

Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Italy

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Executive summary

Implementation of Employment Directive 2000/78/EC

- [1]. Employment Directive 2000/78/EC has been implemented in Italy by *Decreto legislativo* [Legislative Decree] n. 216 of 9.07.2003, issued by the government acting upon delegation of the Parliament. There are no gaps in implementation of the Directive. However, according to the letter of 12.12.2006, infringement procedure 2006/2441, issued by the European Commission, some parts of the Directive have not been properly implemented. As to judicial remedies and other instruments of protection against discrimination, Article 4 of the *Decreto legislativo* [Legislative Decree] n. 216 of 9.07.2003 provides that all agreements aimed at discriminating against workers 'on grounds of sexual orientation' are illegitimate. The *Ufficio Nazionale Antidiscriminazioni Razziali (UNAR) – ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza e sull'origine etnica* [Office against Racial Discrimination], which deals mainly with problems of racism and xenophobia, is expanding its field of competences to other kinds of discrimination, including discrimination based on sexual orientation, are envisaged. This body has advisory, monitoring and information provision roles. As to proceedings aimed at safeguarding victims of discrimination, Legislative Decree No 216/2003 provides a fast procedure. In accordance with Art. 4(3) of the Legislative Decree, the presumed victim of discrimination may invoke conciliatory procedure before turning to the judges. As to the burden of proof, Art. 4 (4) of Legislative Decree 216/2003 has implemented the Employment Directive 78/2000/EC in the narrowest sense. The Commission is not satisfied with the Italian norms concerning the burden of the proof. No statistics concerning discrimination on the ground of sexual orientation are available. As far as Art. 9/2 of the Employment Directive is concerned, Art. 5 of Legislative Decree No 216/2003 provides that the major trade unions in Italy may engage in judicial procedures in cases of collective discrimination if the victims of discrimination cannot be clearly identified. Associations registered in an official list can issue a petition to the judge on behalf of victims of discrimination. The Commission is not satisfied with the Italian norms implementing Art. 9/2 of the Directive, concerning the role of associations in the fight against discrimination on the ground of sexual orientation.

Freedom of movement

- [2]. It is important to point out two elements: first, the Italian measures for implementation of Directive 2004/38/EC reproduce Articles 2 and 3 of the Directive, without adding any further specification. Second, the Italian legal system does not recognise same-sex marriage (Italy does not recognise any form of registered partnerships, either heterosexual or LGBT) because of the obligations imposed by Article 29 of the *Costituzione della Repubblica Italiana* [Constitution of the Republic of Italy], as interpreted in the majority of legal doctrine, *Codice Civile* [Civil Code] dispositions, and decisions of the Civil Division of the *Corte Suprema di Cassazione* [Supreme Court of Cassation] and of the *Corte Costituzionale* [Constitutional Court]. A necessary prerequisite for the validation of a marriage is that the partners are of different sexes. Briefly, it can be stated that freedom of movement is fully assured to single persons, regardless of personal conditions and sexual orientation. However, Italian law does not consider same-sex marriage or registered partnership or durable relationship, duly attested, as autonomous entitlement to enjoy freedom of movement.

Asylum and subsidiary protection

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

Family reunification

- [4]. The provisions of Directive 2003/86/EC in regard to family reunification have been implemented by legislative decree.¹ The notion of the family relevant to the purpose of reunification is that of a heterosexual couple, as ruled by Art. 29 of the Constitution, as interpreted in the majority of legal doctrine, *Codice Civile* [Civil Code] dispositions, and decisions of the Civil Division of the *Corte Suprema di Cassazione* [Supreme Court of Cassation] and of the *Corte Costituzionale* [Constitutional Court]. The delegated legislation does

¹ Italy/Decreto legislativo 5/2007 (08.01.2007).

not recognise the right of family reunification to persons in same-sex marriages or registered unions (neither heterosexual, nor LGBT) or *de facto* unions.

Freedom of assembly

- [5]. 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 meeting is fully protected by the Constitution. There are no official data regarding how measures concerning freedom of assembly in the context of homophobia and/or discrimination on the grounds of sexual orientation are implemented in the Italian legal system.

Hate speech and criminal law

- [6]. There is currently no legal provision in Italy – either in criminal law nor in civil law – in regard to hate speech related to homophobia and/or discrimination on the ground of sexual orientation. Criminal law only penalises hate speech related to discrimination on the grounds of race, ethnicity, nationality or religion. 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 are no official data regarding the number of non-criminal court cases initiated in connection with homophobic statements.

Transgender issues

- [7]. As previously stated, transgender people have been able to rely on very favourable treatment on the part of the Italian public health service since the 1980s, under the provisions of the law on *Norme in materia di rettificazione di attribuzione di sesso* [Rules concerning rectification of sexual attribution].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

² Italy/Legge 164/1982 (14.04.1982).

in the records of the *Ufficio dello Stato civile* [Registrar of Civil Status].

Miscellaneous

- [8]. In Italy, some positive actions for LGBT people are being pursued at both national and local level. Three legislative bills have been presented before Parliament.
- [9]. Some town councils, though it is not possible to list exactly which councils, or how many, have created public registers of civil unions. However, the value of these registers is only symbolic, and the number of unions thus 'registered' is not significant.

Good practices

- [10]. The most important initiatives concerning the fight against discrimination on the ground of sexual orientation have been pursued by the region of Tuscany. Rejection of discrimination on the ground of sexual orientation is affirmed by Article 4 of the *Statuto della Regione Toscana* [Statute of the Region of Tuscany].³
- [11]. Tuscany and other regions have launched a national public administrations network with the aim of improving and promoting the civil rights of LGBT people.
- [12]. 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.

³ Italy/Statuto della Regione Toscana (19.07.2004).

