

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

Italy

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Author of the 2014 Update:
Carmelo Danisi
Franet contractor: C.O.S.P.E.

Authors of the 2010 Update:
Marta Cartabia
Elisabetta Crivelli
Elisabetta Lamarque
Diletta Tega

Author of the 2008 report:
Marta Cartabia

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Executive summary

Implementation of Employment Directive 2000/78/EC

Employment Directive 2000/78/EC has been implemented in Italy by Legislative Decree (*Decreto legislativo*) n. 216 of 9 July 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 December 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 no. 59/2008 (art. 8 septies), turned into Law No. 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 July 2003 provides that all agreements aimed at discriminating against workers ‘on grounds of sexual orientation’ are illegitimate. The National Office Against Racial Discrimination (UNAR) (*Ufficio Nazionale Antidiscriminazioni Razziali*, UNAR), has extended the scope of its activity from the field of discrimination based only on the grounds of race and ethnic origin to include discrimination based on sexual orientation and gender identity thanks to a decree of 31 May 2012 by the Minister of Public Administration. It has an advisory and monitoring role as well as that of information providing. For the first time, in 2013 UNAR adopted a national strategy on the implementation of the Recommendations of the Council of Europe on sexual orientation and gender identity. 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 no. 59/2008 to the articles of the Decree 216/2003 concern the understanding of victimisation (new art. 4 bis,; 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); the burden of proof (art. 4 (4); the role of the associations in the fight against discrimination (art. 5,).

In recent years, a clear trend to take into account discrimination based on sexual orientation and operate to change social attitudes towards LGBT people has emerged. The role of UNAR was enhanced by the implementation of the CoE Recommendation and cooperation with LGBT associations. No significant changes have occurred in case-law related to discrimination in employment on the ground of sexual orientation.

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). Traditionally, Italian law does not consider same-sex marriage or registered partnership or durable relationship, duly attested, as autonomous entitlement to enjoy freedom of movement. The 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 contracted abroad.

Since 2012, some Tribunals have started giving a different interpretation of the national law implementing the EU Directive. It aims to treat homogenously same-sex and opposite sex marriages contracted in other EU Member States with regard to family reunion in Italy, in light of the principle of non-discrimination, the Charter of Fundamental Rights and the right to family life enshrined in the European Convention on Human Rights. This trend has been consolidated at the institutional level, thanks to the clarification of the Ministry of Internal Affairs, which guarantees same-sex couples who got married in other EU Member States the same treatment reserved for heterosexual couples.

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 Court of Cassation (*Corte di Cassazione*) 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.

In 2012 an important development occurred. The Court of Cassation affirmed that in a State where homosexuality is punished under criminal law, irrespective of the effective application of such law, a gay or lesbian person is compelled to violate the law for enjoying his/her fundamental rights and freedom. Since such a provision promotes also the rise and persistence of homophobia in society, it is *per se* an objective persecution.

There is a clear trend to take into account positively persecution on the ground of sexual orientation, following progress observed in the interpretation of international and European standards on refugee status. Italian Tribunals are giving a more liberal interpretation of the relevant legislation, compared to CJEU judgement of cases C-199/12, C-200/12 and C-201/12. They have affirmed that, in order to recognise the existence of a persecution, the application of the law criminalizing homosexuality or same-sex acts in the country of origin of the applicant is not necessary. The simple existence of provisions criminalizing homosexuality or same-sex acts in the legislation of the country of origin of the applicant is, *per se*, a form of persecution that limits seriously the enjoyment of the fundamental rights of the asylum seeker.

Family reunification

The provisions of Directive 2003/86/EC with regard to family reunion have been implemented by Legislative Decree no. 5/2007.¹ The notion of the family relevant to the purpose of reunion used by Decree n o . 5/2007 is: (1) the spouse; (2) minor unmarried children of the spouse and of his/her spouse, or born out of wedlock, 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 reunion to persons in same-sex marriages or registered unions (neither heterosexual, nor LGBT) or de facto unions.

¹ Italy, Legislative decree (*Decreto legislativo*) no. 5, 8 January 2007.

No significant changes, both in case-law and legislation, have been reported in recent years in this specific field. However, it cannot be excluded that significant principles and interpretation that have emerged in the field of freedom of movement apply also to family reunion.

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.

No significant changes in case-law and legislation, have been reported in recent years in this specific field.

Hate speech and criminal law

Italian criminal legislation provides neither punishment against hate speech on the basis of sexual orientation, 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 (Law no. 654/1975, Law no. 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 Criminal 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.

In 2013, a bill extending the scope of the existing legislation against racial and ethnic discrimination to homophobia and transphobia was examined and approved by the Chamber of Deputies. LGBT associations have questioned the effectiveness of the proposed legislation in case it is approved by the Senate as well, because it excludes a wide range of discriminatory acts under the claim of protecting the freedom of expression.

There is growing attention in the newly elected Parliament on the issue of hate speech and homophobic crime. However, as has emerged during past Parliamentary debates, there is also significant opposition to the introduction of criminal provisions to combat homophobic and transphobic violence. Therefore, the current discussion of the bill does not, *per se*, guarantee a positive outcome.

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 the Rules concerning rectification of sexual attribution (*Norme in materia di rettificazione di attribuzione di sesso*).² 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 Registrar of Civil Status (*Ufficio dello Stato civile*)[].

While recently the Tribunal of Rovereto affirmed that gender reassignment surgery cannot be viewed as a mandatory requirement for the adjustment of related records of the registry office, in 2013 the Court of Cassation raised the question of constitutionality of this law. The reason behind this position lies in the automatic divorce imposed on persons who request and obtain gender reassignment while they are still married, with no consideration for a possible opposite opinion of the partner. It is based on an alleged breach of article 2 of the Constitution which protects inviolable human rights and social groups, article 3, prohibiting discrimination on grounds of social conditions, article 29, granting the recognition of marriage, as well as article 117, requiring the exercise of the legislative power of the state and the regions to comply with international law and obligations. The judgment of the Constitutional Court (*Corte costituzionale*), delivered on 11 June 2014, declared the constitutional illegitimacy of “forced divorce”, because it is in contrast with article 2 of the Constitution².

The mentioned developments and trend to broaden the protection of the fundamental rights of transgender persons seem to be consolidating. The role of civil society organisations has been of paramount importance and has led to the declaration of constitutional illegitimacy “forced divorce”. By asking Parliament to introduce a new form of partnership between persons, registered partnership, this judgment opens the way to new developments which may be beneficial also to lesbian and gay people.

Miscellaneous

In Italy, some positive actions for LGBT people are being pursued at both national and local level. In 2007, for example, three legislative bills were presented to Parliament (Bill no. 311/2007 establishing a National Day against Homophobia; Bill no. 1339/2007 introducing Jointly Responsible Contracts (*Contratti di unione solidale*); Bill 8 February 2007 on the rights and duties of persons in a stable partnership – DICO). Due to the premature end of the Parliament, the bills were not approved. Again in 2013, new bills on the same issues have been submitted to Parliament for discussion (Bill no. 403/2013 establishing a National Day against Homophobia; Bill no. 15/2013 against spouse discrimination). .

Some town councils, though it is not possible to list exactly which ones, 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.

² Italy, Constitutional Court (*Corte costituzionale*), judgment no. 170, 11 June 2014.

Homophobic statements made by high level politicians, including the former Prime Minister Berlusconi, has led to a long debate and an increase in discriminatory acts against LGBT persons, according to LGBT associations.

The number of judgments in LGBT parenthood is growing.

Our research did not find any evidence of phallometry or phallometric testing.

Our research did not find any legislation comparable to the Lithuanian one institutionalizing homophobia.

A clear trend has emerged in case-law to recognise the rights of same-sex couples and more generally, to consider sexual orientation as a (positive and) fundamental aspect of a person's life, as shown by the growing case law on granting custody of a child to LGBT persons. At the institutional level, a range of significant initiatives have been taken to ensure equal treatment of cohabiting same-sex couples, including recognition of the right to social benefits, registration of same-sex marriage contracted in other EU Member States. Recognition of same-sex marriages still faces significant opposition while many high level politicians have been involved in public statements against homosexuals.

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 Statute of the Region of Tuscany (*Statuto della Regione Toscana*).³

In 2009 also the region of Liguria passed a Regional Law (*Legge Regione Liguria*) no. 52/2009⁴ providing for specific actions in favour of LGBT persons in relation to various issues, such as employment, health and culture.

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 4 August 2008 the Minister of Equal Opportunities signed an agreement with the National Institute of Statistics (ISTAT) (*Istituto Nazionale di Statistica*, ISTAT) to carry out the first multipurpose survey regarding "Discrimination on the ground of sexual orientation, identity and ethnicity". The results of the survey were published in 2012. Briefly, two million people declared that they had had a homosexual experience in their lives. About 40.3% of homosexuals/bisexuals said they had been discriminated against in the following sectors: school

³ Italy, Statute of the Tuscany Region (*Statuto della Regione Toscana*), 19 July.2004.

⁴ Italy, Liguria Region Law no. 52/2009, available at: <http://rl.regione.liguria.it/leggi/docs/20090052.htm> All hyperlinks were accessed on 27 April 2014.

or university, workplace, access to employment, relationship with neighbours, public offices, access to health services and private housing.⁵

In 2009 several judges⁶ raised the question of the constitutionality of Civil Code (*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, article 3, prohibiting discrimination on grounds of social conditions, article 29, granting the recognition of marriage, as well as article. 117, paragraph I, requiring the exercise of the legislative power of the state and the regions to comply with international law obligations.

With judgement no. 138/2010⁷, the Constitutional Court declared the question partly inadmissible and partly unfounded and stated that finding safeguards and recognising homosexual unions are both up to the Parliament in the exercise of its discretionary power.

After the election of the new Parliament in 2013, a bill on recognition of the rights of same-sex couples was presented to the Parliament. It will be examined in 2014.

The Observatory for security against acts of discrimination OSCAD (*Osservatorio per la sicurezza contro gli atti discriminatori*) was established by decree of the Head of the Police of 2 September 2010, within the Department of Public Security, General Office of Criminal Police. It collects complaints on hate crimes.

Intersex

Intersex persons are invisible in national anti-discrimination legislation and policies as well as in jurisprudence.

By law, a child cannot be recorded in the birth registry without gender identification in his/her birth certificate. Surgical and medical interventions are still performed on intersex children at birth with the consent of the parents. The draft of a new law aimed at regulating this aspect was presented to Parliament in 2013.

However, the National Committee on Bioethics stressed the importance of acting in the best interest of the child adopting a case by case approach and avoiding surgical and medical intervention until the child is able to give his/her informed consent.

⁵ Italy, Institute of Statistics (ISTAT) (2012), *The homosexual population in Italian society (La popolazione omosessuale nella società italiana)*, Rome, ISTAT, available at: www.istat.it/it/files/2012/05/report-omofobia_6_giugno.pdf

⁶ Italy, Tribunal of Venice (*Tribunale di Venezia*), 3 April 2009; Court of Appeal of Trento (*Corte di Appello di Trento*), 29 July 2009; Court of Appeal of Florence, (*Corte di Appello di Firenze*), 3 December 2009; Tribunal of Ferrara (*Tribunale di Ferrara*), 3 December 2009.

⁷ Italy, Constitutional Court (*Corte costituzionale*), judgment no. 138, 14 April 2010.

A. Implementation of Employment Directive 2000/78/EC

Employment Directive 2000/78/EC has been implemented in Italy by Legislative Decree (*Decreto legislativo*) No. 216 of 9 July .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 December 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, paragraph 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; Article 10, para. 1 on the burden of proof 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 no. 101/2008 introduced a series of changes to Legislative Decree no. 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 not to 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) was introduced providing legal protection not only to the victim of direct or indirect discrimination, but also to 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 Legislative Decree No. 216 of 9 July 2003 adds a sentence to article 15 of Law No 300/1970⁸, the basic Italian law on the protection of workers, the so-called Workers' Statute (*Statuto dei lavoratori*), 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 9 July 2003,⁹ implementing Directive 2000/43/EC, a Prime Minister's decree issued on 11 December 2003 set up the Office against Racial Discrimination (UNAR) (*Ufficio Nazionale Antidiscriminazioni Razziali*,

⁸ Italy, Law no. 300, 20 May 1970.

⁹ Italy, Legislative decree (*Decreto legislativo*) no. 215, 9 July 2003.

UNAR)) [] within the Department of Rights and Equal Opportunities.¹⁰ At the beginning, UNAR dealt mainly with issues of racism and xenophobia; later, a decree of the Minister of Public Administration of 31 May 2012 extended the scope of UNAR's areas of activity to include discrimination on all the grounds covered by Directive 2000/78, besides the grounds of race and ethnic origin.¹¹ This body has advisory, monitoring and information provision roles. UNAR has two main departments: the Service for equal treatment and the Service for studies, research and institutional relationships. The powers of UNAR are the following:

- Legal advice: UNAR gives legal advice for civil and administrative proceedings undertaken by victims of discrimination, through a specific Contact Centre. It does not include representation in court.
- Monitoring: UNAR carries out enquiries to verify the existence of discrimination, even without complaints by third parties, 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: UNAR promotes projects on positive action against discrimination.
- Information: UNAR disseminates information by means of awareness raising and advertising campaigns.
- Consultancy: UNAR elaborates recommendations and advice on issues relating to discrimination.
- Study and research: UNAR promotes data collection, studies, research and training courses in cooperation with NGOs and associations operating in the same field. This also includes the establishment of guidelines and codes of conduct to be applied in the fight against discrimination.

Media and Web monitoring: through its Contact Center, UNAR monitors discrimination on all grounds that are reported in the media and on the Internet. To accomplish this task, an agreement was signed by UNAR in 2011 with the Observatory for security against discriminatory acts OSCAD (*Osservatorio per la sicurezza contro gli atti discriminatori*) of the Ministry of the Internal Affairs.¹² The Protocol is aimed at ensuring mutual exchange of information on discriminatory acts in order to detect and fight them. The two bodies – UNAR and OSCAD - cooperate with the Postal police (*Polizia postale e delle comunicazioni*).

As to proceedings aimed at safeguarding victims of discrimination, Legislative Decree No. 216/2003¹³ refers to article 44 of the Immigration Framework Act, Legislative Decree No. 286/1998¹⁴, which provides a fast procedure. In particular, after a victim's petition has been filed without any formality at a tribunal, the judge can order the respondent to stop the discriminatory behaviour and may also take additional measures that may be necessary to counter the 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 article 388 of the Criminal Code, if the respondent does not respect the judge's decision, he/she

¹⁰ Italy, Legislative decree (*Decreto legislativo*) no. 216, 9 July 2003.

¹¹ Italy, Decree of Minister of Public Administration, 31 May 2012, available at: www.funzionepubblica.gov.it/media/999702/direttiva.pdf.

¹² Italy, Observatory for security against discriminatory acts (*Osservatorio per la sicurezza contro gli atti discriminatori*, OSCAD), available at: www.governo.it/backoffice/allegati/63209-6723.pdf

¹³ Italy, Legislative decree (*Decreto legislativo*) no. 216, 9 July 2003.

¹⁴ Italy, Legislative decree (*Decreto legislativo*) no. no. 286, 25 July 1998.

