cases of university classes including information about sexual orientation and gender identity within medical and psychology schools in Rome, Turin, Naples and Bologna. The fundamental role of such type of training in preventing exclusion and marginalization of LGBT persons within the health system has been stressed in several studies conducted in Italy. Data on the invisibility of LGBT persons highlight their difficulties to relate with the health system.

A positive example is the Tuscany Regional health programme. Following the Regional Decree n. 258 of 10th of April 2006, 1500 health professionals have been trained in over 30 training courses held all over the Region. Discrimination against LGBT persons and specific needs connected with their reproductive and sexual health as well as issues related to HIV/AIDS have been addressed during the courses.

Another example concerning gender identity trainings is reported by trans organization MIT – Movimento Identità Transessuale. It is involved on a yearly basis on a training course organized for the local health districts of Reggio Emilia. It is likely that similar experiences have been done elsewhere in Italy at a local level; however, LGBTI Resource Centre has not been provided with further information.

iii. Are education, prevention, care and treatment programmes and services in the area of sexual and reproductive health available to LGBT people, and do they respect their needs?

The LGBT Resource Centre is not aware enough of the context to fully assess such availability; however, according to National Working Group, services, care and treatment programmes are available as much as for the heterosexual peers. On the other hand, lack of training of health personnel and fear of discrimination may reduce the access to such services and programmes.
The survey conducted by Arcigay in 2006\textsuperscript{149} also focused on the availability of information on sexual and reproductive health of LGB people related to their needs. One out of three men included in the sample reports the difficulty to achieve clear information on sexual health, while this difficulty is perceived by the 77.6% of women.

Gender differences on this issue are clearly relevant. It is missing an overview on specific health needs and problems of lesbians and bisexual women; the lack of visibility of this target within the health system lead to an overall undervaluation of these needs and problems which are constantly underestimated and hidden\textsuperscript{150}. Looking at reproductive and sexual health this invisibility brings on one side to a «lack of specific knowledge on the part of health care personnel on the specific risks lesbian and bisexual women face», on the other side to the perception that «same sex activity between women does not entail significant risks of contracting sexually transmitted infections»\textsuperscript{151}.

At the same time, LGBT organizations report a higher interest of institutions on sexual health of gay and bisexual men particularly when connected to HIV/AIDS transmission. The lesbian and gay association Arcigay is member of the ‘National Commission to Fight Against AIDS’ (‘Commissione nazionale per la lotta contro l’AIDS’) within the Health Ministry. The Commission is in charge of addressing core messages of prevention social communication campaign, identifying research priorities, monitoring quality of the assistance provided to HIV positive persons.

\textit{iv. Are health professionals and social workers encouraged to create an environment that is reassuring and open to young LGBT persons, for example through information campaigns?}

The LGBTI Resource Centre is not aware of tools and measures to encourage health professionals and social workers to create a reassuring and open environment particularly to young LGBT persons at a national level. Cases of trainings on these issues are described above, particularly in the case of Tuscany where a specific focus on young LGBT has been stressed in the health sector. At a local level examples of training courses for social workers are available. The Turin City Council LGBT Office has promoted several training courses dedicated to social workers of the municipality.

\textit{v. Are patients in hospital or otherwise the subject of medical emergencies, free to identify their “next of kin”, and are rules on issues regarding “next of kin” applied without discrimination on grounds of (a) sexual orientation and (b) gender identity?}

All hospitals and medical centers allow patients to say who has visitation rights and who can help make medical decisions, including gay and lesbian partners. However, problems may rise when the patient is not conscious. As seen before, 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 often results in discrimination in the context of health care since 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 and are not empowered to make medical decision if the patient is incapacitated.

It has to be noticed that Law no. 91 of 1999 on donation, retrieval and transplantation

\begin{itemize}
\item \textsuperscript{149} R. Lelleri, supra note 13.
\item \textsuperscript{150} Ibid.
\item \textsuperscript{151} Council of Europe Commissioner for Human Rights, supra note 60, p. 193.
\end{itemize}

of organs and tissues entitles cohabiting partners to be informed about the nature and modalities of organ retrieval and to make opposition (art. 3). Even if such provision does not explicitly refer to same-sex couples it seems that it should be applied to both opposite and same-sex de facto couples152.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

The Ministry of Health has failed to answer to the LGBTI Resource Centre information request.

i. Has homosexuality been removed from the national classification of diseases?

