

# Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

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## Executive summary

### Implementation of Employment Directive 2000/78/EC

Employment Directive 2000/78/EC has been implemented in Italy by Decreto legislativo [Legislative Decree] n. 216 of 9.07.2003, issued by the Government acting upon delegation of the Parliament. There are no gaps in implementation of the Directive. However, according to the letter of 12.12.2006, infringement procedure 2006/2441, issued by the European Commission, some parts of the Directive have not been properly implemented. In 2008, in order to respond to those remarks Legislative Decree 216/2003 was amended by Decree Law n. 59/2008 (art. 8 septies), turned into Law n. 101/2008

As to judicial remedies and other instruments of protection against discrimination, Article 4 of the Decreto legislativo [Legislative Decree] n. 216 of 9.07.2003 provides that all agreements aimed at discriminating against workers 'on grounds of sexual orientation' are illegitimate. The Ufficio Nazionale Antidiscriminazioni Razziali (UNAR) – ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza e sull'origine etnica [Office against Racial Discrimination], which deals mainly with problems of racism and xenophobia, is expanding its files of competences to other kinds of discrimination, including discrimination based on sexual orientation, are envisaged. This body has advisory, monitoring and information provision roles. As to proceedings aimed at safeguarding victims of discrimination, Legislative Decree No 216/2003 provides a fast procedure. In accordance with Art. 4(3) of the Legislative Decree, the presumed victim of discrimination may invoke conciliatory procedure before turning to the judges.

The more important changes made by Decree Law n. 59/2008 to the articles of the Decree 216/2003 concern the understanding of victimisation (new art. 4 bis, see [12] below); the cases of justification of differences of treatment based on occupational requirements that had been limited and specified (art. 3 (3,4 bis, 4 ter), see [12] below; the burden of proof (art. 4 (4), see [17] below; the role of the associations in the fight against discrimination (art. 5, see [15] below).

### Freedom of movement

It is important to highlight two elements: firstly, the Italian measures for implementation of Directive 2004/38/EC reproduce Articles 2 and 3 of the Directive, without adding any further specification. Secondly, the Italian legal

system does not recognise same-sex marriage (Italy does not recognise any form of registered partnerships, either heterosexual or LGBT). Italian law does not consider same-sex marriage or registered partnership or durable relationship, duly attested, as autonomous entitlement to enjoy freedom of movement. Italian legal system provides entry and residence rights only for the spouse, and this excludes both same-sex spouses and same sex (registered and unregistered) partners.

## Asylum and subsidiary protection

Italian law provides that persecution on the grounds of sexual orientation is a ground for obtaining refugee status or humanitarian/subsidiary protection. Two recent Supreme Court decisions recognising refugee status affirm that the petitioner must prove that in the country of origin homosexuality, as a private, personal practice and not only as public manifestation of ‘sexual indecency’, is considered a criminal offence.

## Family reunification

The provisions of Directive 2003/86/EC with regard to family reunification have been implemented by legislative Decree 5/2007.<sup>1</sup> The notion of the family relevant to the purpose of reunification used by Decree 5/2007 is: (1) the spouse; (2) minor unmarried children of the spouse and of his/her spouse, or born out of wedding, provided that the other party sharing custody has given his or her agreement; (3) adult unmarried children, where they are objectively unable to provide for their own needs on account of their state of health; (4) first degree relatives in the direct ascending line, where they are dependent on them and do not enjoy proper family support in the country of origin. The delegated legislation does not recognise the right to family reunification to persons in same-sex marriages or registered unions (neither heterosexual, nor LGBT) or de facto unions.

## Freedom of assembly

In Italy neither gay pride parades nor homophobic demonstrations can be banned by the public authorities if they are peaceful and unarmed, and subject to those conditions, the right to hold both kinds of meetings is fully protected by the Constitution. There is no official data regarding how measures concerning the freedom of assembly in the context of homophobia and/or discrimination on the grounds of sexual orientation are implemented in the Italian legal system.

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<sup>1</sup> Italy/Decreto legislativo 5/2007 (08.01.2007).

## Hate speech and criminal law

Italian criminal legislation provides neither punishment against sexual orientation hate, the so-called “hate speech”, nor an aggravating circumstance for crimes committed on the grounds of sexual orientation motives, the so-called “hate crimes”. On the contrary, the Italian criminal legislation shows more consideration towards racial and ethnic discrimination, punishing both the act of disseminating ideas based on the idea of a racial superiority or on the racial or ethnic hate, and the commission of discrimination on the grounds of race, ethnicity, nation or religion, and the incitement to discrimination for the same reasons, and a more general aggravating circumstance (Italy/legge nr. 654/1975, Italy/legge nr. 205/1993). Moreover, the Italian legal system takes no account – either in its legislation or in its case law – of whether a common crime was committed with a homophobic motivation. There is no official data regarding the number of non-criminal court cases initiated in connection with homophobic statements.

At the very beginning of 2009 the Justice Commission of the Chamber of Deputies started examining a bill, made by two Parties of the Opposition (Partito Democratico and Italia dei valori), aiming at introducing into the penal code an aggravating circumstance for sexual orientation motives (AC 1658-1882 A). The bill was not turned into a law as the prejudicial question of unconstitutionality was approved.

## Transgender issues

Transgender people have been able to rely on very favourable treatment on the part of the Italian public health service since the 1980s, under the provisions of the law on Norme in materia di rettificazione di attribuzione di sesso [Rules concerning rectification of sexual attribution].<sup>2</sup> According to this law, a transsexual person must make two requests to the judge: first, he/she must be authorised to have the required surgery. This judicial authorisation allows the person to obtain this surgery in public hospitals totally free of charge. Secondly, he/she can ask for a judicial order which gives consent to change the details of their sex and name in the records of the Ufficio dello Stato civile [Registrar of Civil Status].

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<sup>2</sup> Italy/Legge 164/1982 (14.04.1982).

## Miscellaneous

In Italy, some positive actions for LGBT people are being pursued at both national and local level. Three legislative bills have been presented before Parliament.

Some town councils, though it is not possible to list exactly which councils, or how many, have created public registers of civil unions. However, the value of these registers is only symbolic, and the number of unions thus 'registered' is not significant.

Our research did not result on any findings regarding phallometry or phallogometric testing.

Our research did not result in any findings on legislation comparable to the Lithuanian legislation institutionalizing homophobia.

## Good practices

The most important initiatives concerning the fight against discrimination on the ground of sexual orientation have been pursued by the region of Tuscany. Rejection of discrimination on the ground of sexual orientation is affirmed by Article 4 of the Statuto della Regione Toscana [Statute of the Region of Tuscany].<sup>3</sup>

In 2009 also the region of Liguria passed a Law (Legge Regione Liguria, Regional law of Liguria) 52/2009<sup>4</sup> providing for specific actions in favour of LGBT persons in relation to various issues, such as employment, health and culture (see [74] below).

Tuscany and other regions have launched a national public administrations network with the aim of improving and promoting the civil rights of LGBT people.

As far as good practices in regard to transsexuals are concerned, sex-reassignment surgery is performed completely free of charge in public hospitals if authorised by the judicial authorities.

On 4th August 2008 the Minister of Equal Opportunities signed an agreement with ISTAT (The National Statistic Office) to carry out the first multipurpose survey regarding "Discrimination on the ground of sexual orientation, identity and ethnicity". The result of the survey will be published in the 2011.

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<sup>3</sup> Italy/Statuto della Regione Toscana (19.07.2004).

<sup>4</sup> <http://rl.regione.liguria.it/leggi/docs/20090052.htm>

In 2009 several judges<sup>5</sup> raised the question of the constitutionality of Codice civile dispositions, as interpreted by the majority of legal doctrines, for limiting marriage to opposite sex couples, due to a breach of article 2 of the Constitution, protecting inviolable human rights and social groups like family, art. 3, prohibiting discrimination on grounds of social conditions, art. 29, granting the recognition of marriage, as well as art. 117, Par. I, requiring the exercise of the legislative power of the state and the regions to comply with international law obligations.

With the decision n. 138/2010<sup>6</sup> Constitutional Court declared the question partly inadmissible and partly unfounded and stated that founding safeguards and recognising homosexual unions are both up to the Parliament in exercising its own discretionary power.

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<sup>5</sup> Italy/Tribunale di Venezia (03.04.2009); Italy/Corte di Appello di Trento (29.07.2009); Italy/Corte di Appello di Firenze (03.12.2009); Italy/Tribunale di Ferrara (03.12.2009);

<sup>6</sup> Italy/Corte costituzionale 138/2010 (14.04.2010)

## A. Implementation of Employment Directive 2000/78/EC

Employment Directive 2000/78/EC has been implemented in Italy by Decreto legislativo [Legislative Decree] n. 216 of 9.07.2003, issued by the Government acting upon delegation of the Parliament. This decree concerns discrimination based not only on sexual orientation but also on religion, personal beliefs, disability and age. As the decree refers to the same grounds as the Directive, there are no gaps in implementation of the Directive. The Directive 2000/78/EC has been implemented only regarding employment; the implementing measures do not cover other fields such as education, public services, etc. However, according to the letter of 12.12.2006, infringement procedure 2006/2441, issued by the European Commission, some parts of the Directive have not been properly implemented. In particular, as far as discrimination on the ground of sexual orientation is concerned, the Commission considers that the following articles of Directive 2000/78/EC have not been adequately implemented: Article 3 (4, para. 1), concerning cases where a differences of legal treatment cannot be qualified as discrimination because they are justified as genuine and determining occupational requirements – Italian law seems to adopt an excessively broad understanding of this exception to the principle of equal treatment; Article 9, para. 2 concerning the role of associations in engaging in judicial or administrative procedures against discrimination (see [30] below); Article 10, para. 1 on the burden of proof (see [28] below) and Article 11 on victimisation, because the Italian law seems to protect only the direct victim of the discrimination, without taking into account other persons, such as witnesses or other workers, who tried to protect the victim. In 2008, to respond to the remarks of the Commission, Art. 8 septies of Decree Law n. 59/2008 turned into Law n. 101/2008 introduced a series of changes to Legislative Decree 216/2003.

More specifically, with regard to the justification of differences of treatment based on occupational requirements, the actual Article 3 (4, para 1) contains a more detailed provision on the justification of differences in treatment.

The possibility to not consider discrimination the evaluation of such personal characteristics when they are relevant to establish whether a person is suitable to carry out the functions that armed forces, the police, prison and rescue services can be called on to carry out has been abolished.

With regard to the notion of victimisation, a new article (art. 4 bis) is introduced providing legal protection to protect not only the direct or indirect victim of the discrimination, but also any other person as a reaction to enforce compliance with the principle of equal treatment.



As to judicial remedies and other instruments of protection against discrimination, Article 4 of the Decreto legislativo [Legislative Decree] n. 216 of 9.07.2003 adds a sentence to Article 15 of Law No 300/1970,<sup>7</sup> the basic Italian law on the protection of workers, the so-called Statuto dei lavoratori [Workers' Statute], all agreements aimed at discriminating against workers 'on grounds of sexual orientation' are illegitimate.

