**ITALY**



***MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION***

***inter-ministerial committee for human rights***

 **ITALY’S REPLY**

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Further to your query, we are in position to provide, for your information only, as follows:

**Introduction**

1. The Italian (rigid) Constitution determines the political framework for action and organization of the State. The fundamental elements or structural principles of the constitutional law governing the organization of the State are, as follows: Democracy, as laid down in Article 1; the *personalistic* principle, as laid down in Article 2, which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Articles 2 and 5); the importance of work, as a central value of the Italian community (Articles 1 and 4); the principle of solidarity (Article 2); the principle of equality as laid down in Article 3 (it is also the fundamental criterion applied in the judiciary system when bringing in a verdict); the principles of unity and territorial integrity (Article 5); and above all the relevant principles, including the social state, the rule of law and the respect for human rights and fundamental freedoms, such as freedom of correspondence, freedom of movement, freedom of religion or belief, and freedom of opinion and expression.

2. From a constitutional standpoint, the general principle of equality enshrined in Article 3 of the Constitution stipulates as follows: “*All citizens have equal social dignity and are equal before the law without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country*”. Within our national system of protection of human rights, mention has to be made, among others, of the Italian Constitutional Court[[1]](#footnote-1). This Court exercises its duty as one of the highest guardian of the Constitution in various ways. It becomes active when it is called on. For example, it supervises the preliminary stages of referenda and is competent in the event of presidential impeachment.

* Complaints of unconstitutionality may be submitted to the Italian Constitutional Court by central and local Authorities claiming that a state or a regional Act may be unconstitutional. Therefore, the Court monitors Authorities to see whether they have observed the Constitution in their actions. It also arbitrates in cases of disagreements between the highest State’s organs and decides in proceedings between central and local Authorities.
* Procedurally, the Court must examine *ex officio* (the prosecutor) or upon request of the plaintiff/defendant whether the provisions to be applied are in compliance with the Basic Law. When the Court considers that an act is unconstitutional, such evaluation brings to a suspension of the *a quo* proceeding. Accordingly, a decision is made by the Court itself, pursuant to Article 134 of the Italian Constitution.
* The Constitutional Court decides (and its decisions cannot be appealed) disputes: 1. concerning the constitutionality of laws and acts with the force of law adopted by state or regions; 2. arising over the allocation of powers between branches of government, within the state, between the state and the regions, and between regions; 3. on accusations raised against the head of State in accordance with the Constitution.
* More generally, this Court decides on the validity of legislation, its interpretation and if its implementation, in form and substance, is in line with the Constitution. Thus, when the Court declares a law or an act with the force of law unconstitutional, this norm ceases its force by the day after the publication of this Court’s decision. For further details, and a more specific overview of the Constitution, the powers of State, and the constitutional and non-constitutional guarantees, please kindly refer to the Common Core Document of Italy forming part of the reports of States parties (UN Doc. HRI/CORE/ITA/2016, dated July 25, 2016).

3. Within the framework of LGBT policies, Italy developed the National LGBT Strategy, 2013-2015, in accordance with Recommendation of the Council of Europe CM / REC (2010)5. By an integrated and multi-stakeholder approach, this National Strategy has been supporting national and local policies, in accordance with relevant international and European standards.

4. In this respect, UNAR (National Office Against Racial Discrimination) launched numerous initiatives, such as: The institutional web platform on LGBT issues launched in 2016 ([www.portalenazionalelgbt.it](http://www.portalenazionalelgbt.it)); Two pilot projects to establish information desks, counselling and support for transgender people and to improve the situation of LGBT people in prisons, with particular attention to the information, sensitization and training for Prison Staff and prisoners; the amendment, in the sport field, made by CONI to its statute by which to recognize homophobia as discrimination to be countered; promotion of Positive Actions to combat discrimination. Under Call-APAD 2017, ten projects were accepted for funding, some of them are currently being implemented, for a total of about three hundred, forty thousand Euros (344,000.00 Euros).

5. From a legislative standpoint, it is worth mentioning the 2016 legislation (Act 76/2016) on civil unions and cohabitation for same-sex couples. Under “civil unions”, partners must ensure mutual material and moral support. Property and assets are under a system of community property, unless otherwise decided. As for child adoption, it may be recalled verdict No. 12962/2016, by which the Supreme Court indicates that when assessing requirements for adoption by the couple concerned, sexual orientation cannot be considered, not even indirectly.