Yes. Italian classification of diseases follow the international ones, therefore homosexuality is not anymore considered a disease. The research on attitudes of health professionals of Tuscany Region towards LGBT persons included questions about knowledge of correct definition of homosexual and transsexual. Regarding homosexuality the 20% answered it is matter of personal choices, the 13,0% define it as a pathologic condition, the 4,4% consider homosexuality as a genetic anomaly, while the 0,8% addresses it as a neurotic.

These data clearly highlight the scarce knowledge of health professionals about homosexuality and also the persistence of misbelieve of homosexuality as a disease.

ii. Have all policy documents, medical textbooks and training materials which may previously have treated homosexuality as a disease been corrected or withdrawn?

The LGBTI Resource Centre is not aware of the correction of policy documents, medical training materials and text books that have treated homosexuality as a disease.

iii. Are measures in place to ensure that no one is forced to undergo any form of treatment, protocol or medical or psychological test or confined in a medical institution because of their sexual orientation or gender identity?

According to art. 32 of the Italian Constitution, nobody may be forcefully submitted to medical treatment except as regulated by law. The ‘General Health Law’, no. 833 of 1978 regulates involuntary health treatments in cases of mental illness and other legislative provisions make vaccinations mandatory for some infectious diseases.

None of these norms admit any form of forced treatment for reasons of sexual orientation or gender identity. Besides, art. 3 of the EU Charter of Fundamental Rights states that in the fields of medicine and biology, the free and informed consent of the person concerned, according to the procedures laid down by law.

Therefore the LGBTI Resource Centre is not aware of the existence of forced treatment, protocol or medical or psychological test, nor about the institutionalisation of persons because of their sexual orientation. With regard to medical treatments for transgender people see art. 35.

153. E. Piz, supra note 139, p. 21.
35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

The Ministry of Health has failed to answer to the LGBTI Resource Centre information request.

i. Do transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise?

Legal sex change is granted by Law no. 164 of 1982 ‘Rules concerning rectification of sexual attribution’ (as amended by Legislative Decree no. 150 of 2011).

According to Law no. 164 of 1982 transgender persons can ask for a judicial order which gives consent to change the details of their sex and name in the records of the ‘Registrar of Civil Status’. The law provides that in such proceedings the judge «may ask for a medical opinion regarding the psycho-physical condition of the person» (art. 2). Art. 3 of the Law states that «when a medical – surgical treatment in order to adapt the sexual characteristics is necessary, the court authorises it with a decision. In such case, the court having checked that the authorised treatment has been done, orders the correction of the person’s sex in the records of Registrar’s office». This provision has been often applied as requiring transgender people a medical – surgical treatment in order to obtain a rectification of sexual attribution. Italian judges have been interpreting art. 3 for decades trying to understand if sex reassignment surgery is necessarily a prerequisite for changing one's first name: deciding in which cases the authorization should be denied; evaluating the consequence of the lack of a judge’s prior authorisation for surgery. In this latest case it has been held that it cannot preclude a subsequent gender reassignment, if authorisation could have been given in such a case ('Tribunal of Milan', judgment of 5 October 2000). Some courts have also been arguing that genital surgery is not essential. On 11 March 2011, the 'Tribunal of Rome' decided to grant gender reassignment in a case where the applicant eventually decided not to undergo gender reassignment surgery, referring to a previous decision of 18 October 1997 by the same court. As far as good practices are concerned, the 'Constitutional Court' with its decision no. 253 of 21 June 2006 stated that good practices aimed at promoting better conditions for LGBT people and engaged in at a regional level are legitimate as long as regional law respects the allocation of functions between State law and regional law provided for by the Constitution. On the other hand, only State law, and not regional law, can regulate proceedings to give consent to the change of the sexual characteristics and provide rules governing non-discrimination on the grounds of sexual orientation and gender identity in the area of sale and provision of goods and services.

An important role in this field is played by a national association, the 'National Observatory of Gender Identity' (ONIG) who has been defining standards of care about any

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155. P. Stanzione, supra note 65.
According to the National Working Group, transgender persons have access to gender reassignment services; however, these are not equally distributed throughout Italy. Moreover, quality of services, procedures and expertise are not uniform amongst the gender reassignment services (see art. 36).

ii. If it was the practice to make transgender persons undergo therapy to accept their birth gender, has this practice now been abandoned?

The LGBTI Resource Centre is unaware of such practices being adopted nowadays in Italy.

iii. Have measures been adopted to ensure that no child has their body irreversibly changed by medical practices designed to impose a gender identity without his or her full, free and informed consent, in accordance with his or her age and maturity?