A. Implementation of Employment Directive 2000/78/EC

- [13]. Employment Directive 2000/78/EC has been implemented in Italy by *Decreto legislativo* [Legislative Decree] n. 216 of 9.07.2003, issued by the government acting upon delegation of the Parliament. This legislative decree was published in the Official Journal on 13.08.2003, and entered into force on 28.08.2003. This decree concerns discrimination based not only on sexual orientation but also on religion, personal beliefs, disability and age. As the Decree refers to the same grounds as the Directive, there are no gaps in implementation of the Directive. The Directive 2000/78/EC has been implemented only regarding employment; the implementing measures do not cover other fields such as education, public services, etc. However, according to the letter of 12.12.2006, infringement procedure 2006/2441, issued by the European Commission, some parts of the Directive have not been properly implemented. In particular, as far as discrimination on the ground of sexual orientation is concerned, the Commission considers that the following articles of Directive 2000/78/EC have not been adequately implemented: Article 4, para. 1, concerning cases where a difference of legal treatment cannot be qualified as discrimination because they are justified as genuine and determining occupational requirements – Italian law seems to adopt an excessively broad understanding of this exception to the principle of equal treatment; Article 9, para. 2 concerning the role of associations in engaging in judicial or administrative procedures against discrimination (see [30] below); Article 10, para. 1 on the burden of proof (see [28] below) and Article 11 on victimisation, because the Italian law seems to protect only the direct victim of the discrimination, without taking into account other persons, such as witnesses or other workers, who tried to protect the victim.

As to judicial remedies and other instruments of protection against discrimination, Article 4 of the *Decreto legislativo* [Legislative Decree] n. 216 of 9.07.2003 adds a sentence to Article 15 of Law No 300/1970,⁴ the basic Italian law on the protection of workers, the so-called *Statuto dei lavoratori* [Workers' Statute]: all agreements aimed

⁴ Italy/Legge n. 300/1970 (20.05.1970).

at discriminating against workers 'on grounds of sexual orientation' are illegitimate.

[14]. In accordance with Article 7 of Legislative Decree No 215 of 09.07.2003,⁵ implementing Directive 2000/43/EC, a Prime Minister's decree issued on 11.12.2003 set up the *Ufficio Nazionale Antidiscriminazioni Razziali (UNAR) – ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza e sull'origine etnica* [Office against Racial Discrimination] within the *Dipartimento per i Diritti e le Pari Opportunità* [Department for Rights and Equal Opportunities].⁶ This Office deals mainly with problems of racism and xenophobia, but initiatives to expand its competences to other kinds of discrimination, including discrimination based on sexual orientation, are envisaged. The UNAR is about developing its competences in the field of discrimination on the ground of sexual orientation. This Office consists of a pool of five judges and several lawyers. This body has advisory, monitoring and information provision roles. UNAR has two main departments: the Service for equal treatment and the Service for study, research and institutional relationships. The powers of the Office are the following:

- Legal assistance: the Office gives legal assistance for civil and administrative proceedings undertaken by victims of discrimination, through a specific Contact Center.
- Monitoring: the Office carries out enquiries to verify the existence of discriminations, in respect of judicial decisions. UNAR submits an annual report based on this research to Parliament and to the Prime Minister.
- Development: in cooperation with not for profit associations, the Office promotes positive action projects regarding discrimination.
- Information: the Office spreads knowledge by means of awareness actions and advertising campaigns
- Consulting: the Office gives advice and opinions relating to discrimination.
- Study and research: the Office promotes studies, research, and vocational education courses in cooperation with NGOs and associations, operating in the same field. This also includes the establishment of guidelines and codes of behaviour to be applied in the fight against discrimination.

⁵ Italy/Decreto legislativo n. 215/2003 (09.07.2003).

⁶ See <http://www.pariopportunita.gov.it/defaultdesktop.aspx?page=91>

- [15]. As to proceedings aimed at safeguarding victims of discrimination, Legislative Decree No 216/2003⁷ refers to Art. 44 of the Immigration Framework Act, Legislative Decree No 286/1998,⁸ 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 discriminatory behaviour by the respondent to cease, and may take any measures necessary for the removal of all consequences and effects of such behaviour. A special procedure for use in cases of urgency is established by Art. 44 (5): judicial remedies are immediately enforced by judicial decree and subsequently confirmed or modified during the first hearing of the formal process. In particular, the judge can also award compensation for non-pecuniary damages. Pursuant to Art. 388 of the Criminal Code, if the respondent does not respect the judge's decision, he can be sentenced to prison for up to three years and 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.
- [16]. In accordance with Art. 4(3) of the Legislative Decree, the presumed victim of discrimination may invoke conciliatory procedure before turning to the judges.
- [17]. As to the burden of proof, Art. 4 (4) of Legislative Decree 216/2003 provides that 'in order to establish the existence of the discriminatory behaviour, the plaintiff may provide statistical evidence as well as serious, accurate and non-contradictory factual evidence'. If the plaintiff establishes specific facts and statistics from which it can be inferred that there has been a discrimination, the respondent must prove the opposite. Therefore the burden of proof on the respondent as provided for by Employment Directive 78/2000/EC has been implemented in the narrowest sense. The Commission is not satisfied with the Italian norms implementing Art. 10 of the Directive, concerning the burden of the proof.⁹
- [18]. No statistics concerning discrimination on the ground of sexual orientation are available. The work of UNAR in this field of discrimination on the ground of sex orientation is still in the early stages.
- [19]. As far as Art. 9/2 of the Employment Directive is concerned, Art. 5 of Legislative Decree No 216/2003 provides that 'the local

⁷ Italy/Decreto legislativo n. 216/2003 (09.07.2003).

⁸ Decreto legislativo n. 286/1998 (25.07.1998).

⁹ See the letter of the Commission of 12.12.2006, infringement procedure 2006/2441.

representatives of the most representational national organisations at national level may engage in the procedure established by Art. 4 against the natural or legal person who is the author of the discriminatory act or behaviour, either in name or on behalf, or in support of the victim of discrimination, with his or her delegation, released by public or private authentic deed on pain of nullity'. The reference to 'the most representational national organisations at national level' is a typical definition used in Italian labour law, and refers to the three major trade unions in Italy, CGIL, CISL, and UIL. The same 'local representatives of the most representational national organisations' may engage in judicial procedures in cases of collective discrimination if the victims of discrimination cannot be clearly identified. Associations registered in an official list can issue a petition to the judge on behalf of victims of discrimination. The provision concerning the role of association in the field of discrimination on the ground of sexual orientation are narrow if compared with 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*. The Commission is not satisfied with the Italian norms implementing Art. 9/2 of the Directive, concerning the role of associations in the fight against discrimination on the ground of sexual orientation.¹⁰

[20]. No statistics available.