6. From an institutional standpoint, mention has to be made of the recently established Government led by H.E. Mr. Giuseppe Conte that reintroduced a dedicated Minister for Equal Opportunities and the Family.

**Turning to specific issues**

7. One of the strategic lines of governmental action for the promotion of equal opportunities and protection of rights concerns the prevention and the fight against discrimination, based on sexual orientation and gender identity (SOGI).

8. The mandate of the newly established Minister for Equal Opportunities includes promotion and coordination of activities aimed at implementing the principle of equal treatment and non-discrimination on the ground of sexual orientation and gender identity.

9. The general directive for administrative action and the management of the Equal Opportunities Department (2019) specifically confirms the mandate of UNAR (National Office Against Racial Discrimination) to combat discrimination against LGBT people. Specifically, the Prime Ministerial Decree, dated April 8, 2019, in Article 8 - concerning the Equal Opportunities Department internal organization – envisages, among the UNAR protection functions, competence with regard to LGBT people’s rights, as well as the protection against discrimination based on sexual orientation and gender identity. The National Office Against Racial Discrimination is concretely engaged in preventing and fighting discrimination and violence, grounded on sexual orientation and gender identity (SOGI); collecting reports on discrimination through its Contact Centre; and providing a wide-ranging strategic plan, besides strengthening institutional collaboration, focus on awareness-raising and training, and data-collection.

10. A permanent Dialogue with LGBT NGOs was set in October 2018, by the establishment of the Working Group (WG) for the promotion of LGBT people’s rights. Involving 48 LGBT Associations, it works in plenary sessions and sectorial Working Groups. The aim is to build a shared national strategic plan of relevant actions. In particular, anti-discrimination measures address employment, health, prison conditions, and training of civil servants.

More in detail

11. A permanent Dialogue with LGBT NGOs was set up in October 2018, by the establishment of the Advisory Working Group (WG) for the promotion of LGBT people’s rights (Involving 48 LGBT Associations, it works in plenary sessions and sectorial WGs).

* Meetings, chaired by the Undersecretary for Equal Opportunities, were held in November 2018 and February 2019, in addition to an informal meeting held in July 2018. In May 2019, sub-working groups on specific issues (communication, transgender, parenthood, training, data-collection, digitalization of LGBT archives) were implemented.
* The aim is to build shared national strategic plan of actions to increase LGBT people’s rights. In particular, anti-discrimination measures address employment, health, prison conditions, and training of civil servants.
* Moreover, institutional cooperation has been strengthened through institutional meetings, in order to plan joint initiatives in specific areas of interest, involving the Ministry of Justice and the Prison Administration Department, the Ministry of Health and the Superior Institute of Health, the Ministry of Public Administration, the Ministry of Education, as well as OSCAD and the Conference of Italian University Rectors (C.R.U.I.).

LGBT-related actions under the National Operation Programme-Inclusion, 2014-2020 (Information and training)

12. UNAR is the beneficiary of National Operational Programme-Inclusion funding, specifically dedicated to the promotion of social and employment inclusion of LGBT people’s rights (approximately 6 million Euros).

13. Within this strategic line, ad hoc interventions are also meant to support transgender people at risk of exclusion from labour market and those ones particularly vulnerable at workplace. In this regard, specific actions will be implemented to support transgender people to develop businesses and *start up*.

14. Furthermore, UNAR signed a specific MoU with the Superior Institute of Health, to tackle social exclusion and discrimination against transgender people, by developing an information services network on health and a national informational website.

15. In collaboration with the Department of Penitentiary Administration, training/information measures for staff and prisoners and awareness-raising campaigns on LGBT-related issues are provided, as well as measures supporting the socio-occupational reintegration of LGBT prisoners.

16. The training on LGBT issues for Civil Servants will be the topic of a specific action to be implemented with Ready - Network of Public Administrations against discrimination based on sexual orientation and gender identity, mainly with the Municipalities of Turin, Bologna, Naples and Bari, in cooperation with local LGBT NGOs.

17. Furthermore, discrimination based on sexual orientation and gender identity in the field of employment is the subject of a specific survey conducted by ISTAT (National Office of Statistics)[[2]](#footnote-2).

18. In July 2019, a public call for projects selection and financing was launched in order to collect, digitize and create databases and an archive of historical documentation concerning LGBT issue.