There aren’t any legal provisions explicitly addressing this issue of intersexuality. However, the ‘National Bioethics Committee’ (NBC) has released an official opinion on bioethics aspects of minor’s sexual differentiation disorders. The Committee acknowledges the need to consider both biological and psychological aspects in recognising sexual identity, as well as the importance to provide an accurate and early medical diagnosis in order to chose the best option for the child harmonization of the elements of disharmony.

In cases of early postnatal diagnosis medical-surgical intervention ‘are not only licit, but also a duty if they represent the only reasonable and possible path in order to ensure - as far as possible – that the person has the future conditions to reach harmonic identification, inclusive of future sexual activity’.

Such a choice must be shared amongst medical staff and child’s parent and, if possible, the child. Looking at the role of the child consensus, the Committee refers to Convention on Human Rights and Biomedicine request to take into account the minor’s will. According to that provision, the Committee recommends that the ‘substantial consent of the minor – who is the central subject of therapeutic relationship – is to be sought and supported in the context of the complex relational dynamics, involving not only the parents but also the physician’.

In exceptionally difficult cases, when it is not possible to determine the assignment of sex, the NBC believes that «it may not
be appropriate to proceed immediately to demolition and/or reconstructive surgery because this may not be compatible with the actual evolution of sexual identity. [...] In cases of postponed intervention, the minor should also be gradually involved in the decision – according to the gaining of sufficient awareness – because, especially in the most difficult cases, the choice of the physician and parents may conflict with the sexual identity that is structuring."\(^{166}\)

Lastly, the NBC focuses on legal aspects in cases where «objective data are not sufficient to attribute sex and on consequent legal formalization [...] of the declaration of birth”. As the legal formalization needs to be done within the 10th day from birth\(^{167}\) and it requires sex identification a solution is needed. Even if the declared sex won’t be the future sex of the child, the NBC consider appropriate to legally define it. However, the Committee demands legislature to provide the possibility that the registrar records ‘an annotation’ [...] of the pathology itself. Such an annotation, confidential and strictly respectful of the privacy of the minor, could enable the competent magistrate, should a better and different clinical evaluation of the case be reached, to authorise upon request by the person concerned, a correction of the registry indication (due to incorrect attribution at birth), following more simplified procedures compared to those required by the law now in force\(^{168}\).

The LGBTI Resource Centre is not aware of real practices adopted in these cases.

\(^{166}\) Ibid. p. 18
\(^{167}\) D.P.R. 3rd November 2000 number 396 (art. 30)
\(^{168}\) Italian National Bioethics Committee, supra note 163, p. 19
36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

i. Where legislation provides for the coverage of necessary health-care costs by public or private social insurance systems, is such coverage for gender reassignment treatment ensured?

Gender reassignment surgery is available in public hospitals free of charge. But the health system is mainly a regional responsibility (see above, art. 33) 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 hormone therapy together with surgical procedures. For instance, a male to female transgender person might need female sex hormones, but the technical file on the website of the Italian Pharmaceutical Agency establishes that this kind of medicine is indicated only for menopause: therefore only women in menopause, and not male to female transgender persons, can obtain them free of charge. The fact that most of the 20 Italian Regions do not provide free hormone treatment represent a significant obstacle for trans persons and an economic burden that drives towards marginality and social exclusion as well as serious health problems.

ii. If yes, is it ensured in a reasonable, non-arbitrary and non-discriminatory manner?

According to the information provided by the National Working Group and looking at differences amongst regional health care systems described above, the coverage is not uniform as geographical provenience is a reason of differentiated opportunities.

169. Fieldwork with National Working Group
VIII. Housing

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.

The Ministry of Labor, Social Policy and Equal Opportunities has provided an answer to the LGBTI Resource Centre request of information while the Ministry for Economic Development failed to provide any information.

i. Does legislation prohibit discrimination in such areas as:
- the sale or rent of housing;
- the provision of loans for purchase of housing;
- the recognition of the rights of a tenant’s partner;
- evictions on the grounds of (a) sexual orientation and (b) gender identity?

As seen above (art. 29), Directive 78/2000/EC establishing a general framework for equal treatment in employment and occupation has been implemented in Italy by Legislative Decree no. 216/2003: discrimination based on sexual orientation has been explicitly banned for the first time. However, this legislation does not extend beyond the scope of the said Directive and therefore does not explicitly ban discriminatory treatments in all areas: the prohibition of discrimination on grounds of sexual orientation and gender identity in the access to goods and service (including housing) is not mentioned.