B. Freedom of movement

[21]. It is important to point out two elements: first, the Italian measures for implementation of Directive 2004/38/EC reproduce Articles 2 and 3 of the Directive, without adding any further specification. Second, the Italian legal system does not recognise same-sex marriage (Italy does not recognise any form of registered partnerships, either heterosexual or LGBT) because of the obligations imposed by Article 29 of the *Costituzione della Repubblica Italiana* [Constitution of the Republic of Italy], as interpreted in the majority of legal doctrine, *Codice Civile* [Civil Code] dispositions, and decisions of the Civil Division of the *Corte Suprema di Cassazione* [Supreme Court of Cassation] and of the *Corte Costituzionale* [Constitutional Court]. A necessary prerequisite for the validation of a marriage is that the partners are of different sexes. Briefly, it can be stated that freedom of movement is fully

¹⁰ See the letter of the Commission of 12.12.2006, infringement procedure 2006/2441.

assured to single persons, regardless of personal conditions and sexual orientation. However, Italian law does not consider same-sex marriage or registered partnership or durable relationship, duly attested, as autonomous entitlement to enjoy freedom of movement.

- [22]. Directive 2004/38/EC has been implemented by Decreto legislativo [Legislative Decree] 30/2007.¹¹ Article 2 of the Directive 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 dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b). Article 3 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.
- [23]. 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 of residence on the territory for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport). For the Residence Card to be issued, Italy requires presentation of the following documents: (a) a valid passport; (b) a document attesting to the existence of a family relationship; (c) the registration certificate of the Union citizen whom they are accompanying or joining. The Residence Card is valid for five years. They can also apply for a residence permit for 'elective residence', supplying proof of considerable personal economic resources to sustain himself/herself (Art. 11, Decreto Legislativo 394/1999¹² and other modifications¹³). The Union citizen's death shall not entail loss of the right of residence of his/her family members who

¹¹ Italy/Decreto legislativo 30/2007 (06.02.2007).

¹² Italy/Decreto legislativo 394/1999 (31.08.1999).

¹³ Italy/Ministerial memorandum (18.07.2007).

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 assistance system of the State during their period of residence and have comprehensive sickness insurance cover in the host Member State, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements. 'The Union citizen's departure from the host Member State or his/her death shall not entail loss of the right of residence of his/her children or of the parent who has actual custody of the children, irrespective of nationality, if the children reside in the host Member State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies. Family members who are not nationals of a Member State and have legally resided with the Union citizen in the State for a continuous period of five years have the right of permanent residence there.'

- [24]. There are no available statistics to demonstrate the impact / social reality of relevant legislation for LGBT persons.
- [25]. 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.
- [26]. In recent years at least three homosexual couples have requested the Italian authorities to recognize their relationship. A decision of the *Tribunale di Latina* [Tribunal of Latina]¹⁴ affirmed that it is not possible in Italy to register a same-sex marriage of two Italian citizens that was registered in the Netherlands, since the two individuals were not of the opposite sex, an essential prerequisite for marriage in the Italian legal system. The decree of the *Corte di Appello di Roma* [Court of Appeal of Rome] of 13.07.2006 confirms the Tribunal decree. The *Tribunale di Firenze* [Tribunal of Florence] decree of 07.07.2005 recognises the right of a citizen of New Zealand to receive a visa/ residence permit on the basis of a *de facto* partnership, attested by the New Zealand authorities, between him and an Italian citizen. The reasoning is based on the Directive 2004/38/EC, at that time not yet implemented in Italy, and on the Italian system of international private law. That decree was appealed and rejected by the *Corte*

¹⁴ Italy/Tribunale di Latina (10.06.2005).

d'appello di Firenze [Court of Appeal of Florence].¹⁵ 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 Supreme Court. Slightly different but very interesting, although falling outside the scope of this study, is the case decided by the Tribunal of Florence about the first Italian homosexual couple that applied to the public authorities to marry in Italy. The Tribunal rejected the request.¹⁶

C. Asylum and subsidiary protection

[27]. Directive 2004/83/EC has been implemented by Legislative Decree 251/2007.¹⁷ 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.

[28]. Neither official nor unofficial statistics are available.

[29]. Official data available, supplied by the Ministry for Internal Affairs the 4.02.2008, regards the period between 2005 (the first year of activity of the *Commissioni territoriali di asilo* [Territorial Commissions for Asylum Rights]) and the start of 2008. The *Commissione nazionale di asilo* [National Commission for Asylum Rights] affirms that it does not usually keep that kind of personal data for statistical use. The data provided demonstrate 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 have been granted. Official data provided by Ministry for Internal Affairs do not specify the reasons that justify acknowledgement of refugee status or the other kinds of humanitarian protection granted. (Indeed it is not possible to indicate whether the protection granted was that of refugee status or was another form of subsidiary protection, because Italy has only recently adopted Directive 2004/83/EC by means of Legislative Decree 251/2007 of 19.11.2007.)¹⁸ Petitioners come mainly from

¹⁵ Italy/ Corte d'appello di Firenze (12.05.2006).

¹⁶ Italy/Tribunale di Firenze (3.10.2007).

¹⁷ Italy/Decreto legislativo 251/2007 (19.11.2007).

¹⁸ Italy/Decreto legislativo 251/2007 (19.11.2007).

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.

- [30]. On the other hand, data supplied by ACNUR/UNHCR Italy (see the website of the LGBT organisation *EURIALO&NISO - Associazione GLBT Biella. "diritti e culture delle differenze"*)¹⁹ affirm that 40 homosexuals obtained refugee status or humanitarian protection because of persecution on the basis of their sexual orientation. The data do not specify the reasons that justify acknowledgement of refugee status or the other kinds of humanitarian protection granted. (Indeed it is not possible to indicate whether the protection granted was that of refugee status or was another form of subsidiary protection, because Italy has only recently adopted Directive 2004/83/EC by means of Legislative Decree 251/2007 of 19.11.2007.)
- [31]. Two recent Supreme Court of Cassation decisions²⁰ 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). It is important to state that these two recent decisions represents the only relevant case law.
- [32]. Data about family reunification do not exist, since the Italian legal system provides family reunification only for the spouse of a heterosexual marriage (Art. 29 a, Legislative Decree 286/1998).²¹
- [33]. There are no statistics available to demonstrate the impact / social reality of relevant legislation for LGBT people.
- [34]. Data about family reunification do not exist since the Italian legal system provides family reunification only for the spouse, without specifying if same-sex marriage is included (Art. 29 a, Legislative Decree 286/1998).²² Data about denial of family reunification to LGBT partners are also lacking, because no national record of reasons for denial exist.