In accordance with Article 7 of Legislative Decree No 215 of 09.07.2003,<sup>8</sup> implementing Directive 2000/43/EC, a Prime Minister's decree issued on 11.12.2003 set up the Ufficio Nazionale Antidiscriminazioni Razziali (UNAR) – ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza e sull'origine etnica [Office against Racial Discrimination] within the Dipartimento per i Diritti e le Pari Opportunità [Department for Rights and Equal Opportunities].<sup>9</sup> This Office deals mainly with problems of racism and xenophobia, but initiatives to expand its competences to other kinds of discrimination, including discrimination based on sexual orientation, are envisaged. The UNAR is about to develop its competences in the field of discrimination on the ground of sexual orientation. This Office consists of a pool of five judges and several lawyers. This body has advisory, monitoring and information provision roles. UNAR has two main departments: the Service for equal treatment and the Service for study, research and institutional relationships. The powers of the Office are the following:

- Legal assistance: the Office gives legal assistance for civil and administrative proceedings undertaken by victims of discrimination, through a specific Contact Center.
- Monitoring: the Office carries out enquiries to verify the existence of discriminations, in respect of judicial decisions. UNAR submits an annual report based on this research to Parliament and to the Prime Minister.
- Development: in cooperation with non-profit associations: the Office promotes positive action projects regarding discrimination.
- Information: the Office spreads knowledge by means of awareness actions and advertising campaigns
- Consulting: the Office gives advice and opinions relating to discrimination.
- Study and research: the Office promotes studies, research, and vocational education courses in cooperation with NGOs and associations, operating in the same field. This also includes the establishment of guidelines and codes of behaviour to be applied in the fight against discrimination.

As to proceedings aimed at safeguarding victims of discrimination, Legislative Decree No 216/2003<sup>10</sup> refers to Art. 44 of the Immigration Framework Act, Legislative Decree No 286/1998,<sup>11</sup> which provides a fast procedure. In

<sup>7</sup> Italy/Legge n. 300/1970 (20.05.1970).

<sup>8</sup> Italy/Decreto legislativo n. 215/2003 (09.07.2003).

<sup>9</sup> See <http://www.pariopportunita.gov.it/defaultdesktop.aspx?page=91>

<sup>10</sup> Italy/Decreto legislativo n. 216/2003 (09.07.2003).

<sup>11</sup> Decreto legislativo n. 286/1998 (25.07.1998).

particular, after a victim's petition has been filed without any formality at a tribunal, the judge can order the discriminatory behaviour by the respondent to cease, and may take any measures necessary for the removal of all consequences and effects of such behaviour. A special procedure for use in cases of urgency is established by Art. 44 (5): judicial remedies are immediately enforced by judicial decree and subsequently confirmed or modified during the first hearing of the formal process. In particular, the judge can also award compensation for non-pecuniary damages. Pursuant to Art. 388 of the Criminal Code, if the respondent does not respect the judge's decision, he can be sentenced to prison for up to three years and have to pay a fine. The final decision is to be published in national newspapers, with the expenses borne by the respondent. When taking into account all the relevant circumstances to declare on damages, the judge also takes into consideration whether the respondent's behaviour was in reprisal for a previous civil action against him.

In accordance with Art. 4(3) of the Legislative Decree, the presumed victim of discrimination may invoke conciliatory procedure before turning to the judges.

As to the burden of proof, the Commission was not satisfied with the Italian norms implementing Art. 10 of the Directive, because in the Commission's view it had been implemented in the narrowest sense<sup>12</sup>, providing that "in order to establish the existence of the discriminatory behaviour, the plaintiff may offer statistical evidence as well as serious, accurate and non contradictory factual evidence that the judge evaluates as *ex art. 2729, primo comma, c.c.* (simple presumption): the new article 4 (4) now provides that "if the plaintiff establishes specific facts which demonstrate the existence of discriminatory acts, agreements or behaviours, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment". The same change has been done in relation with Legislative Decree n. 215/2003, implementing Directive 2000/43/EC by Law Decree n. 59/2008 (art. 8-sexies) turned into law 101/2008, in order to respond to infringement procedure 2005/2358.<sup>13</sup>

No statistics concerning discrimination on the ground of sexual orientation are available until now but on 4th August 2008 the Minister of Equal Opportunities signed an agreement with ISTAT (The National Statistic Office) to carry out the first multipurpose survey regarding "Discrimination on the ground of sexual orientation, identity and ethnicity". The game plan is to interview 1500 fourteen-year-old people in 2009 and 10.000 people in 2010. The result of the survey will be published in the 2011.

Regarding the role of associations in the fight against discrimination on the ground of sexual orientation, the Commission was not satisfied with the Italian norms implementing Art. 9/2 of the Directive, because Art. 5 of Legislative Decree No 216/2003 provided that only "the local representatives of the most representational national organisations at national level may engage in the

<sup>12</sup> See the letter of the Commission of 12.12.2006, infringement procedure 2006/2441.

<sup>13</sup> Italy Decreto legislativo 215/2003, art. 4

procedure established by Art. 4 against the natural or legal person who is the author of the discriminatory act or behaviour, either in name or on behalf or in support of the victim of discrimination, with his or her delegation, released by public or private authentic deed on pain of nullity". The reference to 'the most representational national organisations at national level' is a typical definition used in Italian labour law, and refers to the three major trade unions in Italy, CGIL, CISL, and UIL. The provisions concerning the role of association in the field of discrimination on the ground of sexual orientation were narrow when compared to similar provisions regarding discrimination on the ground of race: in this latter case, Legislative Decree No 215/2003, implementing Directive 2000/43/EC, provides that all associations that fulfil certain requirements established by the law can be registered at the UNAR and be entitled to locus standi:<sup>14</sup> in order to eliminate the described discrepancies with Directive 2000/43/EC, Art. 5 of Decree 216/2003 was amended by Article 8 septies of Decree Law n. 59/2008 turned into Law n. 101/2008. The right to take part in litigation, previously limited by Decree n. 216/2003 only to local representatives of the most representational National organizations is now extended to any organization or association representing the rights affected. The previous reference to the "local representatives of the most representational National organizations" was abolished and art. 5 now provides that all organizations or associations representing the rights or interest affected can either issue a petition in name or on behalf or in support of the victim of discrimination, with his or her delegation, or may embark on judicial procedure if the victim of discrimination cannot be clearly identified

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<sup>14</sup> See the letter of the Commission of 12.12.2006, infringement procedure 2006/2441.

## B. Freedom of movement

It is important to highlight two elements: firstly, the Italian measures for implementation of Directive 2004/38/EC reproduce Articles 2 and 3 of the Directive, without adding any further specification. Secondly, the Italian legal system does not recognise same-sex marriage (Italy does not recognise any form of registered partnerships, either heterosexual or LGBT). Italian law does not consider same-sex marriage or registered partnership or durable relationship, duly attested, as autonomous entitlement to enjoy freedom of movement.

Directive 2004/38/EC has been implemented by Decreto legislativo [Legislative Decree] 30/2007.<sup>15</sup> Article 2 of the Decree 30/2007 reproduces art. 2 of the Directive and defines who must be considered as a ‘family member’: (1) the spouse; (2) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State; (3) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b); (4) the direct dependent relatives in the ascending line and those of the spouse or partner as defined in point (b). Article 3 of the Decree 30/2007 reproduces art. 3 of the Directive and provides that Italy shall, in accordance with its national legislation, facilitate entry and residence for the following persons: (a) any other family members, irrespective of their nationality, not falling under the definition of Article 2, who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen; (b) the partner with whom the Union citizen has a durable relationship, attested by the citizen's Member State.

LGBT partners who are not nationals of a Member State shall have the right of residence on Italian territory for a period of longer than three months if they apply for a Residence Card and if the Union citizen satisfies the Directive's conditions (he/she shall have the right to residency on the territory for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport). For the Residence Card to be issued, Italy requires presentation of the following documents: (a) a valid passport; (b) a document attesting to the existence of a family relationship; (c) the registration certificate of the Union citizen whom they are accompanying or joining. The Residence Card is valid for five years. They can also apply for a residence permit for ‘elective residence’, supplying proof of considerable personal economic resources to sustain himself/herself (Art. 11, Regolamento

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<sup>15</sup> Italy/Decreto legislativo 30/2007 (06.02.2007).

394/1999<sup>16</sup> and other modifications<sup>17</sup>). The Union citizen's death shall not entail loss of the right of residence of his/her family members who are not nationals of a Member State and who have been residing in Italy as family members for at least one year before the Union citizen's death. Before acquiring the right of permanent residence, the right of residence of the persons concerned shall remain subject to the requirement that they are able to show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social security system of the State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. 'The Union citizen's departure from the host Member State or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies. Family members who are not nationals of a Member State and have legally resided with the Union citizen in the State for a continuous period of five years have the right of permanent residence there.'

There are no available statistics to demonstrate the impact / social reality of relevant legislation for LGBT persons.

There is no relevant statistical information either on the number of LGBT partners of EU citizens residing in Italy, or on the number of LGBT partners who claimed their right to residence but were denied this right.

In recent years at least three homosexual couples have requested recognition of their relationship by the Italian authorities. A decision of the Tribunale di Latina [Latina Law Court]<sup>18</sup> affirmed that it is not possible in Italy to register a same-sex marriage of two Italian citizens that was registered in the Netherlands, since the two individuals were not of the opposite sex, an essential prerequisite for marriage in the Italian legal system. The decree of the Corte di Appello di Roma [Court of Appeal of Rome] of 13.07.2006 confirms the Tribunal decree. The Tribunale di Firenze [Tribunal of Florence] decree of 07.07.2005 recognises the right of a citizen of New Zealand to receive a visa/ residence permit on the basis of a de facto partnership, attested by the New Zealand authorities, between him and an Italian citizen. The reasoning is based on the Directive 2004/38/EC, at that time not yet implemented in Italy, and on the Italian system of international private law. That decree was appealed and rejected by the Corte d'appello di Firenze [Court of Appeal of Florence].<sup>19</sup> The Court affirmed that the Italian system recognises exclusively partnerships between a woman and a man. It would be against public order to recognise, on the basis of the legislation of a

<sup>16</sup> Italy/Decreto legislativo 394/1999 (31.08.1999).

<sup>17</sup> Italy/Ministerial memorandum (18.07.2007).

<sup>18</sup> Italy/Tribunale di Latina (10.06.2005).

<sup>19</sup> Italy/ Corte d'appello di Firenze (12.05.2006).

third country, same-sex partnerships and related rights. The applicants appealed to the Supreme Court that on the 17th of March 2009 with the decision nr. 6441, has decreed that a non-EU homosexual citizen who lives permanently with his Italian partner is not eligible for the residence permit on the ground of family reunification. The Supreme Court assessed that partners de facto cannot be considered as “relative” under Italy/Dlgs. 286/98 (25.07.1998). Nonetheless, this extensive interpretation is not imposed by any constitutional rule and it cannot derive from Art. n. 9 of the European Charter of Human Rights or from Art. 12 of European Convention of Human Rights. Furthermore, the European Directive 2003/86/EC (implemented by Italy/Dlgs. 5/2007, that concern only the reunification of third country national with their family members) and the European Directive 2004/38/EC (implemented by Italy/Dlgs. 30/2007 that concern the right of citizen of the Union and their family members to move and reside freely within an other Member State and not the right of family reunification to a citizen of a Member State regularly resident who lives in his country of origin are not applicable in the case<sup>20</sup>

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<sup>20</sup> Italy/Corte di Cassazione (19.03.2009).

## C. Asylum and subsidiary protection

Directive 2004/83/EC has been implemented by Legislative Decree 251/2007.<sup>21</sup> Article 8 acknowledges that persecution for belonging to a particular social group characterised by the common feature of sexual orientation is to be considered as among the grounds for protection. The guidelines followed by National Commission for Asylum Rights also contain the same reference.