However, it must be recalled that the right to housing is acknowledged in the legislation of many Italian Regions and it is considered to have a constitutional role: besides, the ‘Constitutional Court’ held that housing is a fundamental social right even if the Constitution does not explicitly declare it. Housing policies are mostly determined by regional legislators since, as seen above (art. 31) in 2001 a significant reform of the part of the Constitution dealing with Regions and Local Authorities came into force. Amendments to art. 117 made State and Regions co-holders of the law-making power, «in compliance with the Constitution and the constraints deriving from European laws and international obligations». With regard to the field of the social right of housing, therefore, State is responsible for setting the general principles and the minimum standards required that have to be ensured in order to grant the same level of protection throughout the whole country (art. 117, 2nd al., letter m))

174. See the letter of 2 July 2012.

The LGBTI Resource Centre is unaware of any measures by the Italian authorities to meet this requirement. The ‘National Office Against Racial Discrimination’ is actually considering the problems related to family refusal of LGBT youths and consequent issues such as homelessness in order to support pilot projects about emergency accommodation.
iii. Is information available to landlords and tenants aimed at preventing such discrimination?

The LGBTI Resource Centre is unaware of any measures by the Italian authorities to meet this requirement. The study of attitudes toward LGBT persons held by the National Institute of Statistics\textsuperscript{175} shows that 8% of respondents justify landlord refusal to rent to LGB persons; the average is 24.8% when it comes to rent to a transgender person. 14.3% of LGBT persons have been discriminated while searching an house to rent or to buy. Situation of transgender persons is particularly severe. Due to the prejudice that link trans persons to prostitution, on one side landlord are reluctant to rent, on the other side the fees request are usually prohibitively high\textsuperscript{176}.

iv. Are adequate and effective legal or other remedies available to victims of such discrimination?

See above.

v. Are any awareness raising campaigns conducted among housing agencies in order to level-up their knowledge on anti-discrimination provisions?

The LGBTI resource Centre is unaware of campaigns adopted by Italian institutions among housing agencies.

\textsuperscript{175} ISTAT, supra note 15.
\textsuperscript{176} C. D’Ippoliti, A. Shuster, supra note 32.

38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

The Ministry of Labor, Social Policy and Equal Opportunities has provided an answer to the LGBTI Resource Centre request of information

i. Have social programmes, including support programmes, been established to address factors which increase the vulnerability to homelessness of LGBT people, especially children and young people, including schemes of neighbourhood support and security?

The Italian social assistance policy underwent significant changes since the passing of Law no. 328 of 2000 ‘on the Establishment of an Integrated System of Social Services and Interventions’ devolving power to the Regions in order to create regional social-health services systems to take care of the citizens and to prevent social problems, with the main goal is to assure the citizens the right of taking part in the creation of social policies. Soon after, the 2001 constitutional reform (see above, art. 31) significantly increased the regional and local responsibility for the implementation of social programmes.

The NGO Agedo is active since 1992 in furnishing support and counseling services to LGBT youths and their families. According to their extensive experience in dealing with LGBT youths’ exclusion and marginalization there is not adequate attention on these issues within social programmes. Local administration that have activated anti-discrimination services – such as in Emilia Romagna and Toscana – may support Agedo action but it seems to depend on the sensitiveness of single policy makers or practitioners.

As stated before, the ‘National Office Against Racial Discrimination’ is actually considering the problems related to family refusal of LGBT youth and consequent issues such as homelessness.

ii. Have the relevant agencies been provided with training and awareness-raising programmes to ensure that they are aware of and sensitive to the needs of LGBT people facing homelessness, particularly young persons?

The LGBT Resource Centre is unaware of systematic trainings and awareness-raising programmes to relevant agencies. It is not possible to assess the action of local and regional administration on this issue. However, the NGO Agedo notice the lack of awareness and specific competence of social workers on specific needs of LGBT youths.

178. See the letter of the 2 July 2012.
179. Field work with National Working Group.
180. See the letter of the 2 July 2012.
IX. Sports

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.

40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.

The Ministry of Sports has failed to provide an answer to LGBTI Resource Centre information request.

i. What measures have been taken to prevent the risk of exclusion from participation in sports on grounds of (a) sexual orientation and (b) gender identity?

The LGBTI Resource Centre is unaware of any measures by the Italian authorities to meet this requirement.

ii. By encouraging, for example:
- the drawing up and dissemination of codes of conduct on questions relating to sport and sexual orientation or gender identity for sports organisations and clubs,
- partnerships between associations representing lesbian, gay, bisexual and transgender persons and sports clubs,
- anti-discrimination campaigns in the sports world,
- support for sports clubs set up by lesbian, gay, bisexual and transgender persons themselves.

