



Running through Hurdles:



Obstacles in the Access



*to Justice for Victims of
Anti-LGBTI Hate Crimes*



Edited by Piotr Godzisz and Giacomo Viggiani

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Italy

At a glance

Attitudes

- According to Eurobarometer (437/2015), 72 percent of Italian respondents think that gay, lesbian and bisexual people should enjoy the same rights as heterosexual people. Despite that, less than a half (43 percent) would feel at ease with, or indifferent about, gay couples showing affection in public, compared to almost three quarters (73 percent) in case of heterosexual couples doing the same.
- Half (49 percent) of Italian respondents declare they would feel totally uncomfortable with their sons or daughters being in a relationship with a transgender or transsexual person. Only 26 percent would be totally comfortable.

Victimization levels

According to the EU LGBT survey (2013), 19 percent of respondents from Italy declared they had been physically/sexually attacked or threatened with violence in the previous five years; however, only 17 percent of them reported the most recent incident to the police.

Official Statistics on Anti-LGBT Hate Crime

The number of officially recorded SOGI hate crimes was 38 in 2016.

Summary

- The lack of a specific law against homophobia/transphobia makes it harder to challenge anti-LGBT hate crimes, as well as making it difficult to estimate their frequency and seriousness.
- Law enforcement professionals who have work experience or personal connections to LGBT people show a high degree of consciousness about what an anti-LGBT hate crime is, although the general level of knowledge within the police service seems likely to be lower. NGO volunteers demonstrate knowledge of what an anti-LGBT hate crime is in theory, but in practice some display difficulty in distinguishing hate crime from other related phenomena, such as discrimination.
- Underreporting is widespread in Italy. Specific accessibility protocols for reporting anti-LGBT hate crimes have not been established, nor do the police have guidelines to govern the reporting of such crimes.
- Protocols or guidelines do not exist on statement taking or the recording of hate crimes. At the same time, most NGOs do not support victims in writing reports and do not collect any statistical data.
- Specific support services for anti-LGBT hate crime victims are mainly provided by LGBT NGOs on a voluntary basis and without the support of public funding. As a consequence, the fragmented and discontinuous nature of available services ends up hindering victims' access to justice.
- NGOs play the most important role in raising awareness of anti-LGBT hate crimes both within the LGBT community and the general public.

Filling the Gaps: Combating Anti-LGBT Hate Crimes in Italy in the Silence of Law

Paola Parolari and Giacomo Viggiani¹

Legal Framework

Italy has hate crime laws but SOGI are not recognized as protected grounds. As a result, anti-LGBT hate crimes are investigated as common crimes. Intersex status has never been considered or proposed as a ground for hate crime. The transposition of the Victims' Directive has been partial and no concrete support or specific service for hate crime victims has been introduced.

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Until 2018, the Italian Penal Code did not provide any official definition of hate crime and the existing legislation was limited to Law no. 205/1993 (the so-called *Mancino Law*). With Legislative Decree no 21/2018, (in force since April 6, 2018) the provisions of *Mancino Law* have been transposed, with few minor changes, into the Penal Code. To this purpose, the Legislative Decree no 21/2018 introduced a new section (Section I-bis "Crimes Against Equality") in the part of the Penal Code dealing with "Crimes Against the Person", and more specifically, in the sub-section concerning "Crimes Against Individual Liberty". This new section consists of two articles: 604-*bis* and 604-*ter*. The substantive provisions introduced by article 604-*bis* punish: (a) racist propaganda, (b) the commission or the incitement to commit discriminatory acts, or acts of violence against people belonging to a different national, ethnic, racial or religious group, and (c) the establishment of associations and organizations with the purpose of inciting to discrimination or violence based on the same grounds. A more severe penalty applies if these acts are based on the denial, serious minimization or apologia of the Holocaust, or on the denial, serious minimisation or apologia of acts of genocide, crimes against humanity and war crimes as defined by articles 6, 7 and 8 of the Stat-



1 Giacomo Viggiani authored the "Summary" and "Legal framework" paragraphs. Paola Parolari authored all the other paragraphs. The "Conclusions and Recommendations" paragraph is co-authored by Parolari and Viggiani.

ute of the International Criminal Court. As in the *Mancino Law*, however, no reference is made to sexual orientation and gender identity as relevant grounds with regard to hate crimes. Art. 604-ter imposes a general penalty enhancement for every crime motivated by hate or by a discriminatory intent (except for crimes already punished with a life sentence). However, also in this case, penalty enhancements apply only to discrimination and hate motivated by bias on the grounds of race, ethnicity, nationality or religion.

In 2009, a Bill was prepared to recognize bias based on sexual orientation or gender identity as a general aggravating circumstance (intersex status or sex characteristics have never been considered as hate crime grounds) but, without opening the debate, it was deemed unconstitutional by the Chamber of Deputies (Bill C. 1658). In 2013, a broad and mixed political coalition proposed the Bill C. 245, extending the protection of *Mancino Law* to sexual orientation and gender identity. This Bill was approved by the Chamber of Deputies² but it was not presented to the Senate before the end of the legislature (December 29th, 2017).

The lack of hate crime legislation covering sexual orientation and/or gender identity also means that anti-LGBT crimes are not registered as such. This not only hinders the possibility of officially appointing an institution for collecting data on the reporting of these crimes but also makes it difficult to understand and challenge them properly.

As far as the support and protection of victims of crime are concerned, Italy has transposed the Victims' Directive through the Legislative Decree no. 212/2015, which amended some provisions of the Code of Criminal Procedure (articles 90, 134, 190-bis, 351, 362, 392, 398, and 498) and introduced four new articles (articles 90-bis, 90-ter, 90-quater, and 143-bis) and two implementing rules (articles 107-ter and 108-ter) in it.

The implementation has both strengths and weaknesses. One positive aspect is, for example, that the legislative decree adopts a new definition of the victim of crime