Official data available, supplied by the Ministry for Internal Affairs the 4.02.2008, regards the period between 2005 (the first year of activity of the Commissioni territoriali di asilo [Territorial Commissions for Asylum Rights]) and the start of 2008. The Commissione nazionale di asilo [National Commission for Asylum Rights] affirms that it does not usually keep that kind of personal data for statistical use. The data provided demonstrates that at least 29 of the 54 requests filed have been accepted. In all of these 29 cases either refugee status or a different kind of humanitarian protection was granted. Official data provided by Ministry for Internal Affairs does not specify the reasons that justify acknowledgement of refugee status or the other kinds of humanitarian protection granted. (Indeed it is not possible to indicate whether the protection granted was that of refugee status or was another form of subsidiary protection, because Italy has only recently adopted Directive 2004/83/EC by means of Legislative Decree 251/2007 of 19.11.2007.)<sup>22</sup> Petitioners come mainly from central and south America (Colombia, Brazil, Cuba), but also from Albania, Iran, Kosovo, Bangladesh, Sri-Lanka, Ghana. The National Commission also underlines that before 2005 few cases of requests for asylum based on sexual orientation had been presented and these had almost always been granted.

On the other hand, data supplied by ACNUR/UNHCR Italy (see the website of the LGBT organisation EURIALO&NISO - Associazione GLBT Biella. "diritti e culture delle differenze")<sup>23</sup> affirm that 40 homosexuals obtained refugee status or humanitarian protection because of persecution on the basis of their sexual orientation. The data does not specify the reasons that justify acknowledgement of refugee status or the other kinds of humanitarian protection granted. (Indeed it is not possible to indicate whether the protection granted was that of refugee status or was another form of subsidiary protection, because Italy has only recently adopted Directive 2004/83/EC by means of Legislative Decree 251/2007 of 19.11.2007.)

Two recent Supreme Court of Cassation decisions<sup>24</sup> recognising refugee status affirm that the petitioner must prove that in the country of origin homosexuality, as a private personal practice and not only as a public manifestation of 'sexual

<sup>21</sup> Italy/Decreto legislativo 251/2007 (19.11.2007).

<sup>22</sup> Italy/Decreto legislativo 251/2007 (19.11.2007).

<sup>23</sup> <http://eurialoeniso.blogspot.com/2007/08/commisariato-onu-40-rifugiati.html>

<sup>24</sup> Italy/Corte di Cassazione (18.01.2008) and Corte di Cassazione (25.07.2007)

indecenty', is considered a criminal offence. It is important to underline that both cases arose in opposition to expulsion decrees (see Annex 1, Chapter C). It is important to state that these two recent decisions represent the only relevant case law.

Data about family reunification does not exist, since the Italian legal system provides family reunification only for the spouse of a heterosexual marriage (Art. 29 a, Legislative Decree 286/1998).<sup>25</sup>

There are no statistics available to demonstrate the impact / social reality of relevant legislation for LGBT people.

Data about denial of family reunification to LGBT partners is lacking, because no national record of reasons for denial exist.

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<sup>25</sup> Italy/Decreto legislativo 286/1998 (25.07.1998). (*Testo unico sull'immigrazione*)



## D. Family reunification

Directive 2003/86/EC was implemented by Legislative Decree 5/2007.<sup>26</sup> The notion of the family relevant to the purpose of reunification is: (1) the spouse; (2) minor unmarried children of the spouse and of his/her spouse, or born out of wedding, provided that the other party sharing custody has given his or her agreement; (3) adult unmarried children, where they are objectively unable to provide for their own needs on account of their state of health; (4) first degree relatives in the direct ascending line, where they are dependent on them and do not enjoy proper family support in the country of origin. The delegated legislation does not recognise the right of family reunification to persons in same-sex marriages or registered unions (neither heterosexual, nor LGBT) or de facto unions.

Data about family reunification of same-sex partners does not exist since the Italian legal system provides family reunification only for the spouse, not including same-sex marriage (Art. 2 e Legislative Decree 5/2007, Art. 29 a Legislative Decree 286/1998).<sup>27</sup> The Italian courts do not recognise a marriage concluded abroad between two persons of the same sex as giving rise to family reunification rights in Italy where one of the two spouses is granted the right to reside in Italy.

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<sup>26</sup> Italy/Decreto legislativo 5/2007 (08.01.2007).

<sup>27</sup> Italy/Decreto legislativo 5/2007, Decreto legislativo 286/1998 (25.07.1998). (*Testo unico sull'immigrazione*).

## E. Freedom of assembly

Article 17 of the Italian Constitution provides that: ‘Citizens have the right to assemble peacefully and unarmed. For meetings including those held in places to which the general public has access, no previous notice or authorisation is required. Previous notice is required to the authorities for meetings in public places. In such cases the authorities can prohibit such meetings only for proven reasons of security and public order’.

Accordingly, in Italy the right of assembly is never subject to authorisation on the part of the public authorities. Moreover, meetings – wherever they are held and whatever the aims of the people attending the meeting are – can be forbidden only for well-established reasons of security or public order.

For meetings held in public thoroughfares (streets, squares and so on) it is necessary that the promoters notify the questore [head of the police administration] of that place at least three days prior to the meeting, as provided by Article 18 of Regio Decreto [Royal Decree] 1931-773.<sup>29</sup> Prior notification allows the police to prevent those that may pose a risk to public security and safety, depending on the circumstances in which they are to be held, and also to set times and locations for such meetings; it also allows the police authorities to supervise meetings and to interrupt them where necessary, if they are not peaceful and unarmed. It is important to note that giving notice is compulsory for promoters of meetings, who can be fined in cases of non-compliance, but the individual right to assembly cannot be jeopardised by the promoters’ attitude, and meetings posing no real danger for public safety or security should not be forbidden simply on the basis of lack of notice to the authorities.

In brief: in Italy neither gay pride parades nor homophobic demonstrations can be banned by public authorities if they are peaceful and unarmed, and on those conditions, both kinds of meeting are fully protected by the Constitution.

There is no official data regarding how freedom of assembly in the context of homophobia and/or discrimination on the grounds of sexual orientation is implemented in the Italian legal system.

The Minister of Internal Affairs personally answered that the only available information is that 13 gay and lesbian parades were held in 13 different towns in Italy in 2007.

There is no relevant case law on this issue.

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<sup>29</sup> Italy/R.D. 1931-773 (18.06.1931).

## F. Hate speech and criminal law

There is currently no legal provision in Italy– either in criminal law or in civil law – on hate speech related to homophobia and/or discrimination on the ground of sexual orientation.

Criminal law only penalises: a) those who propagandise ideas founded on racial or ethnic superiority or hate, or solicit someone to commit, or those who 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 organisations, associations, movements or groups which aim to solicit discrimination or violence for reasons of race, ethnicity, nationality or religion (Article 3, Legge [Law] 654/1975),<sup>30</sup> which ratifies and implements the International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966, as amended by Decreto legge [Decree Law] 122/1993<sup>31</sup>).

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 were approved because of the Government crisis and the subsequent early dissolution of Parliament in February 2008. Initially, Parliament tried to put these new criminal provisions in an amendment to a decree on the exclusion of immigrants for reasons of public security.<sup>32</sup> But the Government decree could not be turned into law because of a mistake in the quotation of the Article of the European Treaty on the prohibition of discrimination (Article 1-bis, Senate of the Republic, Bill no. 1872 and Chamber of Deputies, Bill no. 3292, which refers to ‘Article 13, para. 1 of the Amsterdam Treaty’ instead of ‘Article 13 of the Treaty establishing the European Community’)<sup>33</sup>: a mistake which made it impossible for the Parliament to pass the bill within the sixty-day time limit for turning a Governmental decree into a Parliament law allotted by Article 77 of the Italian Constitution. Subsequently, in order to approve new provisions on hate speech against LGBT people, the Parliament decided to follow the ordinary procedure: the Justice Committee of the Chamber of Deputies collected all the analogous bills brought before Parliament since the beginning of the legislature, and then, on 15.01.2008, proposed to the whole Assembly a text for discussion and approval (Chamber of Deputies, bill nos. 1249-ter and others)<sup>34</sup>. However, as previously noted, a few days later the President of the Republic decided to

<sup>30</sup> Italy/Legge 654/1975 (13.10.1975).

<sup>31</sup> Italy/Decreto legge 122/1993 (26.4.1993).

<sup>32</sup> Italy/Decreto legge 181/2007 (01.11.2007).

<sup>33</sup> See <http://www.senato.it/ricerche/sDDL/nuova.ricerca>

<sup>34</sup> See <http://www.senato.it/ricerche/sDDL/nuova.ricerca>

dissolve Parliament, with the consequence that it has not been approved before election day (13.04.2008).

During the period of the XVI legislature (from april 2008 – until now), at the very beginning of 2009, the Justice Commission of the Chamber of Deputies started examining a bill, made by two Parties of the Opposition (Partito Democratico and Italia dei valori), aiming at introducing into the penal code an aggravating circumstance for reasons of sexual orientation (AC 1658-1882 A). The bill was not turned into a law as the prejudicial question of unconstitutionality was approved: on 13th October 2009 the Chamber of Deputies voted in favour of (285 vs 222) the prejudicial question of the unconstitutionality of that bill in order to show the maximum of the dissenting, following a Union of Center motion. The bill, from point of view of the majority of the Chamber of Deputies, violates both the equality principle (Italy/Costituzione art. 3) as regards in particular: the principle of reasonableness, in the sense that in the impossibility of verifying the authentic motive that leads to a violence, presumable for sexual motives, the victim would receive a greater protection than whoever is the victim of a violence tout court; the principle of peremptoriness of criminal provision's (Italy/Costituzione art. 25) as far as the lack of a precise definition of the expression sexual orientation is concerned, that seems to encompass every sexual tendency, such as incest, pedophilia, zoophilia, sadism and masochism.

As far as case law about hate speech is concerned, we have only few relevant decisions. In the first, the Supreme Court condemned a teacher for the crime of vituperation, after the teacher had used offensive adjectives such as 'stupid', 'imbecile', 'idiot' and 'gay' towards an underage student<sup>35</sup>: in this case, the adjective 'gay' was deemed to be offensive not for its own sake, but in the light of the aim pursued by the teacher, which was only that of humiliating the student.

The second and the third decisions regard the right of an LGBT association to claim civil damages when the individual persons involved, and not the association itself, are the direct target of the offensive words. The decision of the Corte d'Appello di Venezia [Court of Appeal of Venice] of 11.10.2000<sup>36</sup> denies this right to association, while that of the Tribunale di Milano [Milan Law Court] of 03.10.2003<sup>37</sup> grants it, even if it deems that in that case the words do not have an offensive tone.

Moreover, the Italian legal system does not take into account – either in its legislation or in its case law – whether a common crime was committed with a homophobic motivation.

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<sup>35</sup> Italy/Corte di Cassazione sez. V pen.(28.10.1994).

<sup>36</sup> Italy/Corte d'Appello di Venezia (11.10.2000)

<sup>37</sup> Italy/GIP Tribunale di Milano (03.10.2001).

In one decision regarding ‘hate crime’ (a murder where the defendant claimed to have killed in order to avoid a sexual assault by a homosexual man), the Supreme Court said that in that case the persistent requests for the performance of homosexual acts on the part of the victim had to be considered as a natural and foreseeable development of the relationship between the defendant and the victim.<sup>38</sup> In a more recent decision Rome’s District Court introduced homophobic motif for a violent attack against a homosexual couple<sup>39</sup>.

There is no official data regarding the number of non-criminal court cases initiated for homophobic statements.

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<sup>38</sup> Italy/Corte di Cassazione sez. I pen. (14.07.1993).