19. Specific attention is paid to prevention and awareness-raising measures[[3]](#footnote-3), through the implementation of ad hoc communication campaigns, particularly targeting young people. For example, on May 17, 2019, on the occasion of the "International Day against Homophobia, Biphobia and Transphobia", an survey on discrimination against the LGBT community (realized by IPSOS Institute) was presented to the Presidency of the Council of Ministers. In addition, as part of the celebrations, on May 17th, an institutional campaign was carried ut in collaboration with “RAI Creativa” to combat homophobia, broadcasted on national RAI TV channels. At the same time an institutional campaign against homophobia was drawn up involving media and social media.

SOGI Data

20. UNAR is concretely engaged in preventing and fighting discrimination and violence based on sexual orientation and gender identity; collecting reports on discrimination through its Contact Centre; providing a wide-ranging strategic plan; strengthening institutional collaboration; focus on awareness-raising and training; and data-collection.

OSCAD

 21. OSCAD has been always paying the utmost attention to relevant trainings, by involving since 2012 public Institutions and CSOs, such as UNAR (“National Office Against Racial Discrimination” – the Italian Equality body) and the ‘Lenford Network’, a lawyers’ Association, being highly specialized on LGBTI people’s rights. From 2012 onwards OSCAD has directly trained more than 11.000 Police officers on non-discrimination-related issues, including on SOGI. OSCAD was also specifically involved in the implementation of “National LGBT Strategy”, under which it organized *inter alia* two seminars (ToTs), for about 60National Police and Carabinieri senior officers, on preventing/fighting discrimination against LGBT people and hate crimes. Within this framework, OSCAD also organized 8 more courses, at a regional level, for about 300 officers.

More in detail

22. Mention has to be made of some specific OSCAD initiatives, such as: *“FACING ALL THE FACTS!”-* Since 2016, OSCAD has been one of the partners of the European project “Facing all the facts!”, under which it developed an online hate crime course for Italian law enforcement, with modules on bias indicators – one of which specifically related to SOGI motivated crimes (<http://www.ceji.org/?q=content/press-release-united-against-hate-crime-italy>); and *“COME FORWARD: EMPOWERING AND SUPPORTING VICTIMS OF ANTI-LGBT HATE CRIMES”*. In 2018, OSCAD took part in the European 24-month project “*COME FORWARD”* aimed at preventing and countering homophobia and transphobia crimes., including by training law enforcement personnel (https://www.unibs.it/node/12929). Last, in 2014, the annual meeting of “Polis Aperta”, the Italian association of LGBTI law enforcement and military personnel, was for the first time hosted at the Central Directorate of Criminal Police Headquarters.

23. In late 2010, the Observatory for Security Against Acts of Discrimination (OSCAD) was established within the Ministry of Interior (Department of Public Security – Central Directorate of Criminal Police), with the aim of improving the action of the Italian Police agencies (in particular National Police – “Polizia di Stato” and Carabinieri Corps – “Arma dei Carabinieri”) in preventing and combating hate crimes.

24. Domestically, OSCAD: liaises with anti-discrimination CSOs and with other relevant public and private Institutions. Close cooperation has been established with the National Office Against Racial Discrimination (UNAR). By a specific MoU, signed in April 2011, UNAR shall forward to OSCAD any case of discrimination for possible prosecution and OSCAD shall send to UNAR any relevant report, which though does not trigger prosecution. To address under-reporting, an email address, (oscad@dcpc.interno.it) was established with the purpose of getting, also informally, reports from victims, witnesses and NGOs. OSCAD’s experts analyse those reports and, where appropriate, initiate targeted interventions to be carried out by the Police or Carabinieri, locally.

25. As earlier mentioned, OSCAD also organises and delivers relevant trainings for police officers. From 2012, over 11,000 officers have been trained.

26. Internationally, since 2016 OSCAD has been taking part in the European Commission “*High Level Group on* combating *racism*, *xenophobia and other forms of intolerance*”, and in several thematic sub-groups (and From 2014 to 2016, OSCAD was member of FRA “Working Party on Improving Reporting and Recording of Hate Crime” as co-chair of the sub-group on training).