CONI - the ‘Italian National Olympic Committee’ (‘Comitato Olimpico Nazionale Italiano’), that has a legal status in public law, is the Confederation of National Sports Federations and Associated Disciplines Sports. Besides managing the organization and strengthening the national sport, it promotes the widest spread of the sport practice. Among its tasks there is the promotion of initiatives to combat all forms of discrimination and violence in sport. Ac-
According to its duties, CONI approved in February 2012 the ‘Sports Code of Conduct’ (‘Codice di Comportamento Sportivo’). It specifies the mandatory and binding fundamental duties, which people, who are enrolled to national sports federations, to the associated sport disciplines, to the sports promotion bodies, to the associations praiseworthy, as athletes, coaches, managers, judges, and other subjects of sport, must observe.

The art 5 of the Code establishes the principle of nonviolence disturbing the subjects mentioned above by «any conduct or statements which in any way determine or constitute violence.» The code also includes the principle of non-discrimination according to which «The members, affiliates and other subjects involved in sport should refrain from any discriminatory conduct in relation to race, ethnic or territorial, sex, age, religion, political opinions or philosophical». (Art. 6) It is clear the lack of sexual orientation and gender identity among the prohibited grounds of discrimination.

This exclusion is particularly serious given the cases of homophobic statements that occur in sport and in particular in the men’s game. In 2009, some presidents of amateur football teams in the Veneto and Friuli Venezia Giulia expressed their perplexities to the idea of a presence of gay players in their teams (Case 29). In 2008 the women’s soccer coach was fired and expelled from the football club Lendinara after having came out as lesbian. The dismissal was communicated through a text message in which the leadership team motivated their choice by saying that by doing this they ensured the parents of the players that the team was clean and honest and that within it there were no drug addicts or homosexuals (Case 67).

iii. Have effective measures been taken to prevent, counteract and punish the use of discriminatory insults during and in connection with sports events?

The LGBTI Resource Centre is unaware of any measures by the Italian authorities to meet this requirement.

Anti-gay language is still an issue in Italy also from sportspersons. During the 2012 European Football Cup the footballer Antonio Cassano from the Italian national football team declared that «if there are fags in the national football team? It is their own business. I hope there are not». The footballer then apologises for its words and sustained that he didn’t want to offend anybody and that he is not homophobic at all. Because of the discriminatory press statement the European UEFA Control and Disciplinary Body has fined Italian’s Antonio Cassano €15,000 (Case 76). The LGBTI Resource Centre is unaware of equivalent sanctions coming from Italian authorities.

iv. In particular:
- Has homophobic and transphobic chanting at or around sports events been made a criminal offence?
- Have the relevant provisions of the European Convention on Spectator Violence and Misbehaviour at Sports Events, the European Sports Charter and ECRI’s General Policy Recommendation No.12 been implemented in respect of (a) sexual orientation and (b) gender identity?

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182. https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(92)13&Sector=secCM&Language=lanEnglish&Ver=rev&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75; See particularly: Article 1.1 (to enable every individual to participate in sport, in a safe environment); Article 3 (close co-operation with the non-governmental sports organisations); Article 4.1 (non-discrimination); Article 4.2 & 4.4 (accessed by disadvantaged persons).
183. http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N12/e-RPG%202012%20-%20A4.pdf: Although this document relates specifically to racism and racial discrimination in the field of sport, the detailed measures set out in it are just as relevant to combating sexual orientation and gender identity discrimination in sport. Of the three documents listed above, this is the most useful in practical terms.
Homophobic and transphobic chanting around sport events are not criminal offences in the Italian legal system. The LGBTI Resource Centre is unaware of the existence of measures taken for the implementation of these conventions in respect of sexual orientation and gender identity.

v. Have specific appropriate measures been taken to:
- put an end to the exclusion of transgender persons from sports activity or competitions,
- remove the obstacles encountered by them in participating in sport (dressing room access),
- recognize their preferred gender?

The LGBTI Resource Centre is unaware of any measures by the Italian authorities to meet this requirement.
41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

The Ministry of Sports has failed to provide an answer to LGBTI Resource Centre information request.

i. Have steps been taken to encourage dialogue with, and support for sports associations and fan clubs in
- developing awareness-raising activities
- condemning homophobic and transphobic behaviour during and in connection with sports events?

Recently several LGBT sports groups have been established and in some occasion LGBT sports events have received public funding\textsuperscript{184}.