¹⁹ <http://eurialoeniso.blogspot.com/2007/08/commisariato-onu-40-rifugiati.html>

²⁰ Italy/Corte di Cassazione (18.01.2008) and Corte di Cassazione (25.07.2007)

²¹ Italy/Decreto legislativo 286/1998 (25.07.1998). (*Testo unico sull'immigrazione*)

²² Italy/Decreto legislativo 286/1998 (25.07.1998). (*Testo unico sull'immigrazione*)

D. Family reunification

- [35]. Directive 2003/86/EC has been implemented by Legislative Decree 5/2007.²³ The notion of the family relevant to the purpose of reunification is that of a heterosexual couple, as ruled by Art. 29 of the Constitution, as interpreted in the majority of legal doctrine, *Codice Civile* [Civil Code] dispositions, and decisions of the Civil Division of the *Corte Suprema di Cassazione* [Supreme Court of Cassation] and of the *Corte Costituzionale* [Constitutional Court]. The delegated legislation does not recognise the right of family reunification to persons in same-sex marriages or registered unions (neither heterosexual, nor LGBT) or *de facto* unions.
- [36]. Data about family reunification do not exist since the Italian legal system provides family reunification only for the spouse, not including same-sex marriage (Art. 2 e Legislative Decree 5/2007, Art. 29 a Legislative Decree 286/1998).²⁴ The Italian courts do not recognise a marriage concluded abroad between two persons of the same sex as giving rise to family reunification rights in Italy where one of the two spouses is granted the right to reside in Italy.
- [37]. No judicial cases have yet arisen.
- [38]. No relevant statistical information is available: a personal answer of 04.02.2008 from the Minister of the Internal Affairs about the application of the Directive stated that data or statistics are unavailable.
- [39]. See para. [26]

E. Freedom of assembly

- [40]. 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'.

²³ Italy/Decreto legislativo 5/2007 (08.01.2007).

²⁴ Italy/Decreto legislativo 5/2007, Decreto legislativo 286/1998 (25.07.1998). (*Testo unico sull'immigrazione*).

- [41]. 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.
- [42]. For meetings held in public thoroughfares (streets, squares and so on) it is necessary that the promoters notify the *questore* [head of the police administration] of that place at least three days prior to the meeting, as provided by Article 18 of *Regio Decreto* [Royal Decree] 1931-773.²⁵ Prior notification allows the police to prevent those that may pose a risk to public security and safety, depending on the circumstances in which they are to be held, and also to set times and locations for such meetings; it also allows the police authorities to supervise meetings and to interrupt them where necessary, if they are not peaceful and unarmed. It is important to note that giving notice is compulsory for promoters of meetings, who can be fined in cases of non-compliance, but the individual right to assembly cannot be jeopardised by the promoters' attitude, and meetings posing no real danger for public safety or security should not be forbidden simply on the basis of lack of notice to the authorities.
- [43]. 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.
- [44]. There are 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.
- [45]. 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.
- [46]. There is no relevant case law on this issue.

²⁵ Italy/R.D. 1931-773 (18.06.1931).

F. Hate speech and criminal law

- [47]. 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.
- [48]. Criminal law only penalises: a) those who propagandise ideas founded on racial or ethnic superiority or hate, or solicit someone to commit, or themselves commit, acts of discrimination for reasons of race, ethnicity, nationality or religion; b) those who, in every way, solicit someone to commit, or themselves commit, violence or acts which induce to violence for reasons of race, ethnicity, nationality or religion; c) those who take part or support organisations, associations, movements or groups which aim to solicit discrimination or violence for reasons of race, ethnicity, nationality or religion (Article 3, *Legge* [Law] 654/1975),²⁶ which ratifies and implements the International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966, as amended by *Decreto legge* [Decree Law] 122/1993²⁷).
- [49]. During the period of the XV legislature (April 2006-February 2008), many bills were presented before Parliament, in order to extend these criminal provisions to discrimination on the ground of sexual orientation. However, none of these have been approved because of the government crisis and the subsequent early dissolution of Parliament in February 2008. Initially, Parliament tried to put these new criminal provisions in an amendment to a decree on exclusion of immigrants for reasons of public security.²⁸ But the Government decree could not be turned into law because of a mistake in the quotation of the Article of the European Treaty on prohibition of discrimination (Article 1-bis, Senate of the Republic, Bill no. 1872 and Chamber of Deputies, Bill no. 3292, which refers to ‘Article 13, para. 1 of the Amsterdam Treaty’ instead of ‘Article 13 of the Treaty establishing the European Community’)²⁹: a mistake which made it impossible for the Parliament to pass the bill within the sixty-day time limit for turning a Governmental decree-law 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,

²⁶ Italy/*Legge* 654/1975 (13.10.1975).

²⁷ Italy/*Decreto legge* 122/1993 (26.4.1993).

²⁸ Italy/*Decreto legge* 181/2007 (01.11.2007).

²⁹ See <http://www.senato.it/ricerche/sDDL/nuova.ricerca>

and after this, on 15.01.2008, proposed to the whole Assembly a text for discussion and approval (Chamber of Deputies, bill nos. 1249-ter and others)³⁰. However, as previously noted, a few days later the President of the Republic decided to dissolve Parliament, with the consequence that it is most unlikely that the provisions will be approved before election day (13.04.2008). In that case, all the previous work undertaken by the Justice Committee will be lost, and the new Parliament will have to restart the legislative procedure from the beginning.

- [50]. As far as case law about hate speech is concerned, we have only three relevant decisions. In the first, the Supreme Court condemned a teacher for the crime of vituperation, after the teacher had used offensive adjectives such as ‘stupid’, ‘imbecile’, ‘idiot’ and ‘gay’ against an underage student³¹: 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.
- [51]. The second and the third decisions regard the right of a LGBT association to claim civil damages when the individual persons involved, and not the association itself, are the direct target of the offensive words. The decision of the *Corte d’Appello di Venezia* [Court of Appeal of Venice] of 11.10.2000³² denies this right to association, while that of the *Tribunale di Milano* [Tribunal of Milan] of 03.10.2003³³ asserts it, even if it deems that in that case the words do not have an offensive tone.
- [52]. 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.
- [53]. In the only relevant case of ‘hate crime’ (a murder where the defendant claimed to have killed in order to avoid a sexual assault by a homosexual man) the Supreme Court said that in that case the persistent requests for the performance of homosexual acts on the part of the victim had to be considered as a natural and foreseeable development of the relationship between the defendant and the victim.³⁴

³⁰ See <http://www.senato.it/ricerche/sDDL/nuova.ricerca>

³¹ Italy/Corte di Cassazione sez. V pen.(28.10.1994).