<sup>39</sup> Italy/GIP Tribunale di Roma, (12.03.2010)

## G. Transgender issues

Legge [Law] 164/1982 of 14.04.1982, Norme in materia di rettificazione di attribuzione di sesso [Rules concerning rectification of sexual attribution]<sup>40</sup>, provides that the correction of the record of a person's sex held in the Registrar's Office can be obtained by producing a final judicial decision which assigns that person a different sex 'in consequence of the changing of sexual characteristics'. The law states that in such proceedings the judge 'may ask for a medical opinion regarding the psycho-physical condition of the person'. The law also provides that 'when an operation to change the sexual characteristics is necessary, the judge authorises it with a decision': afterwards the judge, 'having checked that the authorised operation has been done, orders the correction of the person's sex in the Registrar Office records.

A decision of the Constitutional Court<sup>41</sup> states that Law 164/1982<sup>42</sup> is not unconstitutional, because not only physical but also mental health has to be safeguarded by the public authorities; furthermore, the sex of a person is to be considered as part of a personality whose development has to be promoted.

In brief, as far as the sex reassignment proceedings are concerned, in Italy a transsexual person must make two requests to the judge: first, he/she must be authorised to have the required surgery (making an exception to Article 5 of the Civil Code, which prohibits any act of disposition of a person's own body that can bring about a permanent reduction of physical wellbeing). This judicial authorisation allows the person to obtain this surgery in public hospitals totally free of charge. Secondly, he/she can ask for a judicial order which gives consent to change the details of their sex and name in the records of the Ufficio dello Stato civile [Registrar of Civil Status].

It is very difficult to collect case law on this subject. It seems that the lack of a judge's prior authorisation for surgery cannot preclude a subsequent recognition of the individual's right to sexual identity, if authorisation could have been given in such a case<sup>43</sup>.

Male to female reassignment is usually authorised only when the person has had complex surgery including orchidectomy, penectomy and vaginoplasty. If the person cannot (for example because of illness) or does not want to undergo this complex surgery, he/she cannot obtain the judicial order and the consequent sex reassignment, even if he/she takes sex hormones prescribed by his/her doctor. Only in two cases, it seems, has a judge ordered a sex reassignment after a simple orchidectomy, and only in one case has a judge ordered a sex

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<sup>40</sup> Italy/Legge 164/1982 (14.04.1982)

<sup>41</sup> Italy/Corte costituzionale 161/1985 (06.05.1985)

<sup>42</sup> Italy/Legge 164/1982 (14.04.1982)

<sup>43</sup> Italy/Tribunale di Milano (05.10.2000).

reassignment without any operation, as the transsexual concerned was very ill and probably near to death<sup>44</sup>.

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 a very difficult operation, with a high failure rate.

Regarding the condition of a transsexual who has already obtained the sex and name change in the records of the Registrar's office, it seems that the Italian legal system provides absolute parity of treatment with people of the newly acquired sex. For example, a decision of the Tribunale per i minorenni di Perugia [Tribunal for Minors of Perugia]<sup>45</sup> states that a married transsexual can adopt a child, if the other requirements requested by law are satisfied. In this sense, we can say that in Italy discrimination of transgender people is dealt with as discrimination on the grounds of sex.

As far as good practices are concerned, the Constitutional Court stated that good practices aimed at promoting better conditions for LGBT people and engaged 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.<sup>46</sup> 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.

As regards sex-reassignment surgery, these operations are performed completely free of charge in public hospitals if authorised by the judicial authorities.

On the other hand, if a transsexual cannot or does not want to have the operation, he has to pay for all hormone therapies and all plastic surgery operations such as breast implant surgery. In particular, a non-surgical male to female transsexual needs a large quantity of hormones, but the technical file on the website of the Agenzia italiana del farmaco (AIFA) [Italian Pharmaceutical Agency]<sup>47</sup> establishes that this kind of medicine is indicated only for menopause: therefore only women in menopause, and not male-to-female transsexuals, can obtain them free of charge.

The group of legal experts went to Ministry of the Internal Affairs in Rome (04.02/2008) and met several Prefects in order to obtain statistical information regarding the number of name changes effected due to change of gender and the number of persons who changed their gender/sex under the relevant legislation:

<sup>44</sup> Italy/Tribunale di Roma (18.10.1997).

<sup>45</sup> Italy/Tribunale per i minorenni di Perugia (22.07.1997).

<sup>46</sup> Italy/Corte costituzionale 253/2006 (21.06.2006)

<sup>47</sup> <http://www.agenziafarmaco.it/section8983.html>

although it was said that this information was available, as nothing has been sent.



## H. Miscellaneous

In Italy some positive actions for LGBT people are pursued both on a national and on a local level. Three law bills have been presented before Parliament. The first of these<sup>48</sup> aims at establishing a National Day against homophobia. This day shall be an occasion for meetings and initiatives to make citizens aware of persistent habits of intolerance and discrimination against LGBT persons. The two other legislative bills concern legal recognition of de facto partnerships. The first of these was approved by the Council of Ministers on 8.02.2007 and intended to recognise several civil rights for two persons linked by sentimental relationship, regardless of their sex. For example the right to visit a de facto partner in hospital, the right to appoint a de facto partner as representative for decisions concerning health, the right to obtain permission for residence for cohabitation reasons, the right of inheritance in lease agreements, in retirement issues and in inheritance in general. The second bill (n. 1339), presented before the Senate on 20.02.2007, aimed at introducing the so-called *contratti di unione solidale* (“Solid Union Contracts”). It reproduces almost the same rights as the previous bill, adding the right to apply for a residence permit. Discussion of these bills was postponed because of the end of the present legislature.

Some town councils, though it is not possible to list exactly which and how many, have created registers of public civil unions. The value of these registers is only symbolic. The number of unions ‘registered is not significant. A few other town councils, such as Padova and Bologna, offer de facto couples, including same-sex couples, the opportunity to obtain ‘*attestazione di famiglia affettiva*’ (‘certificate of affective family’)<sup>49</sup> on the basis of Personal Data Legislation no. 1228 of 1954 and no. 223 of 30.05.1989. Also de facto partners, other than those belonging to a different sex, can register. 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 rights recognised to de facto partners (such as a worker’s right to a paid three days’ leave of absence yearly in the event of serious illness or loss of a partner).

In 2009 several judges<sup>50</sup> raised the question of the constitutionality of Codice civile dispositions, as interpreted by the majority of legal doctrines, for limiting marriage to opposite sex couples, due to a breach of article 2 of the Constitution, protecting inviolable human rights and social groups like family, art. 3, prohibiting discrimination on grounds of social conditions, art. 29, granting the recognition of marriage, as well as art. 117, Par. I, requiring the exercise of the legislative power of the state and the regions to comply with international law obligations.

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<sup>48</sup> Italy/proposta di legge 311/2007

<sup>49</sup> Italy/ Personal Data Legislation 1228/1954 (24.12.1954) and 223/1989 (30.05.1989)

<sup>50</sup> Italy/Tribunale di Venezia (03.04.2009); Italy/Corte di Appello di Trento (29.07.2009); Italy/Corte di Appello di Firenze (03.12.2009); Italy/Tribunale di Ferrara (03.12.2009).

All the questions of constitutionality were raised by judges appealed by same-sex couples lodging complaints against the refusal of the mayor not to proceed with the publication of the notice of marriage to enter into a marriage in a registry office. These cases are part of a national campaign run by a network of lawyers for LGBT rights, Lendford, bringing to court the refusal to publish the notice of marriage for same sex couples.

With the decision n. 138/2010<sup>51</sup> Constitutional Court declared the question partly inadmissible and partly unfounded and stated that founding safeguards and recognising homosexual unions are both up to the Parliament in exercising its own discretionary power.

In the academic year 2006/2007 the University of Bologna launched a masters degree course in sexual minorities studies, the first of its kind in Italy.

Venice, Turin and Bologna set up Servizio LGBT [LGBT Service] offices, public offices with anti-discriminations duties.

Our research did not result on any findings regarding phallometry or phallometric testing.

Our research did not result in any findings on legislation comparable to the Lithuanian legislation institutionalizing homophobia.

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<sup>51</sup> Italy/Corte costituzionale 138/2010 (14.04.2010)

## I. Good practices

The most important initiatives concerning the fight against discrimination on the ground of sexual orientation have been pursued by Tuscany. Rejection of discrimination on the ground of sexual orientation is affirmed by Art. 4 of the Statuto regione Toscana [Statute of the Region of Tuscany].<sup>52</sup>

The Legge regione Toscana [Regional law of Tuscany] 63/2004<sup>53</sup> provides for specific actions in favour of LGBT persons in relation to various issues, such as employment, health and culture. In particular, pursuant to this law it is possible to choose in advance the person entitled to give consent to medical treatment on behalf of an unconscious patient. The Law also provides for some measures to be referred to the region itself: for example, the region organises courses for the education of regional staff on respect for sexual orientation, while a regional committee for telecommunications monitors television and radio shows.<sup>54</sup>

Legge regione Toscana 59/2007<sup>55</sup> aims at preventing violence based on sexual orientation and identity, and promoting protection, solidarity and help for people who have been victims of psychological and physical violence. In order to achieve this goal, Tuscany supports and promotes a coordinated network including town halls and provincial administrations, hospitals, schools, police, judges and magistrates, and anti-violence centres.. Preventative measures are pursued by means of educational projects based on collaboration between schools and families, with participation by bodies and association operating in this field. Support is given to victims at any time in both private and public hospitals or through social services. There are anti-violence centres which are managed by regional associations enrolled in the register of voluntary associations, and which give legal and psychological assistance. Protection is guaranteed by residential refuges with secret addresses, where victims are accommodated. Organisation of these refugees is managed by the network.

Legge regione Liguria 52/2009 called “Norme contro le discriminazioni determinate dall’orientamento sessuale o dall’identità di genere” (Rules against discrimination on the grounds of sexual orientation and identity) concern issues like employment, schools, health welfare, educational projects and cultural projects. The Law also provides for some measures to be referred to the region itself: Liguria promotes a coordinate network of provincial administrations,

<sup>52</sup> Italy/Statuto regione Toscana (19.07.2004), ([http://www.consiglio.regione.toscana.it/istituzione/Statuto-e-regole/Testo/statuto\\_nuovo.asp](http://www.consiglio.regione.toscana.it/istituzione/Statuto-e-regole/Testo/statuto_nuovo.asp)).

<sup>53</sup> Toscana/Legge regione Toscana (15.11.2004).

<sup>54</sup> See [http://www.regione.toscana.it/ius/ns-leggi/?Mlval=pagina\\_2&ANNO=2004&TESTO=NIENTE&TITOLO=NIENTE&MATERIA=0&ANNO1=NIENTE&NUMERO=63&YEAR=2004](http://www.regione.toscana.it/ius/ns-leggi/?Mlval=pagina_2&ANNO=2004&TESTO=NIENTE&TITOLO=NIENTE&MATERIA=0&ANNO1=NIENTE&NUMERO=63&YEAR=2004)

<sup>55</sup> Toscana/Legge regione Toscana 59/2007 (16.11.2007). See [http://www.dirittiepariopportunita.it/Pari\\_Opportunita/UserFiles/II\\_Dipartimento/regione\\_toscana\\_l.r.\\_n.59\\_16112007.pdf](http://www.dirittiepariopportunita.it/Pari_Opportunita/UserFiles/II_Dipartimento/regione_toscana_l.r._n.59_16112007.pdf)

hospitals, schools, town halls and ombudsmen, in order to give support, solidarity and help and prevent discrimination based on sexual orientation. The region organises courses on respect for sexual orientation for the education of regional staff; the hospital and doctors give information and assistance to people who need psychological and physical help, a regional committee for telecommunications monitors television and radio shows.