\textsuperscript{184} European Union Agency for Fundamental Rights, supra note 57.
X. Right to seek asylum

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

The Ministry of Home Affairs provided an answer to the LGBTI Resource Centre information request.

i. Is a well founded fear of persecution based on (a) sexual orientation and (b) gender identity recognized as a valid ground for the granting of refugee status and asylum?

Yes. Art. 10, para. 3, of the Italian Constitution states that «a foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law».

Up until now there does not yet exist in Italy a comprehensive national law concerning the right to asylum: there are many national legislative sources concerning the refugee status and the asylum right which have been adopted in ratification of international conventions such as the ‘Geneva Convention’ of July 28th 1951, relative to refugee status, modified by New York protocol of January 31st 1967 and around European directives on qualification and procedures for requests for protection.

As pointed out by the Ministry of Home Affairs, Italian law provides that persecution on the ground of sexual orientation is a ground for obtaining refugee status or humanitarian protection since the implementation of Directive 2004/83/EC ‘on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted’. Legislative Decree no. 251 of 2007 at art. 8 acknowledges that persecution for belonging to a particular social group characterised by the common feature of sexual orientation is to be considered as among the grounds for protection. The guidelines followed by ‘National Commission for Asylum Rights’ also contain the same reference. This ‘Commission’ has the power to revoke the previous admission of international protection status, according to the above mentioned Legislative decree no. 251 of 2007 and the power to supervise and coordinate local commissions (‘Commissioni territoriali per il riconoscimento della protezione internazionale’) which are the appropriate authority to examine the asylum request according to Legislative decree no. 25 of 2008. The Ministry for Home Affairs affirmed that these Commissions evaluate the asylum requests also taking into account the 2008 UNHCR guidelines concerning the issue.

With regard to non EU citizens, Legislative Decree no. 286 of 1998 and subsequent amendments (‘Immigration Code’) at art. 19, para. 1, prohibits a foreigner from being sent to a state in which he may be «persecuted for reasons of race, sex, language, citizenship, religion, political opinions, or personal or social conditions, or if he risks being sent to a state in which he will not be protected from prosecution»:

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185. See the Letter of 22 October 2012.
orientation and gender identity are not expressly mentioned but this legislation has been usually interpreted as covering these grounds of persecution. It is important to notice that all these legislative measures and judicial decisions only address the problem of sexual orientation: some claims concerning the risk of persecution on grounds of gender identity are however pending before the local commissions.

Case law:

- 'Court of Cassation', no. 11586 of 10 July 2012 -> homosexual non-EU foreign citizens cannot be expelled or reimpatriated if there is a risk of persecution on grounds of sexual orientation in their country of origin. Besides, they have to be granted a stay permit for humanitarian reasons according to art. 28, lett. d) of Regulation no. 394 of 1999 implementing Legislative decree no. 286 of 1998.

- 'Court of Cassation', decision no. 2907 of 18 January 2008 -> this decision arose in opposition to an expulsion order and it pointed out that the petitioner must prove that in the country of origin homosexuality is considered a criminal offence as private personal practice and not only as public manifestation of ‘sexual indecency’. For the same reasons, the same 'Court with decision', with decision no. 16417 of 25 July 2007 repealed the 2004 judgment of the 'Justice of the Peace of Turin' which overturned an expulsion order for a gay Senegalese citizen.

- 'Tribunal of Milan', 16 May 2012 -> the judge granted the refugee status to a citizen of Ghana because of his sexual orientation.

- 'Justice of the Peace of Padova', 2 August 2012 -> the judge overturned an expulsion order for a 26-year-old gay Nigerian who would be at risk of imprisonment if he returned to his country.

- 'Justice of the Peace of Turin', 26 February 2008 -> the judge rejected the opposition to the expulsion order for a Senegalese citizen following the above mentioned decision of the 'Court of Cassation' no. 16417 of 25 July 2007 repealing the previous 2004 decision.

- 'Tribunal of Rome', 18 November 2011 -> the judge overturned an expulsion order for an Egyptian transsexual citizen and granted him a stay permit for humanitarian reasons because of the risk of persecution in his country of origin.

It is important to notice that Italian legislation and most of judicial decisions only address the problem of sexual orientation: some claims concerning the risk of persecution on grounds of gender identity are however pending before the local commissions and the case of the expulsion of a transsexual foreigner has been recently decided:

- 'Tribunal of Milan', 16 May 2012 -> the judge granted the refugee status to a citizen of Ghana because of his sexual orientation.


ii. Are staff responsible for processing asylum requests provided with training in the specific problems encountered by LGBT refugees or asylum seekers?