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/her

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

As to the burden of proof, the Commission was not satisfied with the Italian norms implementing article 10 of the Directive, because in the Commission's view it had been implemented in the narrowest sense¹⁵, 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 No. 59/2008 (art. 8-sexies) turned into Act 101/2008, in order to respond to infringement procedure 2005/2358.¹⁶

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 article 9/2 of the Directive, because article 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 procedure established by article 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*.¹⁷: in order to eliminate the described discrepancies with Directive 2000/43/EC, article 5 of Decree no. 216/2003 was amended by article 8 septies of Decree Law No. 59/2008 turned into Law No. 101/2008. The right to take part in litigation, previously limited by Decree No. 216/2003 only to local representatives of the major 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 article 5 now provides that all organizations or associations representing the rights or interests 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 a judicial procedure if the victim of discrimination cannot be clearly identified.

¹⁵ European Commission, 12 December 2006, infringement procedure no. 2006/2441.

¹⁶ Italy, Legislative decree (*Decreto legislativo*) no. 215/2003, Art. 4.

¹⁷ European Commission, 12 December .2006, infringement procedure no. 2006/2441.

The registry of associations, established by UNAR pursuant to article 5 Legislative decree 215/2003 implementing Directive 2000/43, currently includes more than 320 associations.¹⁸ There is no information on the use by associations, of the possibility of standing in litigation on behalf or in support of complainants. However, taking into account UNAR's Annual reports and the database on the website, civil society organisations have used this possibility in relation to discrimination on grounds of ethnic origin.¹⁹ More frequently, civil society organisations submit complaints to UNAR also through local monitoring agreements or directly promote legal action or legal assistance to victims (see, for example, Administrative Tribunal of Piemonte, judgment 13 February 2002, no. 323; Tribunal of Bolzano, 11 November 2010, no. 665; Tribunal of Bolzano, judgment no. 342/2011L, 20 July 2011; Tribunal of Venice, judgment 8 October 2010. All these judgments are available on UNAR's website).

In the past years, UNAR has, together with the Department of Equal Opportunities, implemented different projects on discrimination based on sexual orientation and gender identity. On 4 August 2008, the Minister of Equal Opportunities signed an agreement with the National Institute of Statistics (ISTAT) (*Istituto Nazionale di Statistica*, ISTAT) to carry out the first multipurpose survey regarding discrimination on the grounds of sexual orientation and gender identity and ethnicity. The results of the survey were published in 2012.²⁰ First, the survey invited respondents to declare their sexual orientation: one million people declared being homosexuals or bisexuals and two million others declared having had a homosexual experience in their life. Secondly, the questionnaire was focused on discrimination experienced by respondents in different areas: at school or university, at the workplace, in access to employment, relationship with neighbours, in public offices, access to health services and in private housing. In relation to these areas, data show that 24% of homosexuals/bisexuals interviewed reported having experienced discrimination at school or university, while only 14.2% of heterosexuals declared the same. As for the workplace, 22.1% of homosexuals/bisexuals were discriminated compared to 12.7% among heterosexuals. Considering all the areas mentioned, 40.3% of homosexuals/bisexuals said they had been discriminated against, compared to 27.9% of heterosexuals. The percentage rises to 53.7% if we consider discrimination suffered (and admittedly related to homosexuality/bisexuality of respondents) when looking for a house to rent (10.2%), relationships with neighbours (14.3%), access to health services (10.2%), in the offices of public administration or in public transport (12.4%). Though a high percentage of people (61.3%) stated that homosexual persons are discriminated against, a significant part of the population does not accept that they may be employed in some positions: 41.4% is against an LGBT person being a teacher in a primary school; 28.1% is against an LGBT person being a health service provider and 24.8% is against a gay politician.

In April 2013, taking into account these results, a national strategy against discrimination on LGBT grounds was adopted with the aim of implementing the Recommendation of the Committee of Ministers CM/REC(2010)5 of the Council of Europe.²¹ The strategy brings together the National LGBT Working Group (29 associations), the inter-institutional cooperation Committee headed by UNAR and involving central and regional administrations, social partners (employers' organisations

¹⁸ Italy, UNAR, List of registered associations, available at: www.unar.it/unar/portal/wp-content/uploads/2013/11/Elenco-delle-Associazioni-e-gli-Enti-art.-5-d.lgs.-215-03-2013.pdf

¹⁹ UNAR's database, available at: www.unar.it/unar/portal/?page_id=115.

²⁰ Italy, Institute of Statistics (ISTAT) (2012), *The homosexual population in Italian society (La popolazione omosessuale nella società italiana)*, Rome, ISTAT.

²¹ Italy, National Office Against Racial Discrimination (UNAR) - Equal Opportunities Department (*Dipartimento Pari Opportunità*) (2013), *National Strategy to prevent and combat discrimination on grounds of sexual orientation and gender identity (2013-2015)*, Rome, available at: www.pariopportunita.gov.it/images/Strategia%20nazionale%20-%20vers.%20EN.pdf

and trade unions), and the National Network of Public Administrations Against Discriminations on the ground of sexual orientation and gender identity (RE.A.DY) (*Rete Nazionale delle Amministrazioni Pubbliche Anti Discriminazioni per l'orientamento sessuale e l'identità di genere*, Re.A.Dy.), made up of public administrations against discrimination based on sexual orientation and gender identity. The strategic areas of actions are: education, employment, security and prisons and communications and the media.

Within the framework of the national strategy against discrimination of LGBT persons and thanks to the use of European Structural Funds, in 2013, the Equal Opportunities Department and UNAR financed:

- a project to enhance information and inclusion by companies on the theme of diversity management;
- a project for the establishment of an Interregional Observatory for monitoring the forms, structures and activities of local media and as well as social media, in connection with the development of stereotypes related to differences in ethnic origin, religion, opinion, disability, age, sexual orientation and gender identity;
- two research projects on the establishment of information, counselling and support offices for transgender persons and on the improvement of the conditions of LGBT persons in prison.²²

Moreover, in January 2013, the Equal Opportunities Department and the Ministry of Labour launched the campaign “Yes to diversity. No to homophobia” (*Si alle differenze. No all'omofobia*) (), aimed at raising awareness on the topic of homophobia and discrimination on grounds of sexual orientation and gender identity.²³

It is worth noting that, due to current financial constraints following the economic crisis, the general reduction of resources allocated to equality bodies has led to some changes in the UNAR's governance and a reduction of its staff. It is not to be excluded that these aspects may seriously hamper the implementation of equal opportunities and non-discrimination policies. For this reason, in 2012 about 120 NGO's joined an appeal proposed by the Italian Federation for overcoming disability (FISH) (*Federazione Italiana Superamento Handicap*, FISH) expressing strong concerns about the risk of reducing the effectiveness of UNAR in protecting and assisting victims of discrimination.²⁴

According to data provided directly by UNAR, in 2012, 144 cases of discrimination based on sexual orientation were recorded, amounting to 11.2% of the total number of cases recorded during the same year. In a majority of the cases (139), discrimination was direct while five cases were instances of indirect discrimination. The majority of complaints (43.1%) were made by people who witnessed cases of discrimination, whereas about one in four complaints was made directly by a victim. Overall, two in three complaints were received from people involved in the

²²Italy, Equal Opportunities Department (*Dipartimento Pari Opportunità*), ‘Unar, aggiudicazione definitiva per la realizzazione di un progetto pilota volto a migliorare le condizioni delle persone LGBT nelle carceri’, Press release, 23 December 2013; UNAR, ‘Lavoro: diversità, uguale opportunità’, Press release, 4 March 2014; Equal Opportunities Department (*Dipartimento Pari Opportunità*), ‘UNAR, indagine di mercato per la realizzazione di un Osservatorio interregionale’, Press release, 23 July 2013.

²³ Italy, Equal Opportunities Department (*Dipartimento Pari Opportunità*), ‘Si alle differenze. No all'omofobia’, Press release. January 2013, available at: www.pariopportunita.gov.it/index.php/campagne-di-informazione/2254-ysi-alle-differenze-no-allomofobia

²⁴ Italy, FISH, ‘Appello a Governo e partiti: non cancellate l'UNAR’, Press release, 13 July 2012, available at: www.fishonlus.it/2012/07/13/appello-a-governo-e-partiti-non-cancellate-unar/

discriminatory act and 25.7% of cases investigated were initiated *ex officio*. Almost half of all complaints (49.3%), were made through the Internet. With specific reference to discrimination cases, about 36.8% of them occurred in “public life”, whereas one in three cases was (33.3%) in the “mass media”. They frequently included verbal insults and homophobic writing. In the “schools and education” sector, the percentage of cases recorded was 7.6% while in other sectors such as leisure, employment and health, the number of cases was very low.

From the above, it can be said that there is a clear trend to consider discrimination based on sexual orientation with more attention and act to change social attitudes towards LGBT people.²⁵ The role of UNAR has been enhanced by broadening the scope of its mandate to include also discrimination based on sexual orientation. Thanks to its activity, many measures have been taken to collect data, conduct researches and establish networks with LGBT associations. The implementation of the CoE Recommendation has been a significant opportunity for reinforcing these new activities. However, taking into account the lack of case-law on discrimination motivated by sexual orientation, it is difficult to assess the effective application of Directive 2000/78 and the role of civil society organisations in engaging or supporting persons who have suffered discrimination in employment on the grounds of their sexual orientation or gender identity.

²⁵ Italy, National Office Against Racial Discrimination (UNAR) - Equal Opportunities Department (*Dipartimento Pari Opportunità*) (2013), *National Strategy to prevent and combat discrimination on grounds of sexual orientation and gender identity (2013-2015)*, Rome,

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. Recent developments in case-law have led to some protection for same-sex couples through the interpretation of national laws in the light of European standards on freedom of movement. However, until now, no changes in the law have been observed.

Directive 2004/38/EC has been implemented by Legislative Decree 30/2007.²⁶ Article 2 of the Decree 30/2007 reproduces article 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 article 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 (article. 11, *Regolamento 394/1999*²⁷ and other modifications²⁸). 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

²⁶ Italy, Legislative decree (*Decreto Legislativo*) no. 30, 6 February 2007.

²⁷ Italy, Legislative decree (*Decreto legislativo*) no. 394, 31 August 1999.

²⁸ Italy, Ministerial memorandum 18 July 2007.

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.

Statistics have been requested from the Ministries of Internal Affairs and Justice as well as from UNAR and according to their replies by email, no data is available because such data is not collected.

In recent years at least three homosexual couples have requested recognition of their relationship by the Italian authorities. A decision of the Tribunal of Latina (*Tribunale di Latina*)²⁹ 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 Court of Appeal of Rome (*Corte di Appello di Roma*) [] of 13 July 2006 confirms the Tribunal decree. The Tribunal of Florence decree of 07 July 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 Court of Appeal of Florence.³⁰ 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 third country, same-sex partnerships and related rights. The applicants appealed to the Court of Cassation (*Corte di Cassazione*) that on 17 March 2009 with the decision No. 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 reunion. The Court of Cassation assessed that partners de facto cannot be considered as “relative” under Legislative decree no. 286/98 (25 July 1998). Nonetheless, this extensive interpretation is not imposed by any constitutional rule and it cannot derive from article 9 of the EU Charter of Fundamental Rights or from article 12 of European Convention of Human Rights. Furthermore, the European Directive 2003/86/EC (implemented by Legislative decree no. 5/2007, that concerns only the reunion of third country nationals with their family members) and the European Directive 2004/38/EC (implemented by Legislative decree no.30/2007 that concerns the right of citizens of the Union and their family members to move and reside freely within another Member State and not the right of family reunion to a citizen of a Member State regularly resident who lives in his country of origin) are not applicable in this case.³¹ The applicants have brought the case to the European

²⁹ Italy, Tribunal of Latina (*Tribunale di Latina*), 10 June 2005.

³⁰ Italy, Court of Appeal of Florence, (*Corte d'appello di Firenze*), 12 May 2006.

³¹ Italy, Court of Cassation (*Corte di Cassazione*), judgment 19 March 2009.

Court of Human Rights for an alleged violation of article 8 of the European Convention on Human Rights. The European Court has communicated the case to the Italian Government and a judgment is expected.³²

On 13 February 2012, the Tribunal of Reggio Emilia accepted the complaint presented by a non-EU citizen, who contracted a same-sex marriage with an Italian citizen under Spanish law. While the competent authority denied the applicant a stay permit, the Tribunal recognised the right of the applicant to a legal title to stay (stay permit) in Italy under Legislative decree 30/2007 (which implements Directive 2004/38/EC). According to the Tribunal, the said decree 30/2007, being the implementation of an EU directive, must be interpreted in light of the principles and Treaties of the European Union, including the principle of non-discrimination on the ground of sexual orientation and article 9 of Charter of Fundamental Rights of the European Union on the right to marry. In particular, the notion of marriage contained in the EU Directive and in the implementing decree has to reflect the content of article 9 of the EU Charter recognising the related benefits to all married couples, irrespective of their sexual orientation.³³

For its considerations on freedom of movement, the position taken by the Court of Cassation in its judgment no. 4184/2012 is significant.³⁴ Though it expressly asserted that a same-sex marriage contracted abroad cannot be registered in Italy, it also affirmed that the partners of a same-sex couple, living together in a stable *de facto* relationship, are entitled to the right to "family life". Therefore, in specific circumstances, they can claim the right to a treatment that is homogenous with the one accorded to married couples by the law. In the same judgment, the Court also excluded that the difference in sex between partners constitutes an inherent and necessary feature of marriage being that Italy is part of the ECHR's system of protection, where an important evolution took place after the European Court's *Schalk and Kopf v. Austria* judgment. Put this way, the Court admitted that a same-sex marriage is not *per se* contrary to Italian public order.

On the basis of the above judgment of the Court of Cassation, the Tribunal of Pescara accepted the appeal filed by the spouse of an EU citizen against the denial of a stay permit by the competent authority (*Questore*). According to the Tribunal, it is irrelevant that Italy does not recognise the right to same-sex marriage because the legislative decree implementing EU Directive 2004/38 should be applied taken into account the status acquired abroad. This interpretation may grant the respect of the right to family life and the principle of non-discrimination. Moreover, since the marriage of the same-sex couple is not in contrast with public order, there are no other reasons that can justify the denial of a stay permit to the spouse of an EU citizen.³⁵

Besides, the Minister of Internal Affairs has taken a clear position on this point. In relation to same-sex couples married abroad and in which one of them is an EU citizen, the Minister has advised the relevant authorities issuing the stay permit (*Questore*), to consider the spouse as a "family member". In this way, judgment no. 138/2010 of the Constitutional Court (*Corte*

³² European Court of Human Rights, *Taddeucci and McCall v. Italy* communicated case no. 51362/09, February 2012.

³³ Italy, Tribunal of Reggio Emilia (*Tribunale di Reggio Emilia*), decision 15 February 2012.

³⁴ Italy, Court of Cassation (*Corte di Cassazione*), judgment no. 4184, 8 March 2012, available at: www.articolo29.it/decisioni/corte-di-cassazione-sentenza-del-15-marzo-2012-n-4184/.