³² Italy/Corte d’ Appello di Venezia (11.10.2000)

³³ Italy/GIP Tribunale di Milano (03.10.2001).

³⁴ Italy/Corte di Cassazione sez. I pen. (14.07.1993).

- [54]. There are no official data regarding the number of non-criminal court cases initiated for homophobic statements.

G. Transgender issues

- [55]. *Legge* [Law] 164/1982 of 14.04.1982, *Norme in materia di rettificazione di attribuzione di sesso* [Rules concerning rectification of sexual attribution]³⁵, provides that correction of the record of a person's sex held by in the Registrar's Office can be obtained by producing a final judicial decision which assigns that person a different sex 'in consequence of the changing of sexual characteristics'. The law states that in such proceedings the judge 'may ask for a medical opinion regarding the psycho-physical condition of the person'. The law also provides that 'when an operation to adapt the sexual characteristics is necessary, the judge authorises it with a decision': afterwards the judge, 'having checked that the authorised operation has been done, orders the correction of the person's sex in the records of Registrar's office'.
- [56]. A decision of the Constitutional Court³⁶ states that Law 164/1982³⁷ is not unconstitutional, because not only physical but also mental health has to be safeguarded by the public authorities; furthermore, the sex of a person is to be considered as part of a personality whose development has to be promoted.
- [57]. In brief, as far as the sex reassignment proceedings are concerned, in Italy a transsexual person must make two requests to the judge: first, he/she must be authorised to have the required surgery (making an exception to Article 5 of the Civil Code, which prohibits any act of disposition of a person's own body that can bring about a permanent reduction of physical wellbeing). This judicial authorisation allows the person to obtain this surgery in public hospitals totally free of charge. Secondly, he/she can ask for a judicial order which gives consent to change the details of their sex and name in the records of the *Ufficio dello Stato civile* [Registrar of Civil Status].
- [58]. It is very difficult to collect case law on this subject. It seems that:

³⁵ Italy/Legge 164/1982 (14.04.1982)

³⁶ Italy/Corte costituzionale 161/1985 (06.05.1985)

³⁷ Italy/Legge 164/1982 (14.04.1982)

- [59]. 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 case³⁸.
- [60]. 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 a judge ordered a sex reassignment without any operation, as the transsexual concerned was very ill and probably near to death³⁹;
- [61]. the female to male change is usually authorised when the person has had an surgery including mastectomy and hysterectomy. In contrast, surgery for penile reconstruction is not requested because it is a very difficult operation, with a high failure rate.
- [62]. As far as the condition of a transsexual who has already obtained the sex and name change in the records of the Registrar's office, it seems that the Italian legal system provides absolute parity of treatment with people of the newly acquired sex. For example, a decision of the *Tribunale per i minorenni di Perugia* [Tribunal for Minors of Perugia]⁴⁰ states that a married transsexual can adopt a child, if the other requirements requested by law are satisfied. In this sense, we can say that in Italy discrimination of transgender people in dealt with as discrimination on the grounds of sex.
- [63]. As far as good practices are concerned, the Constitutional Court stated that good practices aimed at promoting better conditions for LGBT people and engaged in at a regional level are legitimate as long as regional law respects the allocation of functions between State law and regional law provided for by the Constitution.⁴¹ 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.

³⁸ Italy/Tribunale di Milano (05.10.2000).

³⁹ Italy/Tribunale di Roma (18.10.1997).

⁴⁰ Italy/Tribunale per i minorenni di Perugia (22.07.1997).

⁴¹ Italy/Corte costituzionale 253/2006 (21.06.2006)

- [64]. As regards sex-reassignment surgery, these operations are performed completely free of charge in public hospitals if authorised by the judicial authorities.
- [65]. On the other hand, if a transsexual cannot or does not want to have the operation, he has to pay for all hormone therapies and all plastic surgery operations such as breast implant surgery. In particular, a non-surgical male to female transsexual needs a large quantity of hormones, but the technical file on the website of the *Agenzia italiana del farmaco (AIFA)* [Italian Pharmaceutical Agency]⁴² establishes that this kind of medicine is indicated only for menopause: therefore only women in menopause, and not male-to-female transsexuals, can obtain them free of charge.
- [66]. The group of legal experts went to Ministry of the Internal Affairs in Rome (04.02/2008) and met several Prefects in order to obtain statistical information regarding the number of name changes effected due to change of gender and the number of persons who changed their gender/sex under the relevant legislation: although it was said that this information was available, as nothing has been sent.

H. Miscellaneous

- [67]. 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 these⁴³ 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 Council of Ministers on 8.02.2007 and intended to recognise several civil rights for two persons linked by sentimental relationship, regardless of their sex. For example the right to visit a *de facto* partner in hospital, the right to appoint a *de facto* partner as representative for decisions concerning health, the right to obtain permission for residence for cohabitation reasons, the right of inheritance in lease agreements, in retirement issues and in inheritance in general. The second bill (n. 1339), presented before the Senate on 20.02.2007, aimed at introducing the so-called *contratti di unione solidale*. It reproduces almost the same rights as the previous bill,

⁴² <http://www.agenziafarmaco.it/section8983.html>

⁴³ Italy/proposta di legge 311/2007

adding the right to apply for a residence permit. Discussion of these bills has been postponed because of the end of the present legislature.