In February 2010 the Prime Minister challenged this law before the Constitutional Court claiming that it overstepped the Region's legislative function pursuant to art. 117 of the Constitution, claiming that rules concerning the choice of a person able to give consent to medical treatment concerning delegation was a matter of civil law, and therefore have to be ruled by State law. The public hearing for the discussion of the case has been appointed for 21 September 2010.<sup>56</sup>

The so-called Carta d'intenti per la costituzione della Rete nazionale delle pubbliche amministrazioni per il superamento delle discriminazioni basate sull'orientamento sessuale e sull'identità di genere [Charter of intent on the constitution of a national network of public administrations for overcoming discrimination on grounds of sexual orientation and gender identity] has been launched, in order to create a national public administration network to improve and promote the civil rights of LGBT people.<sup>57</sup>

In accordance with a ministerial decree,<sup>58</sup> the Department of Rights and Equal Opportunities has set up the Forum permanente contro le molestie gravi e la violenza alle donne, per orientamento sessuale e identità di genere [Permanent forum against serious harassment and violence on women, and on grounds of sexual orientation and gender identity].

In 2009 the Ministro per i Diritti e le Pari Opportunità [Department of Rights and Equal Opportunities] launched the first media campaign against homophobia

As far as good practices regarding transsexuals are concerned, the Constitutional Court states that good practices aimed at promoting better conditions for LGBT people and engaged at regional level are legitimate as long as regional law respects the allocation of functions between State law and regional law provided by the Constitution.<sup>59</sup> On the other hand, only State law, and not regional law, can regulate proceedings to give consent to the change of 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. The operation is completely free if authorised

<sup>56</sup> Official Bolletin (Gazzetta ufficiale) (17.02.2010, n. 7)

<sup>57</sup> See <http://www.primapagina.regione.toscana.it/identitasessuale-lgbt> (13.02.2008).

<sup>58</sup> Italia/Decreto del Ministro per i Diritti e le Pari Opportunità (13.12.2007). See <http://www.pariopportunita.gov.it>

<sup>59</sup> Italy/Corte costituzionale 253/2006 (21.06.2006).

by judicial authorities in public hospitals. On the other hand, if a transsexual cannot or does not want to have the operation, he has to pay for all hormone therapies and all plastic surgery operations such as breast implant surgery. In particular, a non-surgical male to female transsexual needs a large quantity of hormones, but the technical file on the website of the Agenzia italiana del farmaco (AIFA) [Italian Pharmaceutical Agency]<sup>60</sup> establishes that this kind of medicine is indicated only for menopause: therefore only women in menopause, and not male-to-female transsexuals, can obtain them free of charge.

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<sup>60</sup> <http://www.agenziafarmaco.it/section8983.html>

## Annex 1 – Case law

### Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC, case 1

Case title	Mr Giorgio Asti versus Ministry of Internal Affairs
Decision date	19.06.2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	administrative judgement, Consiglio di Stato, sezione VI (State's Council, section VI)
Key facts of the case (max. 500 chars)	The Applicant worked as a policeman and he was fired as a consequence of a disciplinary sanctions, because his behaviour was considered contrary to honour and moral sense. In fact he was often seen wearing women's clothes and acting in an eccentric way (i.e. he washed his car in a bikini or totally naked). Mr Asti submitted an application before Italy/TAR di Venezia. It was rejected, therefore Mr Asti appealed Italy/Consiglio di Stato for the annulment of the decision
Main reasoning/argumentation (max. 500 chars)	Judges noted that they cannot evaluate the merits an administrative act if it is issued within the limits of the public administration discretionary powers because their duty is only to verify that its motivations is not illogical or irrational. In this case, the Council of State considered that the administration had not adopted a decision based on illogical or irrational grounds since the policeman behaving in an eccentric way outside working hours can undermine his reputation and his colleague's trust, which is fundamental because often policemen work together in dangerous situations.

<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Regardless of sexual orientation, civil servants have a duty of good behaviour in order to transmit confidence both to citizens and to their colleagues.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The application was rejected and the judgement became final. As a consequence of this decision, there are some kind of jobs whereby the decision concerning the compatibility of some kinds of behaviour with the role held remains within the discretionary power of the public administration. The key issue is that a policeman must behave in and outside his working hours in a way that cannot undermine his reliability and reputation of those he represents.</p>

**Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 1**

Case title	Public Prosecutor versus Cheick Fofana
Decision date	25.07.2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Corte di Cassazione Sezione Prima civile (Supreme Court, First and civil section).
Key facts of the case (max. 500 chars)	Mr Fofana, citizen of Senegal, came to Italy as a clandestine immigrant so, pursuant to the law, the public security authority issued a decree stating his expulsion from Italy. In December 2004 the Judge of first instance granted an application filed by Mr Fofana against this decree, on the ground of the risk of persecution in his country: he is gay and homosexuality is punished in Senegal with the conviction to prison from one to five years. The Public Prosecutor appealed against this decision the Supreme Court.
Main reasoning/argumentation (max. 500 chars)	Homosexuality is a human condition worthy of protection and expression of the realisation of personality pursuant to Art. No. 2 of the Constitution. However, persecution is a cruel form of fight against a minority, conducted in a way contrary to human rights. In order to grant asylum, evidence of persecution of a homosexual person is required. Moreover, as long as the question concerns a derogation from general principles ruling expulsion, Mr Fofana's homosexuality must be proven beyond all doubt.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	If all the preconditions provided by law are satisfied the immigrant who entered Italy as a clandestine has a fundamental right to stay there.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court revoked the first instance decision sending it back to another judge. He has to determine whether homosexuality as such is a crime (therefore there is persecution) or whether only ostentation of homosexual practices is punished in Senegal. Secondly, he will have to verify that Mr Fofana's homosexuality has been proven, an oral interrogation being sufficient. As a consequence a derogation from public security law is possible only by strictly respecting the requirements provided and avoiding a misuse of the safeguards provided for victims of real persecutions including LGBT people.



**Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 2**

Case title	Public Prosecutor versus Hagi Samir
Decision date	18.01.2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	criminal judgement, Corte di Cassazione, sezione I penale (Supreme Court, first criminal section)
Key facts of the case (max. 500 chars)	Mr Samir is an immigrant coming from Morocco and he was expelled by a decree issued by Chief police. He did not fulfill the order, committing a crime pursuant to Art. 14 (5 ter) of Italy/Decreto legislativo 286/98 (25.07.1998). Modena's Civil Court acquitted him because the judge thought that there was a justified reason for his behaviour: he is homosexual and homosexuality is punished in Morocco, therefore there was a risk of persecution. Public Prosecutor appealed the Supreme Court.
Main reasoning/argumentation (max. 500 chars)	Civil Court's duty is only to ascertain whether the reason which made impossible order's execution is justified, because only in this case he can be dispensed from the punishment. On the contrary judge found automatically that this justified reason was the mere fact that Mr Samir comes from a country wherein homosexuality is punished.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	An immigrant who runs the risk of being persecuted for his homosexuality is allowed not to obey Chief Police's expulsion decree only if all the preconditions provided by law are fulfilled. If this is the case he has a fundamental right to stay in Italy avoiding the risk of persecution in his country.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Judgement comes back to Civil Court which has to ascertain: a) that Mr Samir is Morocco's citizen; b) that Mr Samir can be expelled only to Morocco; c) that Morocco punishes not only external manifestation of homosexuality but homosexuality as a personal practise. The judge has to find a balance between public security and individual protection following a strict scrutiny concerning the fulfilment of all conditions, also because the risk of persecution is a special exemption.

**Chapter D, Family reunification, case law relevant to art 4/3 of the Council Directive 2003/86/EC, case 1**

Case title	GA and OM versus registry officer
Decision date	10.06.2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil court's decree, Civil Court in Latina
Key facts of the case (max. 500 chars)	Mr GA, born in Latina, Italy and Mr OM, born in Maracay (Venezuela) married in Holland and requested the enrolment of their marriage at the public registry in Latina. Subsequent to the decision made by the Ministry for Internal Affairs, the request was rejected on the ground of the fact that GA and OM belong to the same sex genre and in Italy the law does not recognise this kind of union. Therefore they filed a petition against this rejection before Latina's Civil Court.
Main reasoning/argumentation (max. 500 chars)	To recognise a foreign marriage there must be a difference of sex between the spouses, and this is not the case because the marriage is lacking in a necessary precondition, Art. 29 of the Constitution recognises the rights of the family as a "natural society founded on marriage" which implies a heterosexual union. Moreover, international treaties do not impose an automatic recognition of all foreign acts; rather, in marriage issues the recognition is forbidden when the marriage is contrary to the State's public order. At present, homosexual marriage is contrary to Italian history, tradition and culture.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A marriage between persons of the same sex celebrated in a country that allows it does not impose its recognition in Italy, as it is contrary to Italian public order, which has to be considered the stage of a country society's development.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Judges rejected the petition considering the registry officer's refusal of enrolment lawful. Therefore, the recognition of new kind of unions means that even though other countries may allow them, each country has to take its own decisions in complete freedom. Judges cannot take this decision in place of parliament; therefore, until a law allowing the recognition of this kind of unions is approved in Italy, they will not be registered, even if they are recognised in the country of celebration.

**Chapter D, Family reunification, case law relevant to art 4/3 of the Council Directive 2003/86/EC, case 2**

Case title	GA and OM versus registry officer
Decision date	13.07.2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Corte d'Appello di Roma (Rome's Court of Appeal)
Key facts of the case (max. 500 chars)	GA, and OM, both Italian, married in Holland and filed a petition before Rome's Civil Court in order to obtain the enrolment of their marriage at the public registry office. The petition was rejected on the ground of the fact that GA and OM belong to the same sex genre and in Italy the law does not recognise this kind of union. Therefore they filed a petition against this rejection before Rome's Court of Appeal.
Main reasoning/argumentation (max. 500 chars)	Marriage enrolment cannot be considered a due act without responding to the necessary requirements: it implies the validity of the said marriage regulated by the place of marriage and state law therein ruled but also the persons involved must have the necessary requisite to marry which is regulated by Italian law. There is not a marriage act because it lacks a necessary precondition which is the difference of sex between the spouses. The fact that other countries allow this union is not relevant because EC law does neither forbids nor imposes this recognition.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A marriage between persons of the same sex celebrated in a country that allows it does not impose its recognition in Italy.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Judges rejected the petition considering the registry officer's refusal of enrolment lawful. Therefore, the fact that the EC does not impose or forbid the recognition of new kind of unions means that even though other countries allows them each country has to take its own decisions in complete freedom. Judges cannot take this decision in place of parliament therefore until a law allowing the recognition of this kind of unions is approved in Italy, they will not be registered, even if they are recognised in the country of celebration.