³⁵ Italy, Tribunal of Pescara (*Tribunale di Pescara*), decision 15 January 2013.

costituzionale) affirming the fundamental right of homosexual couples to freely enjoy their unions will also be respected.³⁶

The recognition of the right to family life for same-sex couples has clear implications for other benefits besides freedom of movement in Italy. For instance, with regard to social benefits, if such benefits are not recognised but are necessary for same-sex couples to fully exercise and enjoy the right to family life, they may challenge such provisions in Court in line with the Constitutional Court's judgement no. 138/2010 (see for instance the judgement of the Court of Appeal of Milan, Labour Section, no. 7176, in Annex 1).

Therefore, the trend to guarantee same-sex couples married abroad the same treatment granted heterosexual married couples in relation to the right to freedom of movement is clear. The rulings by the Tribunals of Reggio Emilia and Pescara³⁷ were consolidated at the institutional level following a clarification circular by the Ministry of Internal Affairs³⁸. The recognition of the right to family life of same-sex couples by the Court of Cassation had a clear positive impact on this issue³⁹. In the absence of case-law on same-sex couple registered in a partnership abroad, we cannot say yet if this solution may apply also to such case in light of the right to family life.

³⁶ Italy, Minister of Internal Affairs (*Ministero degli Affari Interni*), note (*circolare*) no. 8996, 26 October 2012, available at: www.programmaintegra.it/uploads/c36e9c21-2574-184f.pdf.

³⁷ Italy, Tribunal of Reggio Emilia, decision 15 February 2012; Tribunal of Pescara, decision 15 January 2013.

³⁸ Italy, Minister of Internal Affairs (*Ministero degli Affari Interni*), note (*circolare*) no. 8996, 26 October 2012.

³⁹ Italy, Court of Cassation, judgment no. 4184, 8 March 2012,

C. Asylum and subsidiary protection

Directive 2004/83/EC has been implemented by Legislative Decree 251/2007.⁴⁰ 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.⁴¹

Official data available, supplied by the Ministry for Internal Affairs on 4 February 2008, includes the period between 2005 (the first year of activity of the Territorial Commissions for Asylum Rights (*Commissioni territoriali di asilo*)) and the start of 2008. The National Commission for Asylum Rights (*Commissione nazionale di asilo*) 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 the Ministry of Internal Affairs does not specify neither the reasons that justify granting of refugee status or other kinds of humanitarian protection, nor the specific ground (sexual orientation or gender identity)⁴². 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 no. 251, 19 November 2007.⁴³

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 provided by UNHCR Italy (see the website of the LGBT organisation EURIALO&NISO - Associazione LGBT Biella. "diritti e culture delle differenze") indicates that 40 persons obtained refugee status or other humanitarian protection because of persecution on the basis of their sexual orientation.⁴⁴ The data does not specify the reasons that justify granting of refugee status or the other kinds of humanitarian protection. (Indeed it is not possible to indicate whether the protection granted was that of refugee status or another form of subsidiary protection, because Italy has only recently adopted Directive 2004/83/EC by means of Legislative Decree 251/2007 of 19 November 2007.).

More recent official data has been requested from the National Commission for Asylum Rights, the Ministries of Internal Affairs and Justice, UNAR and all responded that there is no data because such data is not collected. Statistics available on the website of the Ministry of Internal Affairs include only the country of arrival of all asylum seekers, irrespective of the ground for claiming asylum⁴⁵

⁴⁰ Italy, Legislative Decree (*Decreto legislativo*) no. 251, 19 November 2007.

⁴¹ Italy, Minister of Internal Affairs, Guidelines for the evaluation of the requests for the recognition of the status of refugee (*Linee guida per la valutazione delle richieste di riconoscimento dello status di rifugiato*), 2005, p. 21.

⁴² Jansen, J. et al. (2012), *Fleeing Homophobia*, Amsterdam, University of Amsterdam, p. 15.

⁴³ Italy, Legislative Decree (*Decreto legislativo*) no. 251, 19 November 2007.

⁴⁴ Italy, Eurialo&niso, 'Commissariato Onu: 40 rifugiati per orientamento sessuale', Press release, 29 August 2007, available at: <http://eurialoeniso.blogspot.com/2007/08/commissariato-onu-40-rifugiati.html>

⁴⁵ Jansen, J. et al. (2012), *Fleeing Homophobia*, Amsterdam, University of Amsterdam, p. 15.

Two recent Court of Cassation decisions⁴⁶ 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 indecency’, is considered a criminal offence. It is important to underline that both cases arose in opposition to expulsion decrees (see Annex 1, Chapter C).

An important development occurred in 2012. The Court of Cassation in its judgment No. 15981/2012, decided on the appeal of an LGBT man from Senegal against the denial of refugee status. The Court stated that in a State, such as Senegal, where homosexuality is punished under criminal law, the fundamental right to freely live both sexual and affective life which is protected by the Italian Constitution, the European Convention on Human Rights and the EU Charter of Fundamental Rights, is denied. As a consequence, the existence of a similar criminal offence compels an LGBT person to violate the law by merely enjoying his/her fundamental rights and freedoms. Since it facilitates also the rise and the persistence of homophobia in that society, the situation suffered by the appellant is definitely an objective persecution. The Court of Cassation sent the case back to the Court of Appeal of Trieste for a new judgment, stressing specifically three points: first, it is not necessary that the criminal offence is effectively applied; secondly, the judge has to take into account the standards of human rights protection in accordance with the EU Charter of Fundamental Rights, being the field in question covered by EU legislation; thirdly, the assessment of the judge should include the level of societal disapproval and homophobia in the country of origin which are reinforced by the existence of a criminal offence.⁴⁷

This development has been used and confirmed by different Tribunals. The first case was that of a homosexual man from Cameroon who obtained refugee status in the light of the criminalisation of homosexuality in his country of origin and his story being considered credible.⁴⁸ The second case was brought before the Court of Appeal of Bari by a homosexual man from Gambia following the denial of refugee status on the grounds of persecution suffered as LGBT person. The Court confirmed that the effective application of the criminal offence is irrelevant for the recognition of the refugee status.⁴⁹

Data about family reunion does not exist, since the Italian legal system provides family reunion only for the spouse of a heterosexual marriage (Art. 29 a, Legislative Decree no. 286/1998).⁵⁰

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

Although the recognition of family life by the Court of Cassation may have an impact for the purpose of family reunion, the concept of family member in this specific field has not been addressed in case law yet.

There is a clear trend to take into account positively persecution on the ground of sexual orientation thanks to the evolution observed in the interpretation of international and European standards on refugee status. when compared to CJEU judgement of cases C-199/12, C-200/12 and C-201/12, Italian Tribunals are accepting a more liberal interpretation of the relevant legislation. They have

⁴⁶ Italy, Court of Cassation (*Corte di Cassazione*), judgement 18 January 2008, and Court of Cassation (*Corte di Cassazione*), judgement 25 July 2007.

⁴⁷ Italy, Court of Cassation, VI civil sect. (*Corte di Cassazione, VI sez. civile*), decision no. 15981, 20 September 2012, available at: www.articolo29.it/wp-content/uploads/2012/11/cass-15981-2012.pdf.

⁴⁸ Italy, Tribunal of Bologna (*Tribunale di Bologna*), appeal no. 9947/2013, 4 November 2013.

⁴⁹ Italy, Court of Appeal of Bari, I civil sect. (*Corte di Appello di Bari, I sez. civile*), appeal no. 640/12, 5 March 2013.

⁵⁰ Italy, Legislative decree (*Decreto legislativo*) no. 286, 25 July 1998.

affirmed that, in order to recognise the existence of a persecution, the application of the law criminalizing homosexuality or same-sex acts in the country of origin of the applicant is not necessary. The mere existence in the legislation of the applicant's country of origin of such criminalization is *per se* a form of persecution, limiting seriously the enjoyment of the fundamental rights of the asylum seeker.

D. Family reunification

Directive 2003/86/EC was implemented by Legislative Decree 5/2007.⁵¹ The notion of the family relevant to the purpose of reunion is: (1) the spouse; (2) minor unmarried children of the spouse and of his/her spouse, or born out of wedlock, 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 reunion to persons in same-sex marriages or registered unions (neither heterosexual, nor LGBT) or de facto unions.

Data about family reunion of same-sex partners do not exist since the Italian legal system provides family reunion only for the spouse, not including same-sex marriage (Art. 2 e Legislative Decree 5/2007, Art. 29 a Legislative Decree 286/1998).⁵² The Italian courts do not recognise a marriage concluded abroad between two persons of the same sex as giving rise to family reunion rights in Italy where one of the two spouses is granted the right to reside in Italy.

No significant changes, both in case law and in legislation, have been reported in recent years on this specific issue. New data was requested from relevant authorities and they replied that there is no data.⁵³ The problematic aspect is that no cases involving partners both of whom are third country nationals have so far been brought before a Court. All the cases recorded since 2007 involved couples with at least one EU citizen, thus calling into question Directive 2004/38 (see section B).⁵⁴ However, considering the interpretative principles developed in relation to freedom of movement, it may not be excluded that they would apply also in the field of family reunion.

⁵¹ Italy, Legislative decree (*Decreto legislativo*) no. 5, 8 January 2007.

⁵² Italy, Legislative decree (*Decreto legislativo*) no. 286, 25 July 1998.

⁵³ Data on family reunion were requested by e-mail from the Ministry of Internal Affairs, the Ministry of Justice and the Equal Opportunities Department in February 2014.

⁵⁴ See Italy, Tribunal of Latina (*Tribunale di Latina*), 10 June 2005; Court of Appeal of Florence (*Corte d'appello di Firenze*), 12 May 2006; Court of Cassation (*Corte di Cassazione*), judgment no. 6441, 17 March 2009; Court of Cassation (*Corte di Cassazione*), judgment 19 March 2009; Tribunal of Reggio Emilia (*Tribunale di Reggio Emilia*), decision 15 February 2012; Court of Cassation (*Corte di Cassazione*), judgment no. 4184, 8 March 2012; Tribunal of Pescara (*Tribunale di Pescara*), decision 15 January 2013; Minister of Internal Affairs (*Ministero degli Affari Interni*), note (circolare) no. 8996, 26 October 2012.

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 head of the police administration (*Questore*) of that place at least three days prior to the meeting, as provided by Article 18 of Royal Decree (*Regio Decreto*) [] 1931-773.⁵⁵ 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.

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. In 2014, a new official request was sent to the Ministry of Internal Affairs and the answer was that no data is collected on this issue.

The Court of Cassation decided on a case related to the use in a TV programme of the personal images of an actor participating in an LGBT parade. According to the judgment, the gay pride is a public event and all actions taken while participating in such parade may be subject to audiovisual reproduction without prior personal authorisation. Moreover, the Court rejected the applicant's argument that being associated with gay people constituted a damage to his reputation. Although it was not relevant for the outcome, the Court stated that gay parades do not have a negative value which may damage the reputation of participants, as the applicant had claimed.⁵⁶

⁵⁵ Italy, Royal Decree (*Regio Decreto*) no. 1931-773, 18 June 1931.

⁵⁶ Italy, Court of Cassation, III civil sect. (*Corte di Cassazione, III sez. civile*), judgment 24 October 2013.

Although lack of data remains an issue, the enjoyment of the freedom of assembly by LGBT people is not a problem in Italy. Being constitutionally protected, very sound reasons are needed in order to restrict its enjoyment and no episodes of such kind have occurred in recent years. Increasing numbers of gay pride parades are organised in different cities and there is no information in the media of a refusal to authorise such initiatives or significant protests. The only case that can be recalled (Court of Cassation, III sect., 24 October 2013) led to an important statement: that being associated with Gay pride does not affect a person's reputation.

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, Law no. 654/1975,⁵⁷ which ratifies and implements the International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966, as amended by Decree Law (*Decreto legge*) 122/1993).⁵⁸

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.⁵⁹ But the Government decree could not be turned into law because of a mistake in the quotation of the relevant article of the EC Treaty (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 EC Treaty’): 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 January 2008, proposed to the whole Assembly a text for discussion and approval (Chamber of Deputies, bill Nos. 1249-ter and others). However, as previously noted, a few days later the President of the Republic decided to dissolve Parliament, with the consequence that it has not been approved before election day (13 April 2008).

During the period of the XVI legislature (April 2008 – March 2013), at the very beginning of 2009, the Justice Commission of the Chamber of Deputies started examining a bill, proposed by two opposition Parties (*Partito Democratico* and *Italia dei valori*), aiming at introducing in the Criminal Code an aggravating circumstance in cases of violence for reasons of sexual orientation.⁶⁰ The bill was not turned into a law as the prejudicial question of unconstitutionality was approved: on 13 October 2009 the Chamber of Deputies voted in favour (285 v. 222) of the prejudicial question of the unconstitutionality of that bill in order to show the maximum of the dissenting, following a Union of Center motion.⁶¹ The bill, from point of view of the

⁵⁷ Italy, Law (*Legge*) no. 654, 13 October 1975.

⁵⁸ Italy, Law Decree, (*Decreto legge*) no. 122, 26 April 1993.

⁵⁹ Italy, Law Decree (*Decreto legge*) no. 181, 1 November 2007.

⁶⁰ Italy, Senate, Bill on the fight of homophobia (*Disposizioni in ateria di contrasto all'omofobia*) AC 1658-1882 A.

⁶¹ La Repubblica (2009), ‘Omofobia, affossata la legge’, 13 October 2009.

majority of the Chamber of Deputies, violates both the equality principle (Constitution Article 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 provisions (Italian Constitution Article 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.⁶² This vote on the constitutional legitimacy of the aggravating circumstance of homophobia was followed by another unsuccessful attempt on 26 July 2011.⁶³ The bill was rejected on the same grounds.

Lastly, the Chamber of Deputies passed a bill that aims at extending the scope of the Law no. 654/1975 (*Reale Law*)⁶⁴ and Law no. 205/1993 (*Mancino Law*)⁶⁵ to homophobia and transphobia. The bill is currently under discussion in the Senate, and it will be returned to the Chamber of Deputies for another approval should any amendments be made in the Senate to the version earlier approved in the Chamber of Deputies. The bill is composed of two articles. Article 1 specifically extends to homophobia or transphobia, the crimes of racial / ethnic discrimination or incitement to racial hatred and/or discrimination (art. 3 (a), *Reale Law*), the crime of racial violence or incitement to racial violence (art. 3 (b), *Reale Law*) and the aggravating circumstance applicable in cases of crimes committed for reasons of racial discrimination or hatred (art. 3, *Mancino Law*). It is important to highlight that Article 2 of the bill expressly provides that «free expression and manifestation of belief or opinions that are part of pluralism of ideas, insofar as they do not incite to hatred or violence, or conducts that comply with a law in force or the conduct of organisations that carry out activities of a political, trade union, cultural, health, educational, religious or faith nature, which are related to the implementation of principles and values of constitutional importance which characterise such organisations shall not be considered to constitute discrimination nor incitement to discrimination». According to LGBT associations, this provision, if approved, will deprive the law of its effectiveness⁶⁶. Being ambiguous and vague in an objective way, these associations fear that it will be used by all those individuals and organisations who are against the protection of LGBT rights, to lawfully diffuse ideas which substantially incite to hate against LGBT persons. It is worth mentioning that article 2 of the bill assigns to ISTAT the task of monitoring the effectiveness and implementation of the policies contrasting violence and discrimination as defined in Laws *Reale* and *Mancino*, by providing a statistical analysis every four years on racism, racial violence and homophobia. The discussion of the bill in the Senate has not started yet.⁶⁷

As far as case law about hate speech is concerned, we have only few relevant decisions. In the first, the Court of Cassation condemned a teacher for the crime of vituperation, after the teacher

⁶² Italy, Retelenford, 'Le censura di incostituzionalità sono del tutto inesistenti', Press release, 14 October 2009 available at: www.retelenford.it/articolo/comunicato-stampa-avvocatura-i-diritti-lgbt-rete-lenford.