- [68]. Some town councils, though it is not possible to list exactly which and how many, have created registers of public civil unions. The value of these registers is only symbolic. The number of unions 'registered is not significant. A few other town councils, such as Padova and Bologna, offer *de facto* couples, included same-sex couples, the opportunity to obtain 'attestazione di famiglia affettiva' ('certificate of affective family')⁴⁴ on the basis of Personal Data Legislation no. 1228 of 1954 and no. 223 of 30.05.1989. Also *de facto* partners, other than those belonging to a different sex, can register. No rights, duties or new legal status follow from this registration, although being part of an 'affective family' could be used as proof in order to enjoy the rights recognised to *de facto* partners (such as a worker's right to a paid three days' leave of absence yearly in the event of serious illness or loss of a partner).
- [69]. In the academic year 2006/2007 the University of Bologna launched, for the first time ever in Italy, a masters degree course in sexual minorities studies.
- [70]. Venice, Turin and Bologna set up *Servizio LGBT* [LGBT Service] offices, public offices with anti-discriminations duties.

I. Good practices

- [71]. The most important initiatives concerning the fight against discrimination on the ground of sexual orientation have been pursued by Tuscany. Rejection of discrimination on the ground of sexual orientation is affirmed by Art. 4 of the *Statuto regione Toscana* [Statute of the Region of Tuscany].⁴⁵
- [72]. The *Legge regione Toscana* [Regional law of Tuscany] 63/2004⁴⁶ 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

⁴⁴ Italy/ Personal Data Legislation 1228/1954 (24.12.1954) and 223/1989 (30.05.1989)

⁴⁵ Italy/Statuto regione Toscana (19.07.2004), (http://www.consiglio.regione.toscana.it/istituzione/Statuto-e-regole/Testo/statuto_nuovo.asp).

⁴⁶ Toscana/Legge regione Toscana (15.11.2004).

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.⁴⁷

- [73]. Legge regione Toscana 59/2007⁴⁸ 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 in any phase 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.
- [74]. The so-called *Carta d'intenti per la costituzione della Rete nazionale delle pubbliche amministrazioni per il superamento delle discriminazioni basate sull'orientamento sessuale e sull'identità di genere* [Charter of intent on the constitution of a national network of public administrations for overcoming discrimination on grounds of sexual orientation and gender identity] has been launched., in order to create a national public administration network to improve and promote the civil rights of LGBT people.⁴⁹
- [75]. The *Ministro per i Diritti e le Pari Opportunità* [Department of Rights and Equal Opportunities]⁵⁰ has recently set up a specific body, the *Commissione per i diritti e le pari opportunità per lesbiche, gay, bisessuali e transgender* [Commission for rights and equal opportunities for LGBT persons] for protection against all kinds of discrimination. The Commission has not yet held its inaugural meeting.

⁴⁷ See http://www.regione.toscana.it/ius/ns-leggi/?Mival=pagina_2&ANNO=2004&TESTO=NIENTE&TITOLO=NIENTE&MATERIA=0&ANNO1=NIENTE&NUMERO=63&YEAR=2004

⁴⁸ Toscana/Legge regione Toscana 59/2007 (16.11.2007). See http://www.dirittiepariopportunita.it/Pari_Opportunita/UserFiles/IL_Dipartimento/regione_toscana_l.r._n.59_16112007.pdf

⁴⁹ See <http://www.primapagina.regione.toscana.it/identitasessuale-lgbt> (13.02.2008).

⁵⁰]Italia/ Decreto del Ministro per i Diritti e le Pari Opportunità (25.10.2007)

- [76]. In accordance with a ministerial decree,⁵¹ the Department of Rights and Equal Opportunities has set up the *Forum permanente contro le molestie gravi e la violenza alle donne, per orientamento sessuale e identità di genere* [Permanent forum against serious harassment and violence on women, and on grounds of sexual orientation and gender identity].
- [77]. 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 in at 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.⁵² 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. As far as the costs of the operation are concerned, 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 has to pay for all hormone therapies and all plastic surgery operations such as breast implant surgery. In particular, a non-surgical male to female transsexual needs a large quantity of hormones, but the technical file on the website of the *Agenzia italiana del farmaco (AIFA)* [Italian Pharmaceutical Agency]⁵³ establishes that this kind of medicine is indicated only for menopause: therefore only women in menopause, and not male-to-female transsexuals, can obtain them free of charge.

⁵¹ Italia/Decreto del Ministro per i Diritti e le Pari Opportunità (13.12.2007). See <http://www.pariopportunita.gov.it>

⁵² Italy/Corte costituzionale 253/2006 (21.06.2006).

⁵³ <http://www.agenziafarmaco.it/section8983.html>

Annex 1 – Case law

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

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

DISCLAIMER: This study has been commissioned as background material for a comparative report on homophobia and discrimination on grounds of sexual orientation by the European Union Agency for Fundamental Rights. The views expressed here do not necessarily reflect the views or the official position of the FRA. The study is made publicly available for information purposes only and does not constitute legal advice or legal opinion.

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 job wherein it remains within the public administration's discretionary power the decision concerning the compatibility of some kind of behaviour with the role held. The key issue is that a policeman must behave in and out his working hours in a way that cannot undermine his reliability and reputation of those he represents.
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Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 1

Case title	Public Prosecutor versus Cheick Fofana
Decision date	25.07.2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Corte di Cassazione Sezione Prima civile (Supreme Court, First and civil section).
Key facts of the case (max. 500 chars)	Mr Fofana, citizen of Senegal, came to Italy as a clandestine so, pursuant to the law, 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. Against this decision the Public Prosecutor appealed the Supreme Court.
Main reasoning/argumentation (max. 500 chars)	Homosexuality is a human condition worthy of protection and expression of personality's realisation 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 an evidence of persecution of homosexual person is required. Moreover, as long as the question concerns a derogation from general principles ruling expulsion, it has to be strictly proved the homosexuality of Mr Fofana.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	If all the precondition provided by law are satisfied the immigrant who entered in 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 proved, being sufficient an oral interrogatory. As a consequence a derogation from public security law is possible only respecting strictly the requirements provided avoiding misusing of the safeguards provided for victims of real persecutions including LGBT people.