**Chapter F, Hate speech, case 1**

Case title	Mr. Silvestri versus Y
Decision date	28.10.1994
Reference details (type and title of court/body; in original language and English [official translation, if available])	criminal judgement, Corte di Cassazione, Sezione V penale (Supreme criminal Court, fifth section).
Key facts of the case (max. 500 chars)	Mr Silvestri is a schoolteacher who addressed an underage student using some offensive adjectives such as “stupid” “imbecile”, “idiot” and “gay”. He was sentenced in first and second instance for vituperation pursuant to Art. No. 594 of Italy/Codice penale (19.10.1930). Subsequently Mr. Silvestri filed a petition before the Supreme Court for misjudgement in interpretation of the law.
Main reasoning/argumentation (max. 500 chars)	The Court considers applicable in this case Art. No. 594, and not Art. No. 571 which punishes with a lower punishment the misuse of teaching means because the adjectives used are aimed not at motivating or educating the student but only at mortifying him. In general schoolteachers can use strong words or expressions to attract students’ attention but the adjectives pronounced in this case lead one to think that the aim pursued overstepped the teaching purpose of the expression
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	When the word “gay” is used with other offensive expressions so that it is clear that the aim pursued is to mortify a person, it has a hurtful meaning, regardless of the victim’s sexual orientation.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Judges confirmed the previous decision therefore judgement became final so it was possible to enforce the punishment. In this case, regardless of the student’s sexual orientation, the adjective “gay” was considered offensive not in its own but in the light of the aim pursued by the teacher which was only to mortify the student. It was used in juxtaposition with other offensive expressions and judges pointed out that in Mr Silvestri’s mind all the words pronounced had the same offensive character. Therefore the adjective “gay” is offensive only if it is used with contempt to mortify a person

**Chapter F, Hate speech, case 2**

Case title	Mr Bertozzo, Mr Padovani and Mr Zocatelli versus Arcigay Verona
Decision date	11.10.2000
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Corte d'Appello di Venezia, sezione IV civile (Venice's Court of Appeal, fourth civil section)
Key facts of the case (max. 500 chars)	Mr Bertozzo and Mr Padovani are two city councilmen while Mr Zocatelli is the director of a newspaper called "Family and civilisation" and manager of a Christian association. During a speech Mr Padovani linked LGBT people to paedophiles, Mr Bertozzo offended LGBT during a discussion in an assembly concerning unions and adoption for LGBT people and Mr Zocatelli circulated a leaflet against bodies which contested Mr Padovani's document concerning the family, calling them paedophiles. Venice's Civil Court condemned each petitioner to reward Arcigay with 50.000.000€ (about 26.000,00 Euros)
Main reasoning/argumentation (max. 500 chars)	Individuals have a constitutional right to be represented in his/her real identity including their sexual orientation by groups and associations. However, LGBT people are not a category and offensive words can jeopardise personal identity which belongs only to an individual. Therefore Arcigay cannot act in place of the individual offended. However, Mr Zocatelli offended the association linking it to those representing paedophiles and there was therefore the former association incurred damage.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Hate speech against LGBT people in general cannot allow associations to act in place of single individuals because the damage is suffered by each of them and not by the association. There is a damage suffered by the association only if it is the direct target of the offence.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Judges rewarded Arcigay with 30.000.000€ (about 16.000,00 Euros). The key consequence of the case is that even though LGBT associations can be considered victims of criminal offences and seek reparation for the damage incurred, this is possible only when they are offended directly. Otherwise they remain a different subject from the individuals represented by them.

**Chapter F, Hate speech, case 3**

Case title	X versus Y
Decision date	03.10.2001
Reference details (type and title of court/body; in original language and English [official translation, if available])	criminal judgement, Tribunale di Milano, Ufficio GIP (Preliminary investigation office at the Milan Civil Court)
Key facts of the case (max. 500 chars)	During a Gay Pride manifestation some individuals offended the gay movement. Therefore a member of Arcigay filed an action before the Public Prosecutor in order to obtain a prosecution and conviction of these persons. The Public Prosecutor asked a preliminary investigations' judge to file away the case.
Main reasoning/argumentation (max. 500 chars)	The petitioner as a member of Arcigay has <i>locus standi</i> after having proved his enrolment. The association can represent an individual who is a member of it. On the merits, however, the statements do not constitute grounds for slander.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Offences thrown during a manifestation may regard each participant therefore the association which represents them has <i>locus standi</i>
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The action is admissible but on the merits the judge filed away the case. The Association has a right to protect its members from offences which can be referred to each of them but they must have an offensive tone.

**Chapter F, Hate crimes, case 1**

Case title	X versus Y
Decision date	14.07.1993
Reference details (type and title of court/body; in original language and English [official translation, if available])	criminal judgement, Corte di Cassazione, sezione I penale (Supreme Court, first criminal section).
Key facts of the case (max. 500 chars)	The Defendant firstly accepted an offer of money from the victim. Subsequently, the victim requested him to provide homosexual services for the money offered and the Defendant hit and strangled him, then he robbed him and burnt the flat the victim lived in. After a second instance judgement he appealed to the Supreme Court because the judges did not recognize the extenuating circumstance of provocation as a cause of justification.
Main reasoning/argumentation (max. 500 chars)	The persisting request of the homosexual performance has to be considered as a natural and foreseeable development of the relationship between the Defendant and the victim, accepted without coercion. In this case therefore there was no taunting because the request cannot be considered as an unbearable injustice and offense to the personal dignity in relation to the specific context.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A request of homosexual performance cannot be considered a taunt which reduces the gravity of the act if it was foreseeable on the ground of the relationship between victim and defendant. After the Supreme Court's decision the judgement became final so it was possible to enforce the punishment.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	It has to be noted that in this decision a homosexual performance is defined as an immoral practice.

**Chapter F, Hate crimes, case 2**

Case title	Sardelli versus A. and S.
Decision date	12.03.2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	Criminal judgement, Ufficio Gip (preliminary investigation office at the Roma Civil Court)
Key facts of the case (max. 500 chars)	Mr Sardello attacked a homosexual couple in front of the Gay Village.
Main reasoning/argumentation (max. 500 chars)	The judge stated that the motif which led Mr Sardello to attack the couple concerned only their sexual orientation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Homophobic motif has been recognised by judge and suing for civil injury of the association Arcigay had been allowed.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Mr Sardello was sentenced with seven years of prison for attempted murder, injury and illegal firearm pass. A symbolic compensation of one Euro was granted to Arcigay.



**Chapter G, Applicability of legislation on trans gender issues, case 1**

Case title	LY and MM
Decision date	22.07.1997
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Tribunale per i Minorenni di Perugia (Perugia's Juvenile District Court)
	LY was a woman and, after a surgical operation she became a man; therefore she changed her name and she was able to marry MM. After their marriage they initially requested an international adoption before Perugia's Juvenile Civil Court. It was accepted but afterwards there were some difficulties in practice because the order issued did not consider the psychological analysis of the spouses. Therefore they appealed before the same Court.
Main reasoning/argumentation (max. 500 chars)	Both LY and MM have the requirement to adopt a foreign child regardless of the personal condition of LY so the Court accepted the petition. A transsexual cannot be discriminated against or be considered as an ill person and if the requirements requested by law are satisfied he/she can adopt a child, in order to give him/her moral and material care.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	What has to be verified is not the gap between biological and psychological sexuality but the attitude to be parents because the main point is to have the best interests of the child at heart. Therefore their emotional aim towards a foreign and homeless child it has to be checked
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Both LY and MM have the necessary requirements to adopt a foreign child regardless of the personal condition of LY so the Court accepted the petition. A transsexual cannot be discriminated against or be considered as an ill person and if the requirements requested by law are satisfied he/she can adopt a child, in order to give him moral and material care.

**Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 1**

Case title	Mr Borriello
Decision date	6.05.1985
Reference details (type and title of court/body; in original language and English [official translation, if available])	constitutional judgement, Corte Costituzionale (Constitutional Court)
Key facts of the case (max. 500 chars)	Naples' Civil Court of second instance rejected a petition filed by Mr. Pasquale Borriello aimed at obtaining a sex and name change on the ground of having prevalence of man's sex chromosomes, even though he has been acting like a girl since he was a child and he subjected himself to a surgical operation. During the proceedings before the Supreme Court, Italy/Legge 164/1982 (14.04.1982) concerning sex/name change of transsexual people was approved and judges stated that it was applicable to the case but they referred some constitutional doubts to the Constitutional Court.
Main reasoning/argumentation (max. 500 chars)	a) the law allows body changes which are positive for the health and this includes both physical and psychic wellbeing: a surgical operation allows the reunion of body and mind; b) an individual's health is protected in community's interest and other people have to accept a sex change as a duty in the name of solidarity; c) a name change is affirmed by the decision of a court so there is a certainty and however family is shocked not by it but by transsexual's suffering of living in a stranger's body; c) a surgical operation allows the protection of the mental health and indeed in this case Mr. Borriello was sterile even before undertaking the operation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Italy/Legge 164/1982 (14.04.1982) fulfils all constitutional requirements.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The law is not unconstitutional and it is a development of jurisprudence which allowed sex/name change only in case of natural and not artificial modification of sex. With this decision it is pointed out that the only way to solve a transsexual's suffering is by allowing a surgical operation, in order to create a reunification between body and mind, considering fundamental not only physical but also mental health. Sex is to be considered as part of the personality whose development has to be promoted and the idea that sexual identity is only

	determined by external appearance is a preconception.
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**Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 2**

Case title	SICA versus registry officer
Decision date	18.10.1997
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Tribunale di Roma (Rome's Civil Court)
Key facts of the case (max. 500 chars)	SICA is enrolled in the registry office as a woman but she feels and acts like a man. On 27.02.1989 a judge authorized a sex change by surgical means pursuant to Italy/Legge 164/1982 (14.04.1982) but she could not have it done because she suffers from ischemic heart disease. Therefore, she applied for a name and sex change without surgical operation to Rome's Civil Court.
Main reasoning/argumentation (max. 500 chars)	SICA's decision toward the masculine sex has been steady and certain for thirty years so that she subjected herself to hormonal therapy and she had her breasts removed. In addition she is psychologically a man and her social role has always been masculine; notwithstanding she does not deny her anatomic sex. Judges think an order of name and sex changing can be issued because pursuant to the law a surgical operation is not a necessary precondition. Pursuant to the law sex/name change has to be ordered if it is necessary to render to an individual his/her psychological balance.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Italy/Legge 164/1982 (14.04.1982) does not strictly require a surgical operation in order to obtain name/sex change.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The District Court assigned SICA a masculine sex and name and judges issued an order to the public registry officer stating the change of her basic statistics. Therefore a surgical operation is not necessary pursuant to Italy/Legge 164/1982 (14.04.1982) to obtain a sex/name change. It is necessary only if it is the only means whereby a steady psychophysical balance is achieved. On the contrary in this case SICA accepts her physical sex in her mind and the fact that she cannot subject herself to a operation cannot be an obstacle for acting and being considered a man.

**Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 3**

Case title	VI versus registry officer
Decision date	5.10.2000
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Tribunale di Milano (Milan's Civil Court)
Key facts of the case (max. 500 chars)	VI was a man and on 24.09.1997 subjected himself to a surgical operation following his psychiatrist's advice to solve his psychological illness; this was done without previous authorisation granted by judge. After the operation VI requested the Civil Court to grant a sex and name change at the registry office.
Main reasoning/argumentation (max. 500 chars)	Considering VI's psychological condition, the surgical operation would have been granted in any case. However, judges think that authorisation is not a procedural precondition for sex/name change also because it has to be granted only when it is strictly necessary and in this case there has been a sex change already. There can be no sanction because a motive pursuant to the law which is the individual's correspondence between sex and mind, was applied. Therefore the change can be granted only if the surgical one has respected psycho-sexual preconditions.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Italy/Legge164/1982 (14.04.1982) does not strictly require a previous authorisation for the surgical operation in order to obtain a sex/name change.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court assigned a new name to the petitioner appropriate with the new sex. Therefore the lack of judge's previous authorisation for the surgical operation cannot preclude the recognition of an individual's right to sexual identity guaranteed by granting a name change whenever it corresponds to the new sex. Besides, a surgical operation is not always possible so its authorisation cannot be considered as a binding precondition.

**Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 4**

Case title	X versus registry office
Decision date	02.11.2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Tribunale di Velletri (Civil Court in Velletri)
Key facts of the case (max. 500 chars)	X was a man and on 1992 had a surgical operation which was not successful but afterwards he asked and obtained a sex and name change from masculine to feminine. At a later date he wanted to turn back to masculine without a new surgical operation therefore he requested to Civil Court a new sex and name change at the registry office.
Main reasoning/argumentation (max. 500 chars)	X's ambiguity is not in his/her sex organ but in his/her psychological state. Besides, a sex change can be granted in order to adjust the sexual identity to psychological identity perceived and this is not the case because X does not want to have another surgical operation; therefore his/her condition is irreversible.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Italy/Legge 164/1982 (14.04.1982) is aimed at helping transsexuals to make their condition at the registry office definitive after a final reunification between body and mind.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court rejected the petitioner's request. Therefore a new sex/name change cannot be granted when it is clear that ambiguity persists and cannot be solved with another surgical operation.

**Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 5**

Case title	L. Vivaldo e M. Rizk c. Prefettura di Roma
Decision date	17.05.2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Administrative judgement, Tar Lazio
Key facts of the case (max. 500 chars)	L. Vivaldo e M. Rizk, who had started a therapeutical and judicial process aimed at obtaining a change of sex, filed a petition for change of name.at Prefect of Rome The Prefect rejected the petition, considering not applicable Art. n. 89 of Italy/DPR 396/2000, which allows for a change of name or surname only when it is ridiculous, shameful or revealing natural origin.
Main reasoning/argumentation (max. 500 chars)	Art. 89 of Italy/DPR 396/2000 is not applicable when there is a process of change of sex which has not been not concluded.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Administrative Court followed the interpretation of Italy/Legge n. 164/1982 given by the Italian Constitutional Court which considers the concept of sexual identity not only based on physical characteristics but also on psychological or social elements. This interpretation, though, cannot allow to consider accessible the procedure aimed at changing the name, because Art. n. 89 of Italy/DPR 396/2000, allows for a change of name or surname only when it is ridiculous, shameful or revealing natural origin.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Administrative Court rejected the petition because it was not founded. Pursuant to Italy/Legge 164/1982, in fact, a change of the name from masculine to feminine is allowed only at the end of the procedure of change of sex.

**Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 6**

Case title	F. P. versus registry office
Decision date	23.11.2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Civil judgement, Corte di Appello di Firenze (Florence Court of Appeal)
Key facts of the case (max. 500 chars)	F.P., at the end of the procedure of a change of sex having obtained from Florence Court of first instance an authorization for the modification of his birth certificate, asked the registry office to add the new feminine name, Susanna, to his original name P. As the Florence Court rejected the petition, F.P. appealed against the decision.
Main reasoning/argumentation (max. 500 chars)	The Court of appeal granted the petition, considering that in the case of a judicial decision which modifies the sex of a person Italy/legge 164/1982 does not exclude the possibility of adding a new name to the previous one.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	F.P.'s motivations under his request of recognition of a second feminine name are not against the law and are aimed at satisfying his specific need of identity
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of Appeal issued the modification of the birth certificate and authorized the adding of a feminine name.



**Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 7**

Case title	E.S. versus registry officer
Decision date	15.10.2004
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Tribunale di Brescia (Civil Court in Brescia)
Key facts of the case (max. 500 chars)	E.S., without a previous judicial authorization, went abroad and modified his sex.
Main reasoning/argumentation (max. 500 chars)	The lack of a previous judicial authorization for change of sex cannot be solved through subsequent controls about the conditions of sex modification.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Italy/Legge 164/1982 (14.04.1982) has to be read together with Art. N. 32 of the Italian Constitution, that safeguards the right to health not only as physical but also as psychological wellbeing. Italian law, in fact, prescribes the previous judicial authorization in order to verify the effective need for this medical treatment.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	As a consequence, the Court rejected the petition. This decision, however, overturned the previous case-law (see Chapter G, case 3, Milan's Civil Court, 5.10.2000 and case 8 Pisa's Civil Court, 15.01. 2008).

**Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 8**

Case title	XX versus registry officer
Decision date	15.01.2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Civil judgement, Tribunale di Pisa (Pisa's Civil Court)
Key facts of the case (max. 500 chars)	X.X, without a previous judicial authorization, went abroad and change his sex from masculine to feminine. After the medical treatment, he filed a petition aimed at obtaining the modification of sex and of his name.
Main reasoning/argumentation (max. 500 chars)	A constitutional interpretation of Italy/Legge 164/1982, under Art. 2 and 32 of the Constitution, leads to the consideration that the modification of personal data concerning the sex of a person has to be issued whenever a change of sexual characteristics are ascertained, even if a previous judicial authorization fails.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Italy/Legge164/1982 (14.04.1982) does not require strictly a previous authorization for the surgical operation in order to obtain sex/name change.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court assigned a new sex and a new name to the petitioner which corresponded with the new sex. Therefore the lack of judge's previous authorization for the surgical operation cannot preclude a recognition of an individual's right to sexual identity. As a consequence, a change of name has to be granted whenever a person has changed his/her sex. Besides, as surgical operation is not always possible, its authorization cannot be considered as a binding precondition

**Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 1**

Case title	Prime Minister versus Tuscany
Decision date	21.06.2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	constitutional judgement, Corte Costituzionale (Constitutional Court)
Key facts of the case (max. 500 chars)	Tuscany passed a law Italy/Legge Regionale 63/2004 (15.11.2004) which contains some rules against discrimination on the ground of sexual orientation concerning some issues like professional training, welfare, health, tourism and commercial business. The Prime Minister challenged this law before the Constitutional Court, claiming that it overstepped the Region's legislative function pursuant to Art. No.117 of the Constitution.
Main reasoning/argumentation (max. 500 chars)	Welfare's positive actions aimed at safeguarding people discriminated against on the ground of sexual orientation are legitimate because they only place some general principles not practical measures and the State's claim based on law's unconstitutionality is too generic. Only the claims concerning the choice of a person able to give consent to a medical treatment and the possibility of changing sexual characteristics and the claim against the possibility for a businessman of denying their performance on the ground of sexual orientation and gender identity are founded because they have to be ruled by a State's law.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A regional law which provides measures of good practice concerning homophobia is constitutional as long as it respects the constitution's limits of the regions' powers

<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>Good practices aimed at promoting better conditions for LGBT people and engaged at a regional level are legitimate as long as they do not in practice create a clear disparity on behalf of these people and as long as the regional law respects the allocation of functions between State law and regional law provided by the Constitution. This decision encourages good practices on discrimination also at a regional level as long as these limits are strictly observed.</p>
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**Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 2**

Case title	Attorney Artini versus Padua City Hall
Decision date	05.07.2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	administrative judgement, Tar Veneto, sezione I (Veneto Administrative District Court, first section).
Key facts of the case (max. 500 chars)	Mr Artini pursued a popular action aimed at revoking decision No. 108/2006 of Padua City Hall and the mayor's measure concerning an attestation of enrolment in the registry office of a registry office's family, based on ties of family, marriage, kinship, adoption or love, regardless of sexual orientation. This attestation concerns residency, because it is possible to enrol all persons living in the same dwelling and it is based only on an individual's pro veritate declaration. all the civil rights provided by law are derived from the enrolment.
Main reasoning/argumentation (max. 500 chars)	Mr Artini's interest is to be found in the will to keep separate the nuclear family and the registry office family. The first one based on marriage with all its civil duties and the second based on love ties of any kind. On the merits the City Hall did not overstep its powers because pursuant to the law, any mayor can issue an order stating that the registry officer can grant any certification concerning residence position except professional ones. Declaration of love ties can be pronounced only by the individual with all the criminal consequences in the case false declarations are made.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Pursuant to the law, City Halls can grant an attestation of residence for persons living at the same place, based on the individual's declarations. In the case of false declarations there are criminal consequences.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Padua City Hall's measures are legitimate as long as they are part of its powers also because they provide an administrative subsequent control of the truth of the declaration about residence. Padua's system is different from others because it does not create a collateral registry office. It is aimed at recognizing civil and social rights also to other kind of unions without confusing the nuclear family and registry office family because they

	are founded on different grounds. Padua's measures are forerunners for other City Halls.
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**Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 3**

Case title	F. Piomboni e M. Pegoraro versus Florence registry officer
Decision date	30.06.2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Civil judgment, Florence Court of Appeal, First Civil Section
Key facts of the case (max. 500 chars)	The applicants, persons of the same sex, asked the registry office to allow them to publish the banns, which are a precondition of civil marriage. The registry office refused the authorization and the Florence Court of first instance rejected the petition.
Main reasoning/argumentation (max. 500 chars)	The Italian Constitution recognizes both the principle of non-discrimination based on sexual orientation and the right of person's full development (Art. N. 3 of Italian Constitution). However the Constitution does not recognize the right to marry a person of the same sex and the EC in this issue leaves the Member States a margin of appreciation in the implementation of the principles of the EC Treaty and of the European resolutions.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Judges cannot create a law when a specific discipline is lacking, because the legislative power is reserved to the Parliament.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Court of Appeal rejected the petition, confirming the legitimacy, under the law actually in force, of the registry officer's denial to authorize the banns requested from persons of the same sex. On the Court's view only the Parliament has the power to introduce in Italian law homosexual marriage.

**Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 4**

Case title	X and Y versus Venice registry officer; X and Y versus Trento registry officer
Decision date	14.04.2010 decision n. 138
Reference details (type and title of court/body; in original language and English [official translation, if available])	constitutional judgement, Corte Costituzionale (Constitutional Court)
Key facts of the case (max. 500 chars)	The applicants, X and Y, persons of the same sex, asked the registry officer to allow them to publish the banns, which are a precondition of civil marriage. The registry office rejected the petition, considering it contrary to the internal public order: on his view, in fact, the diversity of sex is a fundamental precondition for marriage. The applicants appealed to the Civil Court that considered necessary a statement issued by the Constitutional Court, because it is not possible to extend the civil institute of marriage, regulated by the Italian Civil Law to a person of the same sex, and this is a violation of Art. N. 2, 3, 29, 117, I of the Italian Constitution
Main reasoning/argumentation (max. 500 chars)	Constitutional Court declared the question partly inadmissible and partly unfounded and stated that founding safeguards and recognising homosexual unions are both up to the Parliament in exercising its own discretionary power.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	There is no violation of Art. No. 29 of the Italian Constitution because this article is only referred to the traditional concept of marriage and the principle of non discrimination provided in Art. No. 3 of the Constitution is not violated by the Civil Code which provides only the marriage between a man and a woman because homosexual unions cannot be considered the same as marriage.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	It is up to the legislator, within his own discretionary power to provide for the appropriate means of recognition and safeguards.



**Miscellaneous, case 1**

Case title	Mr E versus Mrs C
Decision date	14.10.2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Tribunale di Brescia (Brescia Civil Court)
Key facts of the case (max. 500 chars)	Mr E and Mrs C were married when, after fourteen years of marriage, the former confessed a homosexual relationship. Therefore Mrs C left her home and Mr E started living with his partner; the former appealed requesting a declaration of legal separation which stated the husband's responsibility and compensation for existential damage.
Main reasoning/argumentation (max. 500 chars)	The legal separation's responsibility is on the husband because his homosexuality made cohabitation impossible with his wife but there is not a duty of maintenance because she has an income similar to Mr E's. The judge granted the compensation for existential damage because there was a violation of a fundamental right, namely the right of personal dignity as a woman and as a wife. In addition a shared life lasting fourteen years was broken up and Mrs C risked being infected by HIV.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The legal separation's responsibility is on the spouse who breaks the duty of faithfulness both in case of a hetero and in case of a homosexual relationship out of marriage. In the latter case the judge can grant the other spouse compensation for existential damages.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Mr E was condemned to pay 40.000,00 € for existential damage. In general judges do not grant compensation for existential damage in case of legal separation but in this case not only did it bring relevant changes to Mrs C's life but it also caused her traumatic upset, greatly reducing her quality of life. A balance between freedom of choice on the ground of sexual orientation and personal dignity requests compensation for the sufferings that the former might bring.