⁶³ La Repubblica (2011), 'Stop a legge contro omofobia "Incostituzionale la norma sui gay"', 26 July 2011.

⁶⁴ Italy, Law no. 654, 13 October 1975, *Ratification of the International Convention of New York of 1966*, published in the OJ no. 337, 23 December 1975.

⁶⁵ Italy, Decree Law no. 122, 26 April 1993, converted into Law no. 205, 25 June 1993, *Urgent measures for the contrast of racial and ethnic discrimination (Misure urgenti per il contrasto di discriminazione razziale e etnica)*, published in the OJ no. 97, 27 April 1994.

⁶⁶ Italy, Arcigay, 'Discriminati da una legge contro le discriminazioni', Press release, 23 July 2013; Circolo Mario Mieli 'Legge omofobia', Press release, 12 August 2013; L'Huffington Post (2013) 'Legge omofobia: la protesta delle associazioni LGBT', 20 September 2013.

⁶⁷ Italy, Senate, Bill on the fight of homophobia and transphobia (*Disposizioni in materia di contrasto all'omofobia e alla transphobia*) no. 1052,

had used offensive adjectives such as ‘stupid’, ‘imbecile’, ‘idiot’ and ‘gay’ towards an underage student;⁶⁸ 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 Court of Appeal of Venice of 11 October 2000⁶⁹ denies this right to association, while that of the Tribunal of Milan of 3 October 2003⁷⁰ 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.

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 Court of Cassation 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.⁷¹ In a more recent decision District Court in Rome introduced homophobic motivation for a violent attack against a homosexual couple.⁷²

Two other recent judgments may be recalled. The first is related to offensive statements made against a politician during a TV programme. The Tribunal of Milan stated that the words used against this person were meant to perpetuate an image of LGBT persons as human beings of bad morality and to offend their dignity. For this reason, the verbal aggressor was condemned to pay a significant amount of money (50,000 Euros).⁷³ The second judgment dealt with the legitimacy of an expulsion from a private University after two homophobic acts by a student. According to the Tribunal, writing offensive statements against LGBT persons and ripping out posters of an LGBT support association on the Day against Homophobia, are actions meant to offend the dignity of LGBT persons. Therefore, taking into account the seriousness of these acts, the exclusion for one year from all University activities is proportionate.⁷⁴

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

There is growing attention on the part of the newly elected Parliament to the issue of hate speech and homophobic crime⁷⁵. However, as has emerged during some Parliamentary debates, there is significant opposition to the introduction of criminal provisions to combat homophobic and

⁶⁸ Italy, Court of Cassation, V criminal section (*Corte di Cassazione sez. V pen.*), 28 October 1994.

⁶⁹ Italy, Court of Appeal of Venice (*Corte d'Appello di Venezia*), 11 October 2000.

⁷⁰ Italy, Tribunal of Milan, Judge for preliminary investigations (*Tribunale di Milano, GIP*), 3 October 2003.

⁷¹ Italy, Court of Cassation, I criminal section (*Corte di Cassazione, sez. I pen.*), 14 July 1993.

⁷² Italy, Tribunal of Rome, Judge for preliminary investigations (*Tribunale di Roma, GIP*), 12 March 2010.

⁷³ Italy, Tribunal of Milan, I civil sect. (*Tribunale di Milano, I sez. civile*), judgment 13 October 2011, available at: www.articolo29.it/decisioni/tribunale-di-milano-prima-sezione-civile-del-13-ottobre-2011/.

⁷⁴ Italy, Regional Administrative Tribunal of Milan, IV sect. (*Tribunale Amministrativo Regionale di Milano, IV sez.*), judgment 20 December 2011.

⁷⁵ Italy, Senate, Bill on the fight of homophobia and transphobia (*Disposizioni in materia di contrasto all'omofobia e alla transphobia*) no. 1052.

transphobic violence⁷⁶. From the available case law, it emerges that tribunals may take into account the homophobic motivation and consequently opt for more serious sanctions⁷⁷.

⁷⁶ L'Huffington Post (2013) 'Legge omofobia: la protesta delle associazioni LGBT', 20 September 2013.

⁷⁷ Italy, Tribunal of Milan, I civil sect., judgment 13 October 2011; Regional Administrative Tribunal of Milan, IV sect., judgment 20 December 2011.

G. Transgender issues

Law 164/1982 of 14 April 1982: the Rules concerning rectification of sexual attribution, (*Legge 164/1982, 14 aprile 1982 Norme in materia di rettificazione di attribuzione di sesso*)⁷⁸, 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' (article 1). The law states that in such proceedings the judge 'may ask for a medical opinion regarding the psycho-physical condition of the person' (article 2). The law also provides that 'when an operation to change the sexual characteristics is necessary, the judge authorises it with a decision' (article 3); 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 (article 2). Art. 31 of Legislative decree no. 150, 1 September 2011, has innovated the procedural aspects in cases of litigation on gender reassignment. For a person seeking a gender reassignment operation, nothing has changed substantially.

A decision of the Constitutional Court⁷⁹ states that Law no. 164/1982⁸⁰ is not unconstitutional, because not only physical but also mental health has to be safeguarded by 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 Registrar of Civil Status (*Ufficio dello Stato civile*).

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.⁸¹

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 reassignment without any operation, as the transsexual concerned was very ill and probably near to death.⁸² On 3 May 2013, the Tribunal of Rovereto confirmed this interpretative position and stated that, according to Law no. 164/1982, gender reassignment surgery is not a mandatory requirement for the adjustment of the registry office

⁷⁸ Italy, Law no. 164, 14 April 1982.

⁷⁹ Italy, Constitutional Court (*Corte costituzionale*), judgement no. 161, 6 May 1985

⁸⁰ Italy, Law no. 164, 14 April 1982.

⁸¹ Italy, Tribunal of Milano (*Tribunale di Milano*), judgement 5 October 2000.

⁸² Italy, Tribunal of Rome (*Tribunale di Roma*), judgment 18 October 1997.

certificate. Instead, the same Law requires surgery to be authorised only when it is necessary for the physical and psychological health of the person concerned.⁸³

The position expressed by the Tribunal of Rome in the case of a reassignment surgery involving an underage child, is worth noting. In such a case, parents have to give their consent but a hearing of the concerned child is essential in compliance with his/her right to be heard..⁸⁴

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 Juvenile Court of Perugia (*Tribunale per i minorenni di Perugia*) states that a married transsexual can adopt a child, if the other requirements requested by law are satisfied.⁸⁵ 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.⁸⁶

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 gender reassignment surgery, these operations are performed completely free of charge in public hospitals if authorised by the judicial authorities. According to the Surveillance Judge (*Giudice di Sorveglianza*) of Spoleto, therapies must be granted free of charge even in cases where a transsexual person is detained, in compliance with the right to health enshrined in article 32 of the Constitution.⁸⁷ The case thus clarifies that these therapies are included within the basic health services (*livelli essenziali di assistenza*) which must be guaranteed for everyone in Italy. Provision of health services falls primarily under the responsibility of regional administrations and it may happen that such administrations do not have any agreements with prison services on the delivery of gender reassignment surgery related therapies for transgender persons. In such cases, the transgender person may be denied the required therapy. In this ruling, the Judge clarified that even in the absence of a formal bilateral agreement with prison services, regional administrations have an obligation to provide these health services free of charge.

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 Italian Pharmaceutical Agency (*Agenzia italiana del farmaco*, AIFA)⁸⁸ establishes that this kind of medicine is indicated only for

⁸³ Italy, Tribunal of Rovereto (*Tribunale di Rovereto*), judgment no. 194, 3 May 2013, available at: www.articolo29.it/decisioni/tribunale-di-rovereto-sentenza-del-del-2-5-2013/.

⁸⁴ Italy, Tribunal of Rome (*Tribunale di Roma*), judgment 11 March 2011.

⁸⁵ Italy, Tribunal for minors of Perugia (*Tribunale per i minorenni di Perugia*), judgment 22 July 1997.

⁸⁶ Italy, Constitutional Court (*Corte costituzionale*), judgment no. 253, 21 June 2006

⁸⁷ Italy, Surveillance Judge of Spoleto (*Giudice di Sorveglianza di Spoleto*), ruling 13 July 2011, available at: www.articolo29.it/decisioni/ufficio-di-sorveglianza-di-spoleto-ordinanza-del-13-luglio-2011/

⁸⁸ Italy, AIFA (2001), *Menopause and Hormones Therapy (Menopausa e terapia ormonale sostitutiva)*, Rome, available at: www.agenziafarmaco.gov.it/it/content/menopausa-e-terapia-ormonale-sostitutiva.

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 the Ministry of Internal Affairs in Rome (04 February 2008) and met with several Prefects (high-ranking official of the Interior ministry) in order to obtain statistical information regarding the number of persons who changed their names following gender reassignment and the number of persons who changed their gender/sex under the relevant legislation. However, no information was provided. In 2014, a new request for data was sent to the Ministries of Health and Internal Affairs as well as to the National Observatory on Gender Identity (*Osservatorio Nazionale sull'Identità di Genere*, ONIG) and they answered that there is no information on the number of people who changed their names because such data is not collected.

In 2013 the Court of Cassation⁸⁹ raised a question of constitutional legitimacy with regard to the provision according to which the judgment on gender reassignment determines the automatic dissolution of marriage without any consideration for a possible contrary desire of the couple. It is based on the alleged breach of article 2 of the Constitution, protecting inviolable human rights and social groups; article 3 prohibiting discrimination on grounds of social conditions; article 29 on the recognition of marriage, as well as article 117 which requires that the exercise of the legislative powers of the State and the Regions should comply with international legal obligations. According to Constitutional Court judgment no. 170/2014, articles 2 and 4 of Law no. 164/1982 do not comply with article 2 of the Constitution. The reasoning of the Court is very peculiar because it recalls the impossibility for a transgender person to decide, on the occasion of the judgment on gender reassignment, to maintain the legal relationship with his/her spouse. However, if this decision is taken, the relationship will be regulated by a new kind of provision (*registered partnership*) which the Parliament is requested to introduce as soon as possible. Indeed, the Constitutional Court excludes that the “new” union between a transgender person and his/her spouse, after the judgment on gender reassignment of the former, can be protected by article 29 of the Constitution, related to the marriage between a man and a woman⁹⁰.

In relation to the right to privacy, a significant position was taken by the Authority for the Protection of Personal Data (DPA) (*Autorità Garante per la protezione dei dati personali*) in 2012. Faced with a case of a transsexual person who underwent gender reassignment surgery after obtaining a degree in a public university, the DPA asked the Administration of the University to adopt technical measures to ensure that all the official documents carry the new personal data.⁹¹

Lastly, in relation to transsexual third-country nationals married to Italian citizens, it is worth mentioning a decision of the Tribunal of Reggio Emilia of 9 February 2013. It clarifies that so long as a transsexual spouse of an Italian citizen does not request changing his/her personal data to reflect the new gender identity, the marriage will remain valid because it involves two persons of different sex. As a consequence, so long as they live together and share a family life, their private life cannot be investigated to show that their marriage is false and the competent authority (*Questura*) cannot refuse to issue a stay permit to the Italian citizen's spouse on the ground of his/her transsexuality.⁹²

⁸⁹ Italy, Court of Cassation (*Corte di Cassazione*), decision (*ordinanza*) no. 14329, 6 June 2013.

⁹⁰ Italy, Constitutional Court (*Corte costituzionale*), judgment no. 170, 11 June 2014.

⁹¹ Italy, Authority for the Protection of Personal Data (*Autorità Garante per la protezione dei dati personali*), decision no. 341, 15 November 2012, available at: www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/2121695

⁹² Italy, Tribunal of Reggio Emilia (*Tribunale di Reggio Emilia*), decision 9 February 2013, available at: www.asgi.it/public/parser/download/save/tribunale_reggio_emilia_ordinanza_09022013.pdf

From the above, it emerges that some important developments occurred in recent years regarding transgender issues. Although data collection is still problematic, some Tribunals have adopted positions that are more in line with the fundamental rights of transgender persons (Tribunal of Rovereto, 3 May 2013; Surveillance judge of Spoleto, 3 July 2011). The role of civil society organisations has been very important in achieving these positive outcomes, as the question of the legitimacy of “forced divorce” brought before the Constitutional Court shows. Judgment no. 170, issued on 11 June 2014, declared forced divorce to be constitutionally illegitimate and opens the way to new developments which are not confined only to transgender persons but may be extended also to same-sex couples..

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 these⁹³ 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 February 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 (No. 1339), presented before the Senate on 20 February 2007, aimed at introducing the so-called Solid Union Contracts (*contratti di unione solidale*). It reproduces almost the same rights as the previous bill, adding the right to apply for a residence permit. Discussion of these bills did not take place because of the sudden end of the legislature and the election of a new Parliament.

New bills have been submitted to the new Parliament recently. In addition to the bill that aims at extending the scope of Law no. 654/1975⁹⁴ and Law no. 205/1993⁹⁵ to homophobia and transphobia (see Chapter F above)⁹⁶, other bills are worth mentioning. The first is bill no. 403/2013 on the establishment of a National Day against homophobia. The second is bill no. 15/2013 on recognition of same-sex couples and against spouse discrimination. Though discussion of these bills has not started yet, there is growing consensus among political parties on the need to recognise same-sex unions⁹⁷.

Though it is not possible to say exactly how many city councils have created public registers of civil union, the number has grown in recent times and it includes two of the most important Northern cities, Milano and Genova. The value of these registers is only symbolic. The number of unions registered is not significant. A few other town councils, such as Padua and Bologna, offer de facto couples, including same-sex couples, the opportunity to obtain a certificate of affectionate family (*attestazione di famiglia affettiva*)⁹⁸ on the basis of Personal Data Legislation No. 1228 of 1954 and No. 223 of 30 May 1989. Registration is open not only to heterosexual *de facto* couples but also to same-sex partners. No rights, duties or new legal status derive 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).

⁹³ Italy, Bill establishing a National Day against Homophobia no. 311/2007

⁹⁴ Italy, Law no. 654, 13 October 1975, *Ratification of the International Convention of New York of 1966*, published in the OJ no. 337, 23 December 1975.

⁹⁵ Italy, Decree Law no. 122, 26 April 1993, converted into Law no. 205, 25 June 1993, *Urgent measures for the contrast of racial and ethnic discrimination (Misure urgenti per il contrasto di discriminazione razziale e etnica)*, published in the OJ no. 97, 27 April 1994.