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

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

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

Case title	GA and OM versus registry officer
Decision date	10.06.2005
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil court's decree, Tribunale di Latina (Latina's Civil Court)
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 to Latina's registry officer the enrolment of their marriage at the public registry. After Ministry for Internal Affairs' opinion, the request was rejected on the ground of the fact that GA and OM belong to the same sex genre and in Italy 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 it has to exist and this is not the case because the marriage is lacking of a necessary precondition, the difference of sex between the spouses. Art. 29 of Consitution recognises the rights of the family as a "natural society founded on marriage" which implies a heterosexual union. Moreover international treaties do not impose an automatic recognition of all foreign acts, rather, in marriage issues the recognition is forbidden when the marriage is contrary to State's public order. Nowadays homosexual marriage is contary to Italian history, tradition and culture.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A marriage between persons of the same sex celebrated in a country that allows it does not impose its recognition in Italy as it appears contrary to Italy 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 lawful registry officer's refusal of enrolment. Therefore the recognition of new kind of unions means that even thought other countries allows them each country has to take its own decisions in complete freedom. Judges cannot take this decision in place of parliament therefore as long as there will not be approved in Italy a law allowing the recognition of this kind of unions, they will not be enrolled even if they are recognised in the country of celebration.

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

Case title	GA and OM versus registry officer
Decision date	13.07.2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Corte d'Appello di Roma (Rome's Court of Appeal)
Key facts of the case (max. 500 chars)	GA, and OM, both Italian, married in Holland and filed a petition before Rome's Civil Court in order to obtain the enrolment of their marriage at the public registry office. The petition was rejected on the ground of the fact that GA and OM belong to the same sex genre and in Italy 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: it implies the validity of the said marriage ruled by the State's law of celebration's place but also the subsistence of person's capacity to marry, which is regulated by Italian law. There is not a marriage act because it is lacking of a necessary precondition which is the difference of sex between the spouses. The fact that other countries allow this union is not relevant because EC law does not even forbids neither imposes this recognition.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	A marriage between persons of the same sex celebrated in a country that allows it does not impose its recognition in Italy.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Judges rejected the petition considering lawful registry officer's refusal of enrolment. Therefore the fact that EC does not impose neither forbid the recognition of new kind of unions 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 parliament therefore as long as there will not be approved in Italy a law allowing the recognition of this kind of unions, they will not be enrolled even if they are recognised in the country of celebration.

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

Case title	Ministry of Internal Affairs versus Mr MC Call and Mr Taddeucci
Decision date	12.05.2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Corte d'Appello di Firenze (Florence's Court of Appeal)
Key facts of the case (max. 500 chars)	Mr MC Call , a New Zealand national, and Mr Taddeucci, an Italian national, obtained from New Zealand the recognition of <i>partners de facto</i> status therefore, the former requested the permit of stay in Italy for family link to Mr Taddeucci. The Court granted it therefore Ministry for Internal Affairs appealed Court of Appeal against the decision of first instance.
Main reasoning/argumentation (max. 500 chars)	Italian law requests the quality of familiar of the petitioner in order to grant the permit of stay. In this case New Zealand recognised to the couple 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 ruled yet the issues in a specific way and pursuant to European law each State has a right to make its own choices. Anyway New Zealand is not a EC member State.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In order to obtain a permit of stay on the ground of family connections this kind of connection has to be recognised in Italy pursuant to the domestic law.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Judges overturned Civil Court's order. Therefore as long as there will not be a law recognising <i>de facto</i> unions family re-unions between persons of the same sex will not be available, even if there is a foreign statement of union's recognition.

Chapter F, Hate speech, case 1

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

Chapter F, Hate speech, case 2

Case title	Mr Bertozzo, Mr Padovani and Mr Zocatelli versus Arcigay Verona
Decision date	11.10.2000
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Corte d'Appello di Venezia, sezione IV civile (Venice's Court of Appeal, fourth civil section)
Key facts of the case (max. 500 chars)	Mr Bertozzo and Mr Padovani are two city councilmen while Mr Zocatelli is the director of a newspaper named "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 assembly concerning unions and adoption for LGBT people and Mr Zocatelli spread a leaflet against bodies which contested Mr Padovani's document concerning family, calling them paedophiles. Venice's Civil Court condemned each petitioners 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 instead of the individual offended. However Mr Zocatelli offended the association linking it to paedophiles' ones therefore within this limit there has been a damage for the association.
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). 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 undergo directly an offence. For the rest they remain different subject from the individuals represented by them.

Chapter F, Hate speech, case 3

Case title	X versus Y
Decision date	03.10.2001
Reference details (type and title of court/body; in original language and English [official translation, if available])	criminal judgement, Tribunale di Milano, Ufficio GIP (Preliminary investigation office at the Milan Civil Court)
Key facts of the case (max. 500 chars)	During a Gay Pride manifestation some individuals offended gay's movement. Therefore a member of Arcigay filed an action before the Public Prosecutor in order to obtain a prosecution and conviction of these persons. Public Prosecutor asked 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 and the fact that the kind of offence at a minority can be referred to each member of it. On the merits, however, the statements are not able to set up a slander.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Offences thrown during a manifestation are able to concern 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 judge filed away the case. Association has a right to protect his members from offences which can be referred to each of them but they have to present an offensive tone.

Chapter F, Hate crimes, case 1

Case title	X versus Y
Decision date	14.07.1993
Reference details (type and title of court/body; in original language and English [official translation, if available])	criminal judgement, Corte di Cassazione, sezione I penale (Supreme Court, first criminal section).
Key facts of the case (max. 500 chars)	The Defendant firstly accepted a money offer from the victims. Subsequently the victims requested him an homosexual performance for the money offered and the Defendant hit and strangled him, then he robbed him and burnt the flat the victim lived in. After second instance judgement he appealed the Supreme Court because 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 has not be a taunt 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 Supreme Court's decision the judgement became final so it has been 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 an homosexual performance is defined as an immoral practise.

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

Case title	LY and MM
Decision date	22.07.1997
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Tribunale per i Minorenni di Perugia (Perugia's District Court for underage)
Key facts of the case (max. 500 chars)	LY was a woman and, after a chirurgic operation she became a man, therefore she changed her name and she could marry MM. After their marriage they claimed a first time Perugia's Civil Court for underage requesting an international adoption. It was accepted but after there were some difficulties in practice because the order issued did not consider the psychological analysis of the spouses. Therefore they appealed again 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 or be considered as a diseased and if the requirements requested by law are satisfied he/she can adopt a child, in order to give him a 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 biologic and psychic sexuality but the attitude to be parents because the point is the best interest of the child. Therefore it has to be checked their emotional aim towards a foreign and homeless child.
Results (sanctions) and key consequences or implications of the case (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 or be considered as a diseased and if the requirements requested by law are satisfied he/she can adopt a child, in order to give him a moral and material care.