27. **With regard to the issue of sex re-assignment surgery,** mention has to be made of the following:

A. Sex re-assignment surgery for transgender persons

As earlier mentioned, UNAR signed a specific MoU with the Superior Institute of Health, to tackle social exclusion and discrimination against transgender people, by developing an information services network on health, including trainings, and a national informational website. This long and complex pathway implies that the applicant has effective access to the services, that is, to a Center that takes him/her in charge from a psychological, pharmacological and possibly surgical point of view. The coverage of the costs related to this pathway is, in all the Regions, borne by the Regional Health Services. It should be noted that, starting from 2012, several judgments establish that it is not necessary for the person concerned to undertake surgery for sex/gender reassignment, to change documents at the registry office.

By recalling relevant legislation (Act No. 164/1982), it is to be noted the related case-law. As a way of example, according to the judgment of March 2012 by the Court of Rome, "the medical-surgical treatment provided for by Act No.164/82 is necessary only when it is necessary to provide the transgender person with a stable psycho-physical balance. Therefore, Act 164 "(..) only provides that this surgery must be authorized, when necessary” (Interpretation in light of the Constitutional Court's ruling, No. 161/1985). Of relevance are also Constitutional Court’s ruling No.221/2015 and Court of Cassation’s verdict No. 15138/2015.

B. Sex assignment of intersex children

The National Bioethics Committee dealt with the issue under reference by a specific Opinion: Every intervention on the body must be guided by the principle of the best interests of the child, avoiding unnecessary mutilation. Such surgery should be undertaken only in urgent conditions. It is preferable to wait for the person concerned to reach a maturity that allows consent to be expressed.

The family and the child (if the latter has the ability to understand) must be adequately supported psychologically and the communication must be attentive and gradual, besides providing adequate advice.

In order to preserve the integrity of the child, in both psychological and physical aspects, the Italian legislation allows parents to give the consent for surgical intervention.

From data collected in 2014, 34 persons undertook this surgery intervention (23 of whom were children aged 10 or less).

Moreover, the Italian Committee of Bioethics developed recommendations for health-care professionals in order to avoid unnecessary mutilation and loss of procreation capacity.

**Conclusion**

The Italian Authorities take this opportunity to reaffirm their broad commitment to fully cooperating with UN Special Procedures and all other relevant international mechanisms. Last, should additional information be made available, we will promptly submit it.

1. The constitutional court consists of fifteen judges; one-third being appointed by the Head of State, one-third by the Parliament in joint session, and one-third by ordinary and administrative supreme court. [↑](#footnote-ref-1)
2. This research project will focus on "*Access to work, working conditions and employment discrimination of LGBT people, and on diversity policies implemented by companies*" and will be achieved through data collection and information gathered by LGBT people, enterprises and other stakeholders. The project will involve the main national stakeholders such as trade associations, trade unions, LGBT associations, LGBT employee networks with the aim of achieving a thorough picture of the national situation in order to activate effective policies. [↑](#footnote-ref-2)
3. **Awareness raising-events**

On May 17, 2019, on the occasion of the "International Day against Homophobia, Biphobia and Transphobia", an survey on discrimination against the LGBT community (realized by IPSOS Institute) was presented to the Presidency of the Council of Ministers.

As part of the celebrations, on May 17th, an institutional campaign was carried out in collaboration with “RAI Creativa” to combat homophobia, broadcasted on national RAI TV channels. At the same time an institutional campaign against homophobia was drawn up involving media and social media.

Regarding awareness-raising initiatives, UNAR supported projects and events, including:

- October 30, 2018 in Milan - Conference "*The role of companies in the LGBTI people inclusion: the UN guidelines and Italian and international best practices*", organized by Global Compact Network Italy, Parks, EDGE, in collaboration with the UN High Commissioner for Human Rights.

- July 11-13, 2019 "*Rome - Eurogames 2019 - XVII Edition of the multi-sport games LGBT friendly Europeans EGLSF*".

**International activities**

UNAR is member of the "European Governmental LGBTI Focal Points Network" and attended the Tallin / Helsinki Meeting (November 21-23, 2018). At the EPSCO meeting of December 6, 2018, Italy signed a Joint Declaration on the future of the LGBT List of Actions.

On March 21-22, 2019 UNAR attended the launching event of the Council of Europe Report on policies to combat LGBT violence in the educational field, organized in Venice by the COE.

On the occasion of the IDAHOT, held in Oslo May 13-15, 2019, UNAR supported the Italian delegation. On that occasion, the Undersecretary for Equal Opportunities signed on behalf of Italy the LGBT Declaration, signed by many European countries. UNAR also collaborated in preparing several European and international reports, providing its own contribution. [↑](#footnote-ref-3)