⁹⁶ Italy, Senate, Bill on the fight of homophobia and transphobia (*Disposizioni in material di contrasto all’omofobia e alla transphobia*) no. 1052.

⁹⁷ La Repubblica (2014) ‘Unioni gay come le nozze. Al via la legge’, 17 June 2014.

⁹⁸ Italy, Laws on Personal Data no. 1228, 24 December. 1954, and no. 223, 30 May 1989.

In 2009 several judges⁹⁹ raised the question of the constitutionality of dispositions of the Civil Code, 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, Article 3, prohibiting discrimination on grounds of social conditions, article 29, granting the recognition of marriage, as well as article 117, paragraph I, requiring the exercise of the legislative power of the state and the regions to comply with international law obligations.

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 announcement of marriage for same-sex couples.¹⁰⁰

With the decision no. 138/2010¹⁰¹ the 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. The Constitutional Court confirmed this view in a later judgment stating again that it is impossible to extend the institute of marriage to same-sex couples through an inclusive interpretation of the legislation in force.¹⁰² In April 2013, on the occasion of the Extraordinary Conference on the activities of the Constitutional Court, the President of the Court highlighted the need to legally recognise same-sex couples.¹⁰³

A significant initiative aimed at recognising the rights of same-sex couples was recently taken by some municipalities. The cities of Fano¹⁰⁴ and Napoli¹⁰⁵ have decided to allow their respective Municipality registrar to register marriages between same sex persons who had to go abroad to marry. In the case of the Municipality of Grosseto, registration was ordered by a decree of the Tribunal of Grosseto (decree 3 April 2014). According to the Tribunal, when a marriage contracted in accordance with to the laws of a foreign State and the same is not contrary to public order in the same foreign State, then it must be recorded in the Municipality's register. This is true also for a same-sex marriage when it is entered into in another country and according to the laws of the same State. As for being contrary to public order, the Tribunal recalled that, according to the judgment of the Court of Cassation no. 4184/2012, the notion of marriage as enshrined in the ECHR includes also same-sex unions and Italy, being part of the ECHR, cannot but take into due account this new interpretation¹⁰⁶.

While the topic of homophobia has strongly come to public attention partly due to a series of suicides committed by teenagers bullied or discriminated against on grounds of their sexual orientation, on different occasions public statements against LGBT persons have come from high level politicians. A long and heated debate took place when in 2010 the then Prime Minister Silvio Berlusconi

⁹⁹ Italy, Tribunal of Venice (*Tribunale di Venezia*) judgement 3 April 2009; Italy, Court of Appeal of Trento (*Corte di Appello di Trento*) judgement 29 July 2009; Italy, Court of Appeal of Florence (*Corte di Appello di Firenze*), judgement 3 December 2009; Italy, Tribunal of Ferrara (*Tribunale di Ferrara*) judgement 3 December 2009.

¹⁰⁰ Italy, Retelenford, 'Affermazione civile', Press release, 19 October 2008, available at: www.retelenford.it/articolo/affermazione-civile

¹⁰¹ Italy, Constitutional Court (*Corte costituzionale*), judgement no. 138, 14 April 2010.

¹⁰² Italy, Constitutional Court (*Corte costituzionale*), decision (*ordinanza*) no. 4, 5 January 2011.

¹⁰³ Italy, Constitutional Court (*Corte costituzionale*), Annual Report of the President F. Gallo, 19 April 2013, available at: www.cortecostituzionale.it/documenti/relazioni_annuali/RelazioneGallo_20130412.pdf

¹⁰⁴ Il Fatto Quotidiano (2014), 'Fano, sindaco di centrodestra trascrive nozze gay: è il primo in Italia', 28 May 2014.

¹⁰⁵ La Repubblica (2014), 'Matriomni gay, via alle trascrizioni: Roberto e Miguel la prima coppia', 25 June 2014.

¹⁰⁶ Italy, Tribunal of Grosseto (*Tribunale di Grosseto*), decree 3 April 2014.

publicly declared “It is better to run after girls than being gay”.¹⁰⁷ In the following months, while a Parliamentarian from the main opposition party and leader of the LGBT rights movement was insulted in the streets of Rome, LGBT associations denounced a rise in homophobic and transphobic acts.¹⁰⁸ Some politicians are still hostile towards events such as Gay Pride parades and have publicly expressed such hostility.¹⁰⁹ The last and most recent example comes from the President of Calabria Region, one of the biggest regions in the South of Italy. He publicly declared that in the forthcoming elections, his “political party will not involve ‘half-men’ or men in love with other men but only the bravest persons and men in love with women”.¹¹⁰

Public condemnation of developments in favour of the rights of LGBT persons has also come from the Catholic clergy. It is sufficient to recall here the sentence pronounced by Pope Benedict XVI during the World Peace Day in 2012 according to which “same-sex unions are a danger to justice and peace”.¹¹¹ Criticism is even more pronounced when bills or other measures on LGBT rights are under discussion, both in Europe and in Italy.

Some tribunals have also addressed issues related to LGBT parenthood. In judgment No. 601/2013, the Court of Cassation rejected the appeal of a father who had contested the decision upheld by the Court of Appeal of Brescia regarding the custody of a child, claiming that the child would have an unbalanced development if allowed to live with his mother and her female partner. The Court of Cassation highlighted that

*the applicant's complaint is not based on any scientific certainty or data of experience, but only on the mere prejudice that living in a family centred on a homosexual couple is detrimental to the balanced development of the child. In this way, what has to be proven, namely the harmfulness of that family environment for the child, is taken for granted».*¹¹²

In November 2013, the Tribunal of Bologna granted temporary custody of a three year old girl, who had no parental relationship with them, to a male same-sex couple.¹¹³

In the academic year 2006/2007 the University of Bologna launched a master degree course in sexual minority studies, the first of its kind in Italy. For the first time, in May 2012, the Ministry of Education issued a note inviting the principals of public schools to take initiatives to celebrate the international day against homophobia.¹¹⁴

¹⁰⁷ La Repubblica (2010), ‘Ruby, Berlusconi attacca gli omosessuali "Meglio guardare ragazze che essere gay"’, 2 November 2010.

¹⁰⁸ Messaggero (2011), ‘Insulti in strada per Concia e compagna: lesbiche di m... dovevate andare ai forni?’, 21 April 2011.

¹⁰⁹ See, for example, the member of Parliament Carlo Giovanardi’s blog, who has repeatedly expressed his opposition to the promotion of LGBT rights:

www.carlogiovanardi.it/sito/modules.php?name=News&file=article&sid=901

¹¹⁰ Corriere della Sera (2014), ‘Scopelliti: “Noi non vogliamo uomini che amano altri uomini”’, 3 February 2014.

¹¹¹ L’Huffingtonpost (2012), ‘Vaticano, il monito del papa: "Aborto, eutanasia e unioni gay sono reali minacce alla pace"’, 14 December 2012.

¹¹² Italy, Court of Cassation (*Corte di Cassazione*), judgment no. 601, 11 January 2013, available at: www.articolo29.it/decisioni/corte-di-cassazione-prima-sezione-civile-sentenza-dell8-novembre-2012-11-gennaio-2013-n-601/

¹¹³ Italy, Tribunal for minors of Emilia Romagna (*Tribunale per i minorenni dell’Emilia Romagna*), decree 31 October 2013, available at: www.articolo29.it/7286-2/

¹¹⁴ Italy, Ministry of Education, Note 10 May 2012, available at:

www.smontailbullo.it/webi/file/documenti/CIRCOLARI/2012/comunicazione%20%20omofobia.pdf

Venice,¹¹⁵ Turin,¹¹⁶ and Bologna¹¹⁷ set up LGBT Service (*Servizio LGBT*) offices, public offices with anti-discriminations duties.

Our research did not find any information regarding phallometry or phallometric testing.

Our research did not find any information on legislation comparable to the Lithuanian legislation institutionalizing homophobia.

From the above, a clear trend emerges in case-law to recognise the rights of same-sex couples and, more generally, to take into account sexual orientation as a (positive) fundamental aspect of a person's life, as shown by growing case law on child custody assigned to LGBT persons. At the institutional level also, some significant initiatives were taken to ensure equal treatment of same-sex cohabiting couples in relation to specific benefits. Two recent examples may be recalled. First, the Friuli-Venezia Giulia Region has included same-sex cohabiting couples also among the potential beneficiaries of regional subsidies for rent, purchase and renovation of one's house¹¹⁸. Secondly, the Ministry of Foreign Affairs issued a diplomatic passport to a same-sex spouse of an Italian diplomat, following request after the couple married abroad¹¹⁹. Although it was issued in light of the discretionary powers of the Ministry, the administration said that ways of solving this problem in a more general way for all LGBT diplomats is being studied.

However, this positive trend does not include the recognition of a legal status for same-sex couples and discussion of a bill in Parliament on this aspect is expected to face a strong opposition from several political parties. Partly for this reason, two applications have been filed with the European Court of Human Rights concerning the absence in Italy of any form of recognition of same-sex couples alleging a violation of articles 8 and 12 of the European Convention¹²⁰. The two cases were communicated to the Italian Government.

Lastly, at the political level, it is worth noting that many high level politicians are involved in public statements against homosexuals.

¹¹⁵ Italy, Municipality of Venice, LGBT service, www.comune.venezia.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/49638

¹¹⁶ Italy, Municipality of Turin, LGBT service, www.comune.torino.it/politichedigenere/lgbt/

¹¹⁷ Italy, Municipality of Bologna, 'Approvato l'atto di indirizzo per la costituzione dell'ufficio pari opportunità, differenze e diritti umani', Press release, 2 November 2011.

¹¹⁸ Italy, Friuli-Venezia Giulia Region, 'Prima casa: contributi per acquisto, costruzione o recupero', Frequently Asked Questions, available at: www.regione.fvg.it/rafvfg/cms/RAFVG/famiglia-casa/casa/FOGLIA1/faq/.

¹¹⁹ Italy, GlobeMae, 'Il primo passaporto diplomatico', Press release, 17 March 2014, available at: www.globemae.it/node/26.

¹²⁰ European Court of Human Rights (ECtHR), *Oliari and Others v. Italy*, No. 18766/11 and 36030/11; ECtHR, *Orlandi and Others v. Italia*, No. 26431/12.

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 article 4 of the Statute of the Region of Tuscany (*Statuto regione Toscana*).¹²¹

The Regional Law of Tuscany (*Legge regione Toscana*) no. 63/2004¹²² 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.

The Regional Law of Tuscany no. 59/2007¹²³ 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 refuges is managed by the network.

Liguria Regional Law No. 52/2009 titled “Rules against discrimination on the grounds of sexual orientation and identity” (*Norme contro le discriminazioni determinate dall’orientamento sessuale o dall’identità di genere*) concerns 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, 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 article 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. On 21 March 2011, the Constitutional Court declared the regional law of Liguria constitutionally legitimate rejecting the Government’s claims and confirming the faculty of

¹²¹ Italy, Statute of the Tuscany Region, (*Statuto regione Toscana*), 19 July 2004,

¹²² Italy, Law of the Tuscany Region (*Legge regionale Toscana*) no. 63, 15 November 2004.

¹²³ Italy, Law of the Tuscany Region (*Legge regionale Toscana*) no. 59, 16 November 2007.

regional administrations to adopt provisions on equality issues in the areas of their competence.¹²⁴

The so-called Charter of intent on the constitution of a national network of public administrations for overcoming discrimination on grounds of sexual orientation and gender identity (*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*) was launched in 2006, in order to create a national network of public administrations to improve and promote the civil rights of LGBT people.¹²⁵ In recent years, the network has tried to define its role and to include more public administrations. According to data that was available in March 2014, the network has 75 members (of which 6 Regions, 11 Provinces and 51 Municipalities). It has developed relations with national and international actors (such as FRA in relation to the project “Joined Up Governance) and LGBT associations. Thanks also to its collaboration with UNAR in the framework of the National Strategy, the network is launching a website with a collection of data and studies carried out in Italy on LGBT issues (expected date, May 2014). It promotes initiatives on LGBT issues and may serve as a forum where administrations can exchange good practices on the issues¹²⁶.

In 2009 the Department of Rights and Equal Opportunities (*Ministro per i Diritti e le Pari Opportunità*) launched the first media campaign against homophobia¹²⁷. The event had mainly a symbolic significance because for the first time the body charged with its implementation included sexual orientation as a ground of discrimination. There is no data on the impact of this media campaign which involved TV, the Internet and newspapers. Moreover, LGBT associations were considered as important actors and invited to cooperate with the Department, as highlighted in the 2009 annual report to the Parliament (p. 66).

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.¹²⁸ 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 by judicial authorities in public hospitals. On the other hand, if a transsexual cannot or does not want to have the operation, he/she 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 AIFA – the Italian Drug Agency¹²⁹ establishes that this kind of medicine is indicated

¹²⁴ Italy, Constitutional Court (*Corte costituzionale*), judgment no. 94, 21 March 2010.

¹²⁵ Italy, Tuscany Region, Re.A.Dy. Charter, available at: www.regione.toscana.it/documents/10180/23648/Rete_Nazionale_PA.pdf/96193526-9701-4807-a19f-9be643ca16c9

¹²⁶ Italy, Municipality of Torino, Network Re.A.Dy., available at:

www.comune.torino.it/politichedigenere/lgbt/lgbt_reti/lgbt_ready/

¹²⁷ Italy, UNAR, *Relazione al Parlamento sull'effettiva applicazione del principio di parità di trattamento e sull'efficacia dei meccanismi di tutela. Anno 2009 [Report to the Parliament on the effective implementation of the principle of equality and on the effectivity of the protection mechanisms. Year 2009]*, Rome, UNAR, 2010. .

¹²⁸ Italy, Constitutional Court (*Corte costituzionale*) judgement no. 253, 21 June 2006.

¹²⁹ Italy, AIFA (2001), *Menopause and Hormones Therapy (Menopausa e terapia ormonale sostitutiva)*, Rome, available at: www.agenziafarmaco.gov.it/it/content/menopausa-e-terapia-ormonale-sostitutiva.

only for menopause: therefore only women in menopause, and not male-to-female transsexuals, can obtain them free of charge.

The Observatory for security against acts of discrimination (*Osservatorio per la sicurezza contro gli atti discriminatori*, OSCAD) was established within the Department of Public Security, General Office of the Criminal Police, by a decree of the Head of Police dated 2 September 2010.¹³⁰ Its aim is to protect victims of hate crimes and help individuals belonging to minorities to enjoy their right to equality before the law. It collects complaints on hate crimes suffered by minorities and its activity is not limited to racist violence but covers also cases based on sexual orientation and gender identity. Moreover, it starts targeted interventions at the local level, maintains contact with public and private institutions and associations, engaged in combating discrimination and prepares training modules for police operators on anti-discrimination activity.