**Miscellaneous, case 2**

Case title	X versus Y
Decision date	28.06.2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Tribunale di Napoli (Naples' Civil Court)
Key facts of the case (max. 500 chars)	After their legal separation, during which XXX and YYY's son was entrusted to his mother, the father took the case to Civil Court in order to obtain shared foster care. In fact he claims that the mother has a homosexual relationship which can jeopardize the child's growth, because the two women did not hide it and they lapsed into effusion in front of him.
Main reasoning/argumentation (max. 500 chars)	The main point is what is in the best interest of the child, regardless of his parent's sexual orientation. Homosexuality in fact is not an obstacle for foster care, if ever it can be the legal reason for separation, but in the case of foster care this is not relevant, because it does not concern the child's best interest.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In matters of foster care the child's best interest must be sought and therefore the shared one cannot be granted if his/her parents fight against each other.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court granted exclusive foster care to the mother because in this case the shared one was not practicable considering the hostile relationship between the two parents and the father's violent character. Therefore the responsibility for the legal separation is on the father but it is not relevant for the foster care because this is not an award for the irresponsible parent. The hypothetical homosexual relationship is not an obstacle for exclusive foster care, while the shared one cannot be granted if there is conflict and one parent does not recognize to the other his/her parental capacity.

**Miscellaneous, case 3**

Case title	Mr Scarantino versus Public Prosecutor
Decision date	17.07.2002
Reference details (type and title of court/body; in original language and English [official translation, if available])	criminal judgement, Corte d'Assise d'Appello di Caltanissetta (Caltanissetta's District Court of Appeal).
Key facts of the case (max. 500 chars)	Mr Scarantino was a member of Cosa Nostra and after his sentence to prison he started a collaboration with the bench. In particular he referred some episodes concerning the murder of judge Mr Borsellino. He was killed with a car bomb and Mr Scarantino participated in the theft of the car used for the explosion. The defence of the accused denied Mr Scarantino's reliability on the ground among others of the fact that he had a homosexual relationship when he was a teenager therefore he could not be a man of honour.
Main reasoning/argumentation (max. 500 chars)	Cosa Nostra's moral sense is not as conservative as it may seem, therefore it is possible for a homosexual person to take part in the association. Besides, Mr Scarantino uses the Mafia's slang therefore he kept in contact with the organisation and indeed his affirmations have been checked and confirmed.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The reliability of the declarations of a justice's collaborator have to be considered true if they have a confirmation, regardless of his/her sexual orientation.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court confirms Mr Scarantino's reliability. Therefore the Mafia's Code of honour is not so restrictive as it may seem and in the fight against it, it is important to overcome false preconceptions.

**Miscellaneous, case 4**

Case title	MAG versus SDG
Decision date	01.03.2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Corte di Cassazione, sezione I civile (Supreme Court, first civil section)
Key facts of the case (max. 500 chars)	Mrs MAG filed a petition aimed at obtaining the declaration of legal separation but her sons were entrusted to Mr SDG because the judge charged to her the legal separation's responsibility, considering that she left home and established a homosexual relationship with one of her daughter's friends. Subsequently, after the second instance's judgement, she appealed to the Supreme Court in order to obtain the foster care.
Main reasoning/argumentation (max. 500 chars)	Despite Mrs MAG's claims that Mr SDG broke his faithfulness' duty by establishing a relationship out of marriage, she could not prove it. On the contrary her relationship with one of her daughter's friends has been proven and therefore the responsibility for the legal separation is in the first place hers and secondly this choice shocked her children so their best interest is to live with their father.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In responsibility for issues regarding legal separation what has to be proved is the cause of the intolerability of cohabitation: in the present case this element is the steady homosexual relationship established out of marriage by the wife during the marriage.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The petition was rejected and therefore the sons were entrusted to their father. Therefore homosexual and heterosexual relationships are evaluated in the same way in order to establish the responsibility for legal separation, without any discrimination: both are considered valid causes of cohabitation intolerability.

**Miscellaneous, case 5**

Case title	D. Giuffrida versus Ministry of Transport and Ministry of Defense
Decision date	12.07.2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Civil judgement, Tribunale di Catania (Catania's civil court)
Key facts of the case (max. 500 chars)	In 2006 Mr Giuffrida's driving license was suspended on the ground of "conflict of sexual identity": the applicant, who is a truck driver, during the medical examination had declared his homosexuality. Mr. Giuffrida appealed to the Administrative Court and judges granted the suspension of the decision which had suspended the driving license, assessing that homosexuality cannot be considered a psychiatric illness. At the same time, Mr. Giuffrida filed a petition at the Civil Court in order to obtain a restoration of the damage from the Ministry of Transport and from the Ministry of Defense.
Main reasoning/argumentation (max. 500 chars)	The Public Administration's behaviour constitutes a clear discrimination based on sexual orientation, in contrast with the Italian Constitution; as a consequence, the damage and sorrow caused to the applicant must both be restored.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Law does not require heterosexuality as a psycho-physical prerequisite for a truck driver; as a consequence, the public administration's behavior is a discrimination which is heavily offensive for homosexual persons, being an obstacle for their personal realization. The moral offence, then, has to be restored.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Ministries of Transport and of Defense were condemned to pay 100.000,00 € for existential damage and both appealed the decision.

**Miscellaneous, case 6**

Case title	X versus Y
Decision date	4.10.2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Civil judgement, Tribunale di Reggio Emilia (Reggio Emilia's civil court)
Key facts of the case (max. 500 chars)	An underage boy left his family because of a hostile relationship with his mother who did not accept his sexual orientation. The woman, in fact, stopped speaking to her son and giving him any maintenance.
Main reasoning/argumentation (max. 500 chars)	Maintenance of an underage son is not a free choice, but a binding duty descending from the responsibility of parents. As a consequence, its denial cannot be considered legitimate.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The hostile relationship between mother and son does not allow the latter to return home, because this would put him in a situation whereby he would be repudiated as a person. This would constitute a violation of the right of every person to respect for his personal identity, which includes of course his sexual orientation.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Considering that the right to maintenance cannot be refused to an underage son on the ground of his sexual orientation, the Civil Court sentenced the mother to give her son 250 Euros every month.

**Miscellaneous, case 7**

Case title	Ministry of Internal Affairs versus Mr MC Call and Mr Taddeucci
Decision date	12.05.2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Corte d'Appello di Firenze (Florence's Court of Appeal)
Key facts of the case (max. 500 chars)	Mr MC Call, a New Zealand national, and Mr Taddeucci, an Italian national, obtained from New Zealand the recognition of partners de facto status; therefore, the former requested the residence permit in Italy on the grounds of his family link to Mr Taddeucci. The Court granted it. But subsequently Ministry for Internal Affairs appealed to the Court of Appeal against the decision of first instance.
Main reasoning/argumentation (max. 500 chars)	Italian law requests the quality of family of the petitioner in order to grant the residence permit. In this case, New Zealand acknowledged the couple with the status of cohabitants. Constitutional Court case-law does not apply all the provisions concerning legal family to mere cohabitations on the ground that only the former is steady and involves both duties and rights. Besides parliament has not yet ruled the issues in a specific way, and pursuant to European law each State has a right to make its own choices. In any case, New Zealand is not a EC Member State.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In order to obtain a residence permit on the ground of family connections this kind of connection has to be recognised in Italy in accordance with domestic law.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Judges overturned the Civil Court's order. Therefore, until a law is passed recognising de facto unions is passed, family re-unions between persons of the same sex cannot be recognised, even if there is foreign recognition of the union.

Case title	Mr MC Call and Mr Taddeucci versus Ministry of Internal Affairs
Decision date	17.03.2009 n. 6441
Reference details (type and title of court/body; in original language and English [official translation, if available])	Civil judgement, Corte di cassazione, Sezione Prima civile (Supreme Court, First and civil section)
Key facts of the case (max. 500 chars)	Mr MC Call, a New Zealand national, and Mr Taddeucci, an Italian national, obtained the recognition of partners de facto status from New Zealand. Furthermore, the former requested the residence permit in Italy for family reunion with Mr Taddeucci. The Court granted it and then the Ministry of Internal Affairs appealed against the decision. The Court of Appeal overturned the decision of the Court of first instance which had authorized the family reunion.
Main reasoning/argumentation (max. 500 chars)	The Supreme Court assessed that partners de facto cannot be considered as “relative” under Italy/Dlgs. 286/98 (25.07.1998). Nonetheless, this extensive interpretation is not imposed by any constitutional rule and it cannot derive from Art. n. 9 of the European Charter of Human Rights or from Art. 12 of European Convention of Human Rights. Furthermore, the European Directive 2003/86/EC (implemented by Italy/Dlgs. 5/2007, that only concern the reunification of third country national with their family members) and the European Directive 2004/38/EC (implemented by Italy/Dlgs. 30/2007 that concern the right of citizen of the Union and their family members to move and reside freely within an other Member State and not the right of family reunification to a citizen of a Member State who is regularly resident and who lives in his country of origin) are not applicable in the case
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A non-EU citizen has not the right to family reunion with an Italian citizen of the same sex because the notion of relative, necessary under Art. N. 30 of Italy/Dlgs. 286/98, does not include de facto unions, both hetero and homo sexual.



Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court rejected the petition. As a consequence, until a law recognising de facto unions is passed, family re-unions between persons of the same sex will not be available, even if there is foreign recognition of the union.
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## Annex 2 – Statistics

The Minister of Equal Opportunities personally answered, 11.01.2008, that data or statistics are not available

The Minister of the Internal Affairs personally answered, 04.02.2008, that data or statistics are not available

### Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
Total findings of discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available

National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available

**Chapter B, Freedom of movement of LGBT partners**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under previous instruments)	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
Number of LGBT partners who claimed their right to residence but were denied this right	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available

**Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available

**Chapter C, Asylum and subsidiary protection, protection of LGBT partners**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available

**Chapter D, LGBT partners benefiting family reunification**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available

**Chapter E, LGBT people enjoyment of freedom of assembly**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
Number of demonstrations against tolerance of LGBT people.	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available



**Chapter F, Homophobic hate speech**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
Range of sanctions issued for homophobic hate speech	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
Number of non-criminal court cases initiated for homophobic statements	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than symbolic were imposed)	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available

**Chapter F, Homophobic motivation of crimes as aggravating factor**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available

**Chapter G, Transgender issues**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Number of name changes effected due to change of gender	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available
Number of persons who changed their gender/sex in your country under the applicable legislation	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available	Not available

**Chapter I, Statistics relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation  
[presentation according to the templates above]**

The Minister of Equal Opportunities personally answered, 11.01.2008, that data or statistics are unavailable

The Minister of the Internal Affairs personally answered, 04.02.2008, that data or statistics are unavailable

The Minister of Equal Opportunities was not able to give data or statistics available for the 2008 and 2009

The Minister of the Internal Affairs was not able to give data or statistics available for the 2008 and 2009