The LGBTI Resource Centre is unaware of the existence of such training programmes.

iii. Are asylum requests turned down on the ground that the claimant can escape persecution in the country of origin by keeping his or her sexual orientation or gender identity secret?

No. The LGBTI Resource Centre is unaware of the existence of such cases.
43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

The Ministry of Home Affairs provided an answer to the LGBTI Resource Centre information request\textsuperscript{194}.

\textit{i. What procedures are in place to ensure compliance with this obligation?}

The Ministry of Home Affairs pointed out that art. 5, al. 6, of the above mentioned Legislative Decree no. 251 of 2007 states that when a request for asylum is refused, a residence permit for humanitarian reasons can be released if serious reasons of humanitarian nature occur.

\textit{ii. Are there documented cases where asylum seekers have been returned to such a country?}

No. But see above (art. 42) the mentioned case–law concerning the right of asylum.

\textsuperscript{194} See the Letter of 22 October 2012.
44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

The Ministry of Home Affairs answered to the checklist related to this article but the measures that are mentioned are not explicitly related to sexual orientation or gender identity issues.

i. What measures have been taken to comply with this requirement?

The LGBTI Resource Centre is not aware of the existence of such measures.

ii. In particular, have the staff of administrative detention centres, police and medical staff and voluntary organisations with access to such cases, received appropriate training and information on issues regarding (a) sexual orientation and (b) gender identity?

The Centro Risorse LGBTI is not aware of the existence of such training programmes.

195. See the Letter of 22 October 2012.
45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

The Ministry of Foreign Affairs, the Ministry for European Affairs and the Ministry of International Cooperation and Integration have failed to provide any information to the LGBTI Resource Centre.

i. Are national human rights structures clearly mandated to address discrimination on grounds of (a) sexual orientation or (b) gender identity?

No. The only national structure addressing discrimination is the already mentioned ‘National Office Against Racial Discrimination’ (UNAR) set up by Legislative Decree no. 216 of 2003 for the purpose of working for the promotion of equal treatment and the fight against discrimination based on race or ethnic origin only. Even if Italy still lacks an integrated equality body pursuing a multi ground equality agenda, it must be recalled that UNAR has been implementing several measures on the issue of discrimination, harassment and victimisation against LGBT persons in employment since 2010 (see above, art. 29).

ii. In practice do they
   - make recommendations on legislation and policies,
   - conduct awareness-raising among the general public
   - examine individual complaints
   - participate in court proceedings
   - speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed, in relation to (a) sexual orientation or (b) gender identity?
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Background

With the exception of rules deriving from EU directives or treaties of the European Union, there is no law guaranteeing full equality and/or protection of the dignity and rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in Italy. Moreover, recognition and promotion of the rights and welfare of LGBTI people is not a priority on the political and institutional agenda in Italy today. The reasons for this absence are related to political and cultural realities in Italy that remain hostile to claims made by the LGBTI community. The actors who contribute directly or indirectly to this exclusion are numerous and powerful. Activities that have led to successful claims on the part of LGBTI persons in other countries include: study of the strategic context; development of clearly defined objectives; creation of a coordinated strategy supported by documentation; good communication; and the diversification of financial resources. In the political reality of Italy today the strengthening of the capacity of the LGBTI movement and the various associations and groups that make up this movement will contribute to guarantee that LGBTI issues are not marginalized.

What is the LGBTI Resource Centre

The LGBTI Resource Centre is a non-profit organization whose mission is to contribute to the elimination of all forms of discrimination and human rights abuses against LGBTI persons, and to promote full equality for such persons in Italy. The Centre aims to achieve its mission through capacity-building activities for local and national LGBTI associations and organizations. In this context, capacity-building means any activity that will create, improve, and/or sustain the capabilities and competencies necessary for LGBTI individuals, associations, and organizations to efficiently solve problems and achieve their goals. One of the Centre’s main focus is the advocacy action aimed at changing public policies, laws, regulations, and/or organizational structures in order to bring them in line with human rights principles related to LGBTI people. This involve helping LGBTI organizations or associations to identify problems, analyzing problems in relation to existing human rights standards, and developing appropriate responses/actions. Based on the above, the main activities of the Centre will consist of research and training. In addition, the Centre will provide advisory services to LGBTI organizations and groups, who can then rely on the expertise and support available to them.
ABOUT THE LGBTI RESOURCE CENTRE