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

Case title	Mr Borriello
Decision date	6.05.1985
Reference details (type and title of court/body; in original language and English [official translation, if available])	constitutional judgement, Corte costituzionale (Constitutional Court)
Key facts of the case (max. 500 chars)	Naples' Civil Court of second instance rejected a petition filed by Mr. Pasquale Borriello aimed at obtaining sex and name change on the ground of 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 surgical operation. During the proceeding before the Supreme Court, Italy/Legge 164/1982 (14.04.1982) concerning sex/name change of transsexual people was approved and judges stated that it was applicable to the case but they pointed out to the Constitutional Court some constitutional doubts.
Main reasoning/argumentation (max. 500 chars)	a) law allows body changes which are positive for health and this includes both physical and psychic wellness: surgical operation allows a body and mind reunion; b) individual's health is protected in community's interest and other people have to accept a sex change as a solidarity's duty; c) name change is stated by a court's decision so there is certainty and however family is shocked not by it but by transsexual's suffering of living in a stranger's body; c) surgical operation allows the protection of psychic health and however in this case Mr. Borriello was sterile also before it.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Italy/Legge 164/1982 (14.04.1982) fulfils all constitutional requirements.

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The law is not unconstitutional and it is a development of jurisprudence which allowed sex/name change only in case of natural and not artificial modification of sex. With this decision it is pointed out that the only way to solve transsexual's suffering is allowing a chirurgic operation, in order to create a reunification between body and mind, considering fundamental not only physical but also psychic health. Sex is to be considered as part of the personality whose development has to be promoted and the idea that sexual identity is only determined by external aspect is a preconception.
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Chapter G, Name change and/or sex change of trans gender people, relevant case law, case 2

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

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

Case title	VI versus registry officer
Decision date	5.10.2000
Reference details (type and title of court/body; in original language and English [official translation, if available])	civil judgement, Tribunale di Milano (Milan's Civil Court)
Key facts of the case (max. 500 chars)	VI was a man and on 24.09.1997 subjected himself to a chirurgical operation following his psychiatrist's advice to solve his psychological disease, without a previous authorisation granted by judge. After the operation VI requested Civil Court a sex and name change at the registry office.
Main reasoning/argumentation (max. 500 chars)	Considering VI's psychological condition, the chirurgical operation would be 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 it has been pursued an aim pursuant to the law which is the individual's correspondence between sex and mind. Therefore the change can be granted only if the chirurgical one has respected psycho- sexual preconditions.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Italy/Legge164/1982 (14.04.1982) does not require strictly a previous authorisation for the chirurgical operation in order to obtain sex/name change.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Court assigned to the petitioner a new name consonant with the new sex. Therefore the lack of judge's previous authorisation for the chirurgical operation cannot preclude a recognition of individual's right to sexual identity guaranteed by granting name change whenever it corresponds to the new sex. Besides chirurgical operation is not always possible so its authorisation cannot be considered as a binding precondition.

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

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

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

Case title	Prime Minister versus Tuscany
Decision date	21.06.2006
Reference details (type and title of court/body; in original language and English [official translation, if available])	constitutional judgement, Corte Costituzionale (Constitutional Court)
Key facts of the case (max. 500 chars)	Tuscany passed a law Italy/Legge Regionale 63/2004 (15.11.2004) which contains some rules against discriminations on the ground of sexual orientation concerning some issues like professional training, welfare, health, tourism and commercial business. Prime Minister challenged this law before the Constitutional Court, claiming that it overstepped Region's legislative function pursuant to Art. No.117 of the Constitution.
Main reasoning/argumentation (max. 500 chars)	Welfare's positive actions aimed at safeguarding people discriminated on the ground of sexual orientation are legitimate because they only put 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 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 constitution's limits of 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 create in practice a clear disparity on behalf of these people and as long as 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 in a regional level as long as these limits are strictly observed.
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Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 2

Case title	Attorney Artini versus Padua City Hall
Decision date	05.07.2007
Reference details (type and title of court/body; in original language and English [official translation, if available])	administrative judgement, Tar Veneto, sezione I (Veneto Administrative District Court, first section).
Key facts of the case (max. 500 chars)	Mr Artini pursued a popular action aimed at revoking decision No. 108/2006 of Padua City Hall and major's measure concerning an attestation of enrolment in the registry office of a registry office's family, based on ties of family, marriage, kinship, adoption or love, regardless of sexual orientation. This attestation concerns the residence, because it is possible to enroll all persons living at the same place and it is based only on individual's <i>pro veritate</i> declaration. From the enrolment derive all the civil rights provided by law.
Main reasoning/argumentation (max. 500 chars)	Mr Artini's interest is to be found in the will of keeping distinguished <i>nuclear</i> family and <i>registry office's</i> 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 City Hall did not overstepped its powers because pursuant to the law major 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 criminal consequences in case of false ones.
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 individual's declarations. In 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 <i>nuclear</i> family and <i>registry office's</i> one because they are found on different

	grounds. Padua's measures are forerunners for other City Halls.
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Miscellaneous, case 1

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

Miscellaneous, case 2

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

Miscellaneous, case 3

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

Miscellaneous, case 4

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

Annex 2 – Statistics

[78]. The Minister of Equal Opportunities personally answered, 11.01.2008, that data o statistics are not available

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

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

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

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							
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Chapter B, Freedom of movement of LGBT partners

	2000	2001	2002	2003	2004	2005	2006	2007
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							
Number of LGBT partners who claimed their right to residence but were denied this right	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
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.	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							

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

	2000	2001	2002	2003	2004	2005	2006	2007
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							
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner	Not available							

Chapter D, LGBT partners benefiting family reunification

	2000	2001	2002	2003	2004	2005	2006	2007
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.	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							

Chapter E, LGBT people enjoyment of freedom of assembly

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

Chapter F, Homophobic hate speech

	2000	2001	2002	2003	2004	2005	2006	2007
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)	Not available							
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)	Not available							
Range of sanctions issued for homophobic hate speech	Not available							
Number of non-criminal court cases initiated for homophobic statements	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							

Chapter F, Homophobic motivation of crimes as aggravating factor

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

Chapter G, Transgender issues

	2000	2001	2002	2003	2004	2005	2006	2007
Number of name changes effected due to	Not							

change of gender	available							
Number of persons who changed their gender/sex in your country under the applicable legislation	Not available							

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

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

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