Thanks to the personal initiative of a Judge, a website on legal issues related to homophobia and transphobia was set up in 2013 (www.articolo29.it). While it is an open platform for discussions, its aim is to collect Italian, international and European case law in all the fields where the respect of fundamental rights of LGBT people are at stake (such as, employment, freedom of movement, asylum and other kinds of protection, marriage and rights of same-sex couples, parenthood). Indeed, it originated from the need, on the part of judges, lawyers and public administration officials, for better awareness of the standards of human rights protection which may be applied to LGBT people in their field of activity. Its name – *Articolo 29* – refers to Art. 29 of the Constitution which deals on the right to marriage. After almost a year, the favourable and most significant judgments in Italian case law on LGBT issues cite *Articolo29.it* as a sources of documentation and information. In consideration of the need for a better understanding of sexual orientation and transgender issues in Italy, a new scientific journal was created in June 2014. “GenIUS”, the journal’s name, brings together a wide network of academic experts in different branches of law and will be entirely dedicated to the analysis of developments in the field.

¹³⁰ Italy, General Office of the Criminal Police, Head of Police’s decree 2 September 2010. OSCAD has no website. More information are available at www.poliziadistato.it/articolo/22017/.

J. Intersex

Intersex persons are invisible in national anti-discrimination legislation and policies as well as in jurisprudence. Until now, ‘intersex’ is not covered by law as a prohibited ground of discrimination and there is no evidence that a court may include it if a case arises.

By law, a child cannot be recorded in the registry of birth without gender identification in the birth certificate. According to article 29 of Presidential Decree no. 396, 3 November 2000, parents are obliged to declare the sex of their child within ten days from birth.

In Italy surgical and medical interventions are still performed on intersex people after their birth with the consent of parents, as denounced by experienced researchers.¹³¹ According to health providers, who decide on a case by case analysis, the aim of such interventions is the wellbeing of the child who will be able to live an “ordinary” life as a man or woman.

As for the legal basis for such interventions, there is no specific legal text that either allows or prohibits these interventions. In these cases, according to the Committee on bioethics, the doctor may decide to intervene with the consent of the parents in order to ensure the physical and mental well-being of the child¹³². Reference could also be made, in general, to Art. 32 of the Constitution on the protection of individual health and Law no. 145, 28 March 2001, on informed consent. If the doctor intervened to save the life of the child or prevent serious damages, reference could also be made to article 54 of the Criminal Code which provides for an exclusion of his responsibility.

In relation to consent, according to the National Committee on Bioethics, the interested parties are the intersex child and his/her parents. The Committee suggested that, when an intervention is not necessary, the consent must be given by the child depending on age and maturity. The Committee did not expressly define a minimum age but required that full informed consent is sought when he/she is old and mature enough. When the child is not old and mature enough, parents are considered the only interested parties. In case of a disagreement between them, a judge may decide which parent is more suitable to decide¹³³.

Our research did not find any protocol on this topic. However, the National Committee on Bioethics which is under the Presidency of the Council of Ministers, expressed its views in 2010 in a position paper entitled “The disturbances of sexual differentiation in children: bioethical aspects” (*I disturbi della differenziazione sessuale nei minori: aspetti bioetici*).¹³⁴ It stresses the importance of acting in the best interest of the child through a case by case analysis and avoiding

¹³¹A. Baiocchi, A.B. Tonarti (2013) ‘Mutilazioni sociali’, *Intersexioni*, 2 July 2013, available at: www.intersexioni.it/mutilazioni-sociali-bisturi-sempre-piu-in-voga-per-omologare-le-atipicita/.

¹³² Italy, National Committee on Bioethics (*Comitato Nazionale di Bioetica*) (2010), *The disturbances of sexual differentiation in children: bioethics aspects (I disturbi della differenziazione sessuale nei minori: aspetti bioetici)*, Rome, Presidenza del Consiglio dei Ministri, pp. 16-17, available at: www.governo.it/bioetica/pareri_abstract/disturbi_differenziazione_25022010.pdf.

¹³³ Italy, National Committee on Bioethics (*Comitato Nazionale di Bioetica*) (2010), *The disturbances of sexual differentiation in children: bioethics aspects (I disturbi della differenziazione sessuale nei minori: aspetti bioetici)*, Rome, Presidenza del Consiglio dei Ministri, para. 6.3.

¹³⁴ Italy, National Committee on Bioethics (*Comitato Nazionale di Bioetica*) (2010), *The disturbances of sexual differentiation in children: bioethics aspects (I disturbi della differenziazione sessuale nei minori: aspetti bioetici)*, Rome, Presidenza del Consiglio dei Ministri.

surgical and medical interventions until the child is able to give a fully informed consent.¹³⁵ As for cases in which one sex is not predominant, the Committee suggests raising the child as a male or female person while being alert to his/her physical and psychological development. From a legal point of view, it excludes the introduction of a 'third sex/gender' in the national legal system but recognises the possibility of including a sentence in the parents' declaration on the sex of the child required by the above mentioned decree, aimed at giving the child the chance to change more easily his/her sex in official documents once he/she is fully developed. A fully informed consent should be obtained from the parents and, in case of disagreement between them, from the competent judge, as well as from the child who is capable of forming his/her own opinion.

A draft of a new legislation on this subject was presented to Parliament in 2013,¹³⁶ with the aim of allowing intersex children to change the sex declared at birth in an easier and faster way than transsexual persons (article 13). In September 2013, during the World Congress on paediatric endocrinology, a public protest was organised for the first time in Italy, to demand the end of surgical and medical interventions on intersex children other than those necessary in case of a life threatening situation at birth.¹³⁷

¹³⁵ Italy, National Committee on Bioethics (*Comitato Nazionale di Bioetica*) (2010), *The disturbances of sexual differentiation in children: bioethics aspects (I disturbi della differenziazione sessuale nei minori: aspetti bioetici)*, Rome, Presidenza del Consiglio dei Ministri, pp. 16-17.

¹³⁶ Italy, Draft Law on the change of the assignment of sex (*Norme in materia di modificazione dell'attribuzione del sesso*), submitted to the Senate by senator Sergio Lo Giudice on 9 April 2013.

¹³⁷ Intersexioni.it (2013), 'Stop agli interventi di chirurgia cosmetica genitale su neonati e bambini!', Press release, 11 September 2013, available at: www.intersexioni.it/stop-agli-interventi-di-chirurgia-cosmetica-genitale-su-neonati-e-bambini/; A. Sciotto (2013), 'Noi Intersex chiediamo rispetto', *L'Espresso*, 19 September 2013, available at: <http://espresso.repubblica.it/attualita/cronaca/2013/09/19/news/noi-intersex-chiediamo-rispetto-1.134087>.

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 v. Ministry of Internal Affairs
Decision date	19 June 2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Consiglio di Stato, Sezione Sesta (<i>State's Council, Sixth section</i>)
Key facts of the case (max. 500 chars)	The Applicant worked as a policeman and he was fired as a consequence of a disciplinary sanction, 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 the Regional Administrative Tribunal of 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.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Regardless of sexual orientation, civil servants have a duty of good behaviour in order to transmit confidence both to citizens and to their colleagues.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	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.

Case title	N. 7176
Decision date	31 August 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di appello di Milano – sez. lavoro (<i>Court of appeal of Milan, Labour section</i>)
Key facts of the case (max. 500 chars)	The applicant was working for a bank in Milan. When he signed the contract, he was given the possibility to benefit from health assurance for himself and, for his wife or cohabiting partner, on payment of a given amount,. When the applicant submitted a formal request to include his male partner in the health assurance scheme, he received a refusal. The reason for the refusal was that the contract referred to traditional marriage and the notion of cohabiting partner was to be interpreted accordingly, thus including only heterosexual partners. Before the First instance Court (Tribunal of Milan), the applicant claimed having suffered a direct discrimination in contrast with legislative decree no. 216/2003 (implementing EC Directive 2000/78). The Court upheld the applicant’s claim in judgment no. 5267/09 (15 December 2009) affirming that the notion of “ <i>more uxorio</i> ” includes also same-sex cohabiting couples in order to protect all the employees, irrespective of their sexual orientation. The employer – the bank – appealed against the decision.
Main reasoning/argumentation (max. 500 chars)	According to the Court of Appeal, the notion of cohabiting couple has evolved and, in contrast to the reasoning of the employer, is not limited to the traditional interpretation which excluded two persons of the same sex living together and sharing economic and emotional bonds. Since the applicant and his partner satisfied these criteria, they have to be considered as cohabiting couple to whom the employer is obliged to grant the benefit reserved by contract for all the bank’s employees.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The notion of <i>more uxorio</i> or cohabiting partner must be interpreted in light of current social reality, as confirmed by the judgments of the Constitutional Court no. 138/2010 and the European Court of Human Rights in <i>Schalk and Kopf</i> case. Being entitled to the enjoyment of the right to family life as heterosexual couples, the benefits reserved for cohabiting couples must be granted also to same-sex couples. The Court did not, however, make reference to Directive 2000/78 as suggested by the applicant.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant was allowed to register his partner with the health assurance scheme granted by the employer to all his employees.

Chapter B, Freedom of movement

Case title	X v. Minister of Internal Affairs
Decision date	15 February 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Reggio Emilia (<i>Tribunal of Reggio Emilia</i>)
Key facts of the case (max. 500 chars)	A non-EU citizen, who contracted a same-sex marriage with an Italian citizen under Spanish law, was denied a stay permit. He appealed against the decision.
Main reasoning/argumentation (max. 500 chars)	The Tribunal recognised the right of the applicant to a legal title to stay (stay permit) in Italy under Legislative decree 30/2007 (which implements directive 2004/38/EC). According to the Tribunal, the said decree 30/2007, being the implementation of an EU directive, must be interpreted in light of the principles and Treaties of the European Union, including the principle of non-discrimination on the ground of sexual orientation and Art. 9 of Charter of Fundamental Rights of the European Union on the right to marry. In particular, the notion of family contained in the EU Directive should be interpreted to reflect the content of Art. 9 of the EU Charter which recognises the right of every person to get married and constitute a family..
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The notion of spouse in relation to same-sex marriage contracted abroad.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	While the applicant obtained the stay permit, the judgment started a process that led the Minister of Internal Affairs to publish a circular clarifying that in same-sex couples where at least one is an EU citizen should be treated as family members.

Case title	No. 4184
Decision date	8 March 2012

Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Cassazione (<i>Court of Cassation</i>)
Key facts of the case (max. 500 chars)	The applicants, a same-sex couple, requested for the registration in Italy of their marriage contracted abroad.
Main reasoning/argumentation (max. 500 chars)	The partners in a same-sex couple, living together in a stable <i>de facto</i> relationship, are entitled to the right to «family life» and therefore in specific circumstances they can claim the right to a treatment homogenous with the one accorded married couples by the law.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court excluded that the difference in sex between the spouses is an inherent and necessary feature of marriage. Given that Italy is part of the ECHR's system of protection, it is not <i>per se</i> in contrast with the Italian public order. However, this interpretation has not led so far to any other development because, according to a Constitutional Court judgment, only Parliament may introduce same-sex marriage by law.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	A same-sex marriage contracted abroad cannot be registered in Italy. However, same-sex couples enjoy the right to respect for family life. As a consequence, in specific cases, they have to be treated equally as heterosexual couples.

Case title	G. v Questore di Pescara
Decision date	15 January 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Pescara (<i>Tribunal of Pescara</i>).
Key facts of the case (max. 500 chars)	A male third-country national married to a male Portuguese citizen was denied a stay permit by the local authority of Pescara, on ground that national legislation does not recognise same-sex marriage.

Main reasoning/argumentation (max. 500 chars)	The Court took the view that EU provisions should be interpreted in light of the status acquired in the country of marriage. It remembered that, according to the case law of the ECtHR and the decisions of the Constitutional Court (138/2010) and Court of Cassation (4184/2012), in specific circumstances same-sex couples may be treated the same way as married heterosexual couples with regard to certain aspects such as family reunion.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Although national legislation does not provide for same-sex marriage, the marriage of a gay couple celebrated in another Member State of the EU has the same effects in Italy as that of a marriage between heterosexuals with regard to the application of EU law.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	A stay permit was granted to the third-country national spouse of the Portuguese citizen. More broadly, the case creates a precedent that can be relied upon by other same-sex couples who wish to establish in a Member State where same-sex marriage is not recognised under national legislation.

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

Case title	Public Prosecutor v. Cheick Fofana
Decision date	25 July 2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Cassazione, Prima Sezione civile (<i>Court of Cassation, First civil section</i>).
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.

Case title	Public Prosecutor v. Hagi Samir
Decision date	18 January.2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Cassazione, Sezione Prima penale (<i>Court of Cassation, First criminal section</i>)
Key facts of the case (max. 500 chars)	Mr Samir is an immigrant from Morocco and he was expelled by a decree issued by the Police Chief. He did not comply with the expulsion order, thereby committing a crime pursuant to Art. 14 (5 ter) of Decreto legislativo 286/98. 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. The Public Prosecutor appealed to the Court of Cassation.
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.

Case title	No. 15981
Decision date	20 September 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Cassazione, VI sez. civile, (<i>Court of Cassation, VI civil sect.</i>)
Key facts of the case (max. 500 chars)	Appeal by a gay man from Senegal against the refusal of his application for asylum. He declared a well-founded fear of been persecuted on the ground of his homosexuality, if returned to his country of origin.
Main reasoning/argumentation (max. 500 chars)	In a State, such as Senegal, where homosexuality is punished under criminal law, the fundamental right to live freely one's sexual and affective life - protected by the Constitution, the European Convention on Human Rights and the EU Charter of Fundamental Rights - is denied. The existence of a similar criminal offence compels an LGBT person to violate the law in order to enjoy his/her fundamental rights and freedoms. Given that the existence of such criminal offence facilitates also the rise and persistence of homophobia in that society, the situation suffered by the appellant is definitely an objective persecution.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	First, it is not necessary that the criminal offence is effectively applied. Secondly, the judge has to take into account the standards of human rights protection deriving from the EU Charter of Fundamental Rights, since the issue is covered by EU legislation. Third, the judge's evaluation should include the level of societal disapproval and homophobia in the country of origin which are reinforced by the existence of a criminal offence.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court of Cassation sent back the case to the Court of Appeal of Trieste for a new judgment taking into account the concepts clarified by this decision.

Case title	Appeal no. 9947/2013
Decision date	4 November 2013
Reference details (type and title of court/body; in original language and English [official translation, ...])	Tribunale di Bologna (<i>Tribunal of Bologna</i>)
Key facts of the case (max. 500 chars)	A gay man from Camerun was refused refugee status. According to the applicant, he was abused by his uncle when he was a child. Then, he started to meet other men. While he was in a bar with other gay people, he was arrested by the police and detained for two months. During the detention, he was seriously beaten and later hospitalised for treatment injuries and he managed to escape from there and left his country to seek asylum in Europe.
Main reasoning/argumentation (max. 500 chars)	According to the Tribunal, the applicant's story is credible and he could prove that he suffered maltreatment. Moreover, there is no doubt about his homosexuality, thanks also to his participation in gay events in Italy. Taking into account national and EU legislation, the Geneva Convention and given that homosexuality is criminalised in Camerun, the applicant has to be granted refugee status.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Homosexuality is a fundamental personal characteristic on which a persecution may be based. Being that LGBT people constitute a salient social group, the risk of being persecuted on the ground of sexual orientation may give rise to a valid asylum claim. In order to establish if there is a persecution, according to Court of Cassation judgment no. 15981, criminalisation of homosexuality has to be considered a persecution <i>per se</i> , even if the law is not applied.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant obtained the refugee status.