Who we are

The LGBTI Resource Centre consists of a group of activists already engaged in the promotion of human rights, equality, and equal opportunities in various contexts. We have extensive experience dealing with issues related to anti-discrimination and the promotion of equality within a myriad of organizations and public bodies, and have accumulated a wealth of knowledge about the political and institutional landscape of Italy and Europe. We have developed skills in research, training, planning, fundraising, use of participatory methodologies, management and resolution of conflicts, event organization, communication, and marketing. To these we intend to add more skills and promote a network of experts available, from time-to-time, to provide advice and assist with the projects and activities sponsored by the Centre and the LGBTI organizations with which it works.
ABOUT THE NATIONAL WORKING GROUP

ARCIGAY – Associazione Lesbica e Gay Italiana

Arcigay is a non-profit organization, founded in 1985, which operates all over the country through its local branches and affiliated clubs. Its aim is the equality between individuals regardless of their sexual orientation or gender identity. Arcigay is made of groups of volunteers, the local branches, composed by lesbian, gay, bisexual, transgender and also straight people. From its headquarters, it coordinates the national activities on information, prevention, and advocacy for the LGBT community. It works for the growth and expansion of its branches that are working at regional, provincial and local level. Arcigay cooperates with other Italian and European NGOs and with the major national and international private and public institutions.

www.arcigay.it

ARCILESBICA – Associazione Nazionale

ArciLesbica is an NGO active on the Italian public scene, both locally and nationally. It cooperates with institutions and other civil society’s organisation:
- developing local and national action plans involving people in the educational, health and social system and making them knowing the phenomenon of homophobia;
- planning initiatives aiming to overcome and fight discriminations, also under a legislative point of view;
- planning positive action proposals in the fields of employment, health and education for a full social inclusion of women. ArciLesbica has actively took part in drafting the Plan of National Action against discriminations and giving a specific contribution to the theme of sexual orientation that includes a gender outlook in order to focus the different sorts of discrimination that may interest lesbian women of different social contexts.

www.arcilesbica.it
ABOUT THE NATIONAL WORKING GROUP

A.GE.D.O. – Associazione Genitori di Omosessuali

AGEDO is an organization of parents, relatives and friends of LGBTI people engaged in affirming LGBTI civil rights. Our mission is to support parents of LGBTI persons that struggle to accept and understand their sons and daughters sexual orientation and gender identity. Thanks to our counseling work, we intend to contribute to overcome discriminations against LGBTI persons.

www.agedo.org

ASSOCIAZIONE RADICALE CERTI DIRITTI

The Associazione Radicale Certi Diritti was founded on the 1st of March 2008 in the office of the EU Parliament in Rome, as a center of nonviolent political and juridical initiative for the promotion and protection of civil rights and a free and responsible sexuality. All its activities are due exclusively to voluntary work and all its economic resources come only from subscriptions and contributions.

The organization is a constitutive subject of the Nonviolent Radical Party, Transnational and Transparty (PRNTT) of which shares the nonviolent method that characterized the history of its libertarian initiatives and social reforms such as divorce, abortion, sexual education, conscientious objection, family law and the rights of Trans people. The organization is inspired by the battles of the FUORI!, the first LGBTI Italian organization, federated to the Radical Party since the early Seventies. The organization imported in Italy the method of strategic litigation and has been running advocacy campaigns on marriage equality since 2008.

www.certidiritti.it
FAMIGLIE ARCOBALENO
Associazione Genitori Omosessuali

Famiglie Arcobaleno is an independent association that was born in 2005. It includes two kind of people: homosexual couples or singles who have decided to become parents; and women and men who have accepted their homosexuality after having become parents in a heterosexual relationship. The main goal of the association is the recognition (legal, social, etc.) of our families as another parenting reality that exists in a social context in constant transformation.

www.famigliearcobaleno.org

MIT – Movimento di Identità Transessuale
Coordinamento Trans Sylvia Rivera

MIT is an NGO founded in 1982 to support trans persons and to promote their full equality in Italy. As a consequence of an agreement between MIT and the Emilia Romagna Regional Health System, since 1994 MIT became also a centre providing health and social services to trans persons during the gender reassignment procedure. MIT works both at a national and European levels to promote actions against discrimination based on gender identity and to support trans persons victim of discrimination.

MIT is one of the funding members of the second level umbrella organisation ‘Coordinamento Trans Sylvia Rivera’. The Coordinamento involves numerous trans organizations active at a local level throughout Italy. The mission of the Coordinamento is to coordinate the action of trans NGOs in order to develop and implement common strategies and actions to promote full equality of trans persons.

www.mit-italia.it
coordinamentosylviarivera.blogspot.it

ABOUT THE NATIONAL WORKING GROUP