Case title	Appeal no. 640/12
Decision date	5 March 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Appello di Bari, I sez. civile (<i>Court of Appeal of Bari, First civil section</i>)
Key facts of the case (max. 500 chars)	An LGBT person from Gambia appealed against the refusal of refugee status. He applied for the refugee status on the ground of the persecution suffered due to his sexual orientation. The applicant said he started having sex with other men in 2000. His family introduced him to many girls for marriage but he refused. As a consequence, his step father threatened him with death and drove him away from home. Once he was found having sex with his partner at the seaside, he was beaten by the people of his village. Worried about being persecuted due to his homosexuality, he escaped from his country and tried to seek asylum in Europe.
Main reasoning/argumentation (max. 500 chars)	According to the Court, given that homosexuality is criminalised in Gambia and the applicant's story is credible, the latter should be granted refugee status. It is not necessary that the criminal offence of homosexuality is effectively applied. Therefore, the Court refused the argument by the asylum request evaluation Commission that the man's story was not properly referenced and some events were contradictory. It equally refused the conclusion by same Commission that, since in Gambia criminal provisions on homosexuality are not applied, the applicant did not risk being persecuted. By contrast, the Court of Appeal considered that there are not enough guarantees that the Gambian authorities are tolerant with homosexuals and potentially, the law may always be applied.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	According to Court of Cassation judgment no. 15981, the effective application of the criminal offence is irrelevant in order that refugee status is granted. The fact that the law sanctioning homosexuality is not applied is not enough to state that the risk of persecution is not real.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant obtained refugee status.

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

Case title	GA and OM v. Registry officer
Decision date	10 June 2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunal of Latina (<i>Tribunal of Latina</i>)
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 that GA and OM are of the same sex 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 in sex between the spouses and this is not the case. The marriage is lacking in a necessary precondition because 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, on the issue of marriage recognition is forbidden when the marriage is contrary to the public order according to the laws of the State. At present, homosexual marriage is in contrast with 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 such marriage 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.

Case title	GA and OM v. Registry officer
Decision date	13 July 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte d' Appello di Roma (<i>Court of Appeal of Rome</i>)
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 that GA and OM are of the same sex 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 in the place of marriage and state law therein but also the persons involved must have the necessary requisite to marry which is regulated by Italian law. The marriage is not valid under Italian law because it lacks a necessary precondition which is the difference in sex between the spouses. The fact that other countries allow this union is not relevant because EU law neither forbids nor imposes its 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 applicant's claim, upholding as lawful the refusal by the marriage registry office to record it. Therefore, the fact that the EU does not impose or forbid the recognition of new type of union means that even though other countries allow them, each country has to take its own decisions in complete freedom. Judges cannot take this decision in place of the Parliament; therefore, until a law allowing the recognition of this kind of union is approved in Italy, such marriages will not be registered, even though they are recognised in the country of celebration.

Chapter E, Freedom of Assembly

Case title	X. v. RAI
Decision date	24 October 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Cassazione (<i>Court of Cassation, III civil sect.</i>)
Key facts of the case (max. 500 chars)	An actor claimed that the national TV network RAI broadcast his personal image captured during his alleged participation in an LGBT parade.
Main reasoning/argumentation (max. 500 chars)	According to the judgment, the LGBT parade is a public event and all actions taking place during this parade may be subject to audiovisual reproduction without prior personal authorisation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court rejected the applicant's argument that being associated with gay persons constituted an offence to his reputation. Although it was not relevant for the outcome of the case, the Court stated that gay parades do not have a negative value which may damage the reputation of the participants, as the applicant claimed.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The national TV network RAI was acquitted and did not pay any damages which the applicant had requested for the alleged damage to his reputation.

Chapter F, Hate speech

Case title	Mr. Silvestri versus Y
Decision date	28 October 1994
Reference details (type and title of court/body; in original language and English [official translation, ...])	Corte di Cassazione, Sezione Quinta Penale (<i>Court of Cassation, , Fifth criminal section</i>).
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. 594 of the Criminal code (19 October 1930). Subsequently Mr. Silvestri filed a petition before the Court of Cassation for misjudgement in interpretation of the law.
Main reasoning/argumentation (max. 500 chars)	The Court considers applicable in this case Art. 594, and not Art. 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

Case title	Mr Bertozzo, Mr Padovani and Mr Zocatelli v. Arcigay Verona
Decision date	11 October 2000
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte d'Appello di Venezia, Sezione Quarta civile (<i>Court of Appeal of Venice, Fourth civil section</i>)
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.

Case title	X v. Y
Decision date	3 October 2001
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Milano, GIP (<i>Tribunal of Milan, Preliminary investigation office</i>)
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.

Case title	X v. Y.
Decision date	13 October 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Milano, I sez. civile (<i>Tribunal of Milan, I civil sect.</i>)
Key facts of the case (max. 500 chars)	A politician was offended with expressions which denigrated gay persons during a TV program.
Main reasoning/argumentation (max. 500 chars)	The Tribunal of Milan stated that the words used against the man were meant to perpetuate an image of homosexual persons as human beings of bad morality and offend their dignity.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Freedom of expression cannot be used to offend and perpetuate the idea of inferiority of a group. Political criticism should be limited to political activity and not extended to personal characteristics such as sexual orientation.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The verbal aggressor was condemned to pay a significant amount of money (50,000 Euros for the damage suffered by the victim).

Case title	No. 2758
Decision date	20 December 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale Amministrativo Regionale di Milano, IV sez. (<i>Regional Administrative Tribunal of Milan, IV sect.</i>)
Key facts of the case (max. 500 chars)	The applicant was expelled from the University for a year, following homophobic attacks against an LGBT association and LGBT persons. He appealed against the expulsion.
Main reasoning/argumentation (max. 500 chars)	According to the Tribunal, writing offensive statements against LGBT persons as well as ripping out an LGBT association's poster on the <i>Day against Homophobia</i> are actions meant to offend the dignity of LGBT persons. Therefore, taking into account the seriousness of these acts, expulsion for one year from all University activities is proportionate.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Offensive statements against LGBT persons as well as ripping to shreds an LGBT association's poster are serious offences to LGBT people's dignity and require adequate sanction.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Tribunal rejected the appeal.
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Chapter F, Hate crimes

Case title	X v. Y
Decision date	14 July 1993
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Cassazione, Sezione Prima Penale (<i>Court of Cassation, First criminal section</i>).
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 Court of Cassation 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 Court of Cassation'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,

Case title	Sardelli v. A. and S.
Decision date	12 March 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Roma, Ufficio GIP (<i>Tribunal of Rome, Preliminary investigation office</i>)
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 July 1997
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale per i Minorenni di Perugia (<i>Tribunal for Minors of Perugia</i>)
	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 May 1985
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte Costituzionale (<i>Constitutional Court</i>)
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 Court of Cassation, Law no. 164/1982, 14 April 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)	Law no. 164/1982, 14 April 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 change of sex / name only in cases of natural and not artificial modification of sex. This decision points out that the only way to end a transsexual's suffering is to allow a surgical operation, in order to reunite between body and mind, considering as fundamental not only physical but also mental health. Sex is to be considered as part of personality whose development has to be promoted and the idea that sexual identity is only determined by external appearance is a preconception.

Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 2

Case title	SICA v. Registry officer
Decision date	18 October 1997
Reference details (type and title of court/body; in original language and English [official translation,	Tribunale di Roma (<i>Tribunal of Rome</i>)
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 February 1989 a judge authorized a sex change by surgical means pursuant to Law no. 164, 14 April 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)	Law no. 164, 14 April 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 Law no. 164, 14 April 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 v. Registry officer
Decision date	5 October 2000
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Milano (<i>Tribunal of Milan</i>)
Key facts of the case (max. 500 chars)	VI was a man and on 24 September 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)	Law no. 164, 14 April 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 v. registry office
Decision date	2 November 2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Velletri (<i>Tribunal of Velletri</i>)
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)	Law no. 164, 14 April 1982, is aimed at helping transsexuals update their status at the registry office after finally reuniting 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 and M. Rizk v. Prefettura di Roma
Decision date	17 May 2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunal Amministrativo Regionale del Lazio (<i>Administrative Regional Tribunal of Lazio</i>)
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. 89 of Decree of the President of Republic no. 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 Decree of the President of Republic no. 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 Law no. 164, 14 April 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. 89 of Decree of the President of Republic no. 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 Law no. 164, 14 April 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. v. Registry office
Decision date	23 November 2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Appello di Firenze (<i>Court of Appeal of Florence</i>)
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 Law no. 164, 14 April 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. v. Registry officer
Decision date	15 October 2004
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Brescia (<i>Tribunal of Brescia</i>)
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)	Law no. 164, 14 April 1982, has to be read together with Art. 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, Tribunal of Milan, 5 October 2000 and Tribunal of Pisa, 15 January 2008).

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

Case title	XX v. Registry officer
Decision date	15 January 2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Pisa (<i>Tribunal of Pisa</i>)
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 Law no. 164/1982, under Articles 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)	Law no. 164, 14 April 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 G, Transgender issues

Case title	No. 194
Decision date	3 May 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Rovereto (<i>Tribunal of Rovereto</i>)
Key facts of the case (max. 500 chars)	A transsexual person asked the Tribunal to confirm her request for gender reassignment in the records of the registry office certificate although she did not undergo surgery.
Main reasoning/argumentation (max. 500 chars)	The Tribunal confirmed the view already sustained (only) by the Tribunal of Rome in two previous judgments, according to which Law 164/1982 does not require gender reassignment surgery as a mandatory requirement for the adjustment of the registry office certificate. The law just requires surgery to be authorised in the case it is necessary for the physical and psychological health of the person.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The law does not require the applicant to undergo gender reassignment surgery in order to change the reference to her sex in the registry certificate. The choice of undertaking gender reassignment surgery is left to the applicant who should receive psychological support / counselling.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The applicant was recognised as female for the purpose of the registry office certificate, although she did not undergo surgery.

Case title	No. 5896
Decision date	11 March 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Roma (<i>Tribunal of Rome</i>)
Key facts of the case (max. 500 chars)	The case concerned the authorisation of power of consent requested by a parent who had parental authority over the son who needed to undergo surgical treatment for adjustment of his sexual features from male to female.

Main reasoning/argumentation (max. 500 chars)	The Tribunal affirmed that, when the reassignment operation concerns an underage child and it is aimed at protecting his/her psychological well-being, parents have to give their consent. However, it is essential to grant the concerned child hearing, in compliance with his right to be heard.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The protection of the child's psychological well-being may require that parents are authorised to give their consent for the surgical treatment required for gender reassignment.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The parents were authorised to give their consent and the child was heard.

Case title	Giudice di Sorveglianza di Spoleto, 13 July 2011
Decision date	13 July 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	Giudice di Sorveglianza di Spoleto (<i>Surveillance Judge of Spoleto</i>)
Key facts of the case (max. 500 chars)	Medical treatment was not given to a transsexual person while he was detained.
Main reasoning/argumentation (max. 500 chars)	According to the judge, medical treatment must be granted free of charge to a transsexual person, even when under detention, in compliance with the right to health enshrined in Art. 32 of the Constitution
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	It is not important that a protocol of understanding between the regional administration and the prison has been signed by on this matter; the prison authority has to ensure that particular therapy if the transsexual person had already started it before detention.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The transsexual person detained received the necessary medical treatment free of charge.

Case title	No. 14329
Decision date	6 June 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Cassazione (<i>Court of Cassation</i>)
Key facts of the case (max. 500 chars)	The Court of Cassation raised the question of constitutional legitimacy of Law no. 164/82 for imposing an automatic divorce on married persons who request and obtain gender reassignment, without considering the possibility that the partners may want to continue with the marriage.
Main reasoning/argumentation (max. 500 chars)	The illegitimacy of Art. 4 of Law no. 164/1982, imposing the automatic divorce, is based on the alleged breach of art. 2 of the Constitution which protects inviolable human rights and social groups; art. 3 which prohibits discrimination on various grounds including social conditions; art. 29 that grants the recognition of marriage and art. 117 which requires that the exercise of the legislative powers of the State and the Regions must comply with international law or obligations.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The alleged constitutional illegitimacy of Art. 4 of the Law no. 164/82.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The question of constitutional legitimacy is now pending before the Constitutional court.

Case title	No. 341
Decision date	15 November 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Autorità Garante per la Protezione dei Dati Personali (Authority for the Protection of Personal Data)
Key facts of the case (max. 500 chars)	A transsexual person who underwent gender reassignment surgery after obtaining a degree in a public university requested for certification of the degree obtained. The University issued the certificate making evident in it the gender reassignment thus violating his/her right to privacy.
Main reasoning/argumentation (max. 500 chars)	The right to respect for personal data requires that the post-surgery certifications by the University should contain the personal data acquired after gender reassignment.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The key issue is about the possibility of revealing, by way of an official public certification of a different condition, that a person has undergone gender reassignment. According to the Authority for the Protection of Personal Data, all public certificates requested by a transgender person after gender reassignment operation should report the new gender. Reporting the old gender would amount to a violation of his/her right to privacy.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Authority asked the Administration of the University to adopt technical measures to ensure that all the official documents are issued with the new personal data.

Case title	V.F. v. Questura Reggio Emilia
Decision date	9 February 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Reggio Emilia (<i>Tribunal of Reggio Emilia</i>)
Key facts of the case (max. 500 chars)	Two spouses, an Italian citizen and a third-country national who is a transsexual person were accused of having contracted a bogus marriage. For this reason, the Police started investigations meant to support a refusal to issue a stay permit to the third-country partner.
Main reasoning/argumentation (max. 500 chars)	As long as the spouses live together and share a family life, their private life cannot be investigated to show that their marriage is bogus. As a consequence, the competent authority (Questura) cannot refuse to issue the stay permit to the spouse of an Italian citizen on the ground of his/her transsexuality.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Tribunal clarified that, until the transsexual spouse requests for a change of his/her personal data to reflect the new gender identity, the marriage remains valid because it is between two persons of different sexes.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	A stay permit was issued to the third-country spouse.

Case title	170/2014
Decision date	11 June 2014
Reference details (type and title of court/body; in original language and English [official translation, if available])	Constitutional Court (<i>Corte costituzionale</i>)
Key facts of the case (max. 500 chars)	A married man (now A. B.) requested, after some years of marriage, a gender reassignment to reflect his gender identity, According to the Law no. 164/82, articles 2 and 4, acceptance of the request by a Tribunal and pronouncement of a corresponding judgment on gender reassignment, implies an automatic dissolution of the marriage. As a result, A.B. was obliged to divorce from her spouse after obtaining the Court approval of her request,. They went before a Court and challenged these provisions claiming that forced divorce violated some provisions of the Constitution.
Main reasoning/argumentation (max. 500 chars)	According to the Constitutional Court judgment no. 170/2014, articles 2 and 4 of the Law no. 164/1982 do not comply with article 2 of the Constitution. The reasoning recalls the impossibility for the transgender person to decide, on occasion of the judgment on gender reassignment, to maintain the legal relationship with his/her spouse. However, if this decision is taken, the relationship will be regulated by a new kind of institute (registered partnership) which the Parliament is called on to introduce as soon as possible. Indeed, the Constitutional court excludes that the “new” union between the transgender person and his/her spouse, after judgment on gender reassignment of the former, can be protected by article 29 of the Constitution, related to the marriage between a man and a woman
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Constitutional Court clarified that forced divorce violates the Constitution. It is illegitimate because it violates the protection of fundamental rights as protected by article 2 of the Constitution but not article 29 which is aimed at protecting – it seems - only heterosexual couples.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Parliament is now called on to introduce as soon as possible a new kind of institute (registered partnership) which will regulate the relationship between two persons of the same sex. As for the applicant in the main proceeding, the Court will decide the case in coming months, hopefully after Parliament will have introduced registered partnerships. .

Chapter G, Miscellaneous

Case title	Decree 3 April 2014
Decision date	3 April 2014

Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunal of Grosseto (<i>Tribunale di Grosseto</i>)
Key facts of the case (max. 500 chars)	Two man went to New York to marry. When they came back, they asked for the registration of their marriage at the Grosseto's registrar. The Municipality's officer refused so they challenged the refusal before a Court. .
Main reasoning/argumentation (max. 500 chars)	According to the Tribunal, when a marriage is entered into according to the law of the foreign State and it is not contrary to public order, it must be registered by the Municipality's registrar. This is true also for same-sex marriage when it was contracted abroad according to the law of the foreign State. As for the contrast with public order, the Tribunal remembered that, according to the Court of Cassation's judgment no. 4184/2012, the notion of marriage as enshrined in the ECHR includes also same-sex unions and Italy, being part of the ECHR, cannot but take into due account this new interpretation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	According to the Tribunal of Grosseto there are no reason to refuse the registration of a same-sex marriage contracted abroad. Moreover, the registration has not a creative function but it just recognises an act issued abroad, in accordance with the foreign State's law.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Municipality of Grosseto was obliged to register the same-sex marriage contracted abroad.

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

Case title	Prime Minister v. Tuscany
Decision date	21 June 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte Costituzionale (<i>Constitutional Court</i>)

Key facts of the case (max. 500 chars)	Tuscany passed a law no. 63, 15 November 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. 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
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	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.

Case title	Attorney Artini v. Padua City Council
Decision date	5 July.2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	Veneto Regional Administrative Tribunal, First section (<i>Tribunale Amministrativo Regionale del Veneto, Sezione Prima</i>).
Key facts of the case (max. 500 chars)	Mr Artini undertook a popular action seeking revoke of decision No. 108/2006 by Padua City Council and on an attestation of enrolment in the registry office as a 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. The exercise of all civil rights guaranteed by law depend on 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.

Case title	F. Piomboni and M. Pegoraro v. Florence Municipality (Marriage Registry office)
Decision date	30 June 2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Appello di Firenze, Prima Sezione Civile (<i>Florence Court of Appeal, First Civil Section</i>)
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.

Case title	No. 138
Decision date	14 April 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte Costituzionale (<i>Constitutional Court</i>)
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. 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. 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. 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.

Case title	No. 94
Decision date	21 March 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte Costituzionale (<i>Constitutional Court</i>)
Key facts of the case (max. 500 chars)	In February 2010, the Office of the Prime Minister challenged the Regional Law of Liguria n. 52/2009 entitled: <i>Norme contro le discriminazioni determinate dall'orientamento sessuale o dall'identità di genere</i> (Rules against discrimination on the grounds of sexual orientation and gender identity) before the Constitutional Court claiming that the law had gone beyond the legislative powers of the Region, encroaching on a subject that falls under the competence of the national government pursuant to art. 117 of the Constitution.
Main reasoning/argumentation (max. 500 chars)	The Constitutional Court declared the Liguria regional law constitutionally legitimate, rejecting the Government's claim and confirming the competence of regional administrations to adopt provisions on equality issues within their fields of competence under Art. 3 of the Constitution.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Within the powers conferred by the Constitution, regional administrations may adopt measures against discrimination on the ground of sexual orientation and gender identity in fields such as employment, schools, health, welfare, educational and cultural projects.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Liguria Regional Law on sexual orientation and gender identity is legitimate and still into force.

Chapter H, Miscellaneous

Case title	Mr E v. Mrs C
Decision date	14 October 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunal of Brescia (<i>Tribunale di Brescia</i>)
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.

Case title	X v. Y
Decision date	28 June 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Napoli (<i>Tribunal of Naples</i>)
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.

Case title	Mr Scarantino v. Public Prosecutor
Decision date	17 July 2002
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte d'Assise d'Appello di Caltanissetta (<i>Criminal Court of Appeal of Caltanissetta</i>).
Key facts of the case (max. 500 chars)	Mr Scarantino was a member of the criminal organisation called <i>Cosa Nostra</i> and after he was sentenced to prison, he started cooperating with the magistrates investigating the group's activities). In particular, he described some details of the murder of the Judge, Mr Borsellino who was killed by a car bomb and Mr Scarantino participated in the theft of the car used for the explosion. The defence of the accused questioned Mr Scarantino's reliability on the grounds, among others, that the latter had had a homosexual relationship when he was a teenager and as such, could not be a member of the Mafia.
Main reasoning/argumentation (max. 500 chars)	The criminal organisation's moral code is not as conservative as it may appear at first sight. It is therefore possible for a homosexual person to be a member of the organisation. Besides, Mr Scarantino uses the Mafia's slangs and as such may have been in contact with the organisation and indeed his statements had been checked and confirmed.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The declarations of a member of organised crime cooperating with investigators are to be considered to be true only if they have been confirmed, regardless of his/her sexual orientation.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court confirmed Mr Scarantino's reliability. The Mafia's Code of honour is not so restrictive as it may seem and in the fight against this organisation, it is important to overcome preconceptions.

Case title	MAG v SDG
Decision date	01 March.2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Cassazione, Sezione Prima Civile (<i>Court of Cassation, First civil section</i>)
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 Court of cassation 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.

Case title	D. Giuffrida v Ministry of Transport and Ministry of Defense
Decision date	12 July 2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Catania (<i>Tribunal of Catania</i>)
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.

Case title	X v. Y
Decision date	4 October 2008
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale di Reggio Emilia (<i>Tribunal of Reggio Emilia</i>)
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.

Case title	Ministry of Internal Affairs v. Mr MC Call and Mr Taddeucci
Decision date	12 May 2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte d' Appello di Firenze (<i>Court of Appeal of Florence</i>)
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 v. Ministry of Internal Affairs
Decision date	17 March 2009, no. 6441
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di cassazione, Sezione Prima Civile (<i>Court of Cassation, First civil section</i>)
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 Court of Cassation assessed that partners de facto cannot be considered as “relative” under Legislative decree no. 286/98, 25 July 1998. Nonetheless, this extensive interpretation is not imposed by any constitutional rule and it cannot derive from Art. 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 Legislative decree no.5/2007, that only concern the reunion of third country national with their family members) and the European Directive 2004/38/EC (implemented by Legislative decree no. 30/2007 that concern the right of citizen of the Union and their family members to move and reside freely within another Member State and not the right of family reunion 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. 30 of Legislative decree no. 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.

Case title	Ordinanza no. 4
Decision date	5 January 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte Costituzionale, (<i>Constitutional Court</i>)
Key facts of the case (max. 500 chars)	Two persons, X and Y, of the same sex applied to the municipal marriage registry office for the publication of the announcement that they intend to marry, which is a precondition for civil marriage. The registry office rejected the application, considering it to be contrary to public order according to the marriage registry office, being of different sexes is a fundamental precondition for marriage. The applicants appealed to a Civil Court which felt that a pronouncement of the Constitutional Court was necessary because it is not possible to extend the institute of civil marriage, regulated under civil law, to persons of the same sex, and this constitutes a violation of Articles 2, 3, 29 and 117, para. I, of the Constitution.
Main reasoning/argumentation (max. 500 chars)	Recalling judgment no. 138/2010, the Constitutional Court confirmed that the question raised by the Tribunal of Ferrara was partly inadmissible and partly unfounded because the recognition of homosexual unions is up to the Parliament, in the exercise of its discretionary power.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	As in judgment no. 138/2010, the Constitutional Court confirmed that Art. 29 of the Constitution refers only to the traditional concept of marriage. Moreover, the Civil Code which provides only for marriage between a man and a woman does not violate the principle of non-discrimination enshrined in Art. 3 of the Constitution.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	It is up to the legislator, within its own discretionary power, to introduce provisions which may recognise and safeguard same-sex union.

Case title	No. 601
Decision date	11 January 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Corte di Cassazione, I sez. civile (<i>Court of Cassation, I Civil sect.</i>)
Key facts of the case (max. 500 chars)	The Court of Cassation rejected the appeal by a father against the decision of the Court of Appeal of Brescia to give custody of the man's son to the child's mother, despite the latter being in a same-sex relationship. The father claimed that the child would have an unbalanced development if allowed to live with his mother and her female partner.
Main reasoning/argumentation (max. 500 chars)	The Court of Cassation highlighted that «the applicant's complaint is not based on any scientific certainty or data of experience, but only on the mere prejudice that living in a family centred on a homosexual couple is detrimental to a balanced development of the child. In this way, what has to be proven, namely the harmfulness of that family environment for the child, is taken for granted ».
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A same-sex family does not constitute per se a harmful environment for a child and, on the contrary, such argumentation is a mere prejudice, not supported by any scientific evidence.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The appeal was dismissed and the mother obtained the custody of the child.

Case title	Not applicable
Decision date	31 October 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunale per i minorenni dell'Emilia Romagna (<i>Tribunal for Minors of Emilia Romagna</i>)
Key facts of the case (max. 500 chars)	The decision of the local social service to give in custody a child to a same-sex couple was contested by the Public Prosecutor of Parma on the ground that national legislation does not permit same-sex couples to adopt.
Main reasoning/argumentation (max. 500 chars)	The Tribunal ruled in favour of the couple, arguing that while legislation on adoption does not allow a same-sex couple to adopt a child, the rules on temporary custody provide that single individuals and common law couples may be given custody of a child. Given that the choice must be made in the best interest of the child, the Tribunal relied on the assessment of the social services, arguing that the child was happy to live with the couple and she was treated lovingly by them.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Tribunal highlighted the differences between the provisions on adoption and those on temporary custody and clarified that same-sex couples do constitute nuclear families. Relying on a <i>de facto</i> assessment, the best solution for the child was to live with the same-sex couple.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Tribunal rejected the position of the Public Prosecutor and gave custody of the child to a same-sex couple. It is the first case in which a same-sex couple has been given custody of a child.

Annex 2 – Statistics

The Minister of Equal Opportunities personally answered, 11 January 2008, that data or statistics are not available The Minister of the Internal Affairs personally answered, 04 February 2008, that data or statistics are not available

Data was requested from the following public authorities:

- the Department of Equal Opportunities;
- the Minister of Justice;
- the Minister of Internal Affairs – OSCAD;
- the National Observatory on Gender Identity.

All the authorities contacted replied by e-mail by the end of February / beginning of March, saying that there are no data or statistics on these issues because such information is not collected.

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

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
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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
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	2010	2011	2012	2013
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
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

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

	2010	2011	2012	2013
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
Number of LGBT partners who claimed their right to residence but were denied this right	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

	2010	2011	2012	2013
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

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
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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

	2010	2011	2012	2013
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

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
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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

Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.				
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification				

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

	2010	2011	2012	2013
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	Not Available	Not available	Not available	Not Available
Number of demonstrations against tolerance of LGBT people.	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

	2010	2011	2012	2013
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	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

Range of sanctions issued for homophobic hate speech	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
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

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

	2010	2011	2012	2013
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

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

	2010	2011	2012	2013
Number of name changes effected due to change of gender	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

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]

Data not available for the period 2010-2013

The Minister of Equal Opportunities personally answered, 11 January.2008, that data or statistics are unavailable The Minister of the Internal Affairs personally answered, 04 February 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

All the above mentioned authorities stated that there is no data on this topic for the years 2010, 2011, 2012 and 2013.

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage can be transformed into a registered partnership
IE									✓ (name change possible by Deed)	Further changes expected following court case <i>Lydia Foy</i> (2007)

									Poll and under Passports Act 2008)	
IT			✓	✓	✓	✓	✓	✓		The constitutionality of the Forced/ automatic divorce will be examined by the Constitutional Court in 2014. (see case Court of Cassation (<i>Corte di Cassazione</i>) no. 14329, 6 June 2013).
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV						✓	✓ Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
RO				✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI										No formalities for change of name

SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
UK										Change of name requires no formalities
UK	✓	✓	✓				✓	✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ✕=removed; change since 2008

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ¹³⁸	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted

¹³⁸ Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ¹³⁸	All areas of RED*		
EL	✓			✓	
ES			✓		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓			✓	Minister of Public Administration's Decree 31 May 2012 has extended the competence of UNAR from the field of discrimination based on the grounds of race and ethnic origin to include discrimination based on the grounds covered in Directive 2000/78. Therefore, in relation to sexual orientation, it operates only in the field of employment.
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ¹³⁸	All areas of RED*		
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	9	7	11	20	

Note: ✓ = Applies; ? = doubt; x = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or <i>travaux préparatoires</i>
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to ‘gender identification’.
DE			✓	Constitutional amendment proposal by opposition (‘sexual identity’)
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to ‘other issues related to gender’.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission
PL			✓	
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered ‘sex’ discrimination. The new ground ‘transgender identity or expression’ now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓			Explicit provision in legislation
UK		✓		The Equality Act 2010 replicates the ‘gender reassignment’ protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under “medical supervision” and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
TOTAL	10	3	15	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on ‘incitement to hatred’ and ‘aggravating circumstances’ covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category ‘group of people’, but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category ‘comparable group’. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category ‘groups of society’. Penal Code was amended to include hate motivated crimes against ‘certain groups of society’. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people. A bill is currently under discussion in Parliament (Italy, Senate, Bill on the fight of homophobia and transphobia (Disposizioni in materia di contrasto all’omofobia e alla transphobia) no. 1052).
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article 369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

Table 5 - Definition of ‘family member’ for the purposes of free movement, asylum and family reunification

Country Codes	Free movement ¹³⁹		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of ‘family member’ includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of ‘family member’ includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY							
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the ‘affective relationship’ be ‘duly attested’ remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU <i>acquis</i> , confirms the notion that a family member includes the <i>de facto</i> partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	
FR	?	?	?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities’ discretion, which may require additional conditions. No information available on refugees.
HU		✓		✓		?	Entry and residence rights for free movement are also granted for the unmarried <i>de facto</i> partner, subject to conditions.
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.
IT	✓						According to recent case-law (Tribunale di Reggio Emilia, 9 February 2012; Tribunale di Pescara, 15 January 2013) and public administration (see Minister of Internal Affairs’ note 26 October 2012).

¹³⁹ In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a ‘durable relationship’ may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement ¹³⁹		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
LT							
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV		✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO		?					The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.
SI							Provides a legal scheme for registered partnership in domestic law, but without granting entry and residence rights to registered partners
SK							Family reunification possible when the partner can prove economic or social dependence.
UK	✓	✓	✓	✓	✓	✓	
TOTAL	8	15	8	13	8	12	

Note: ✓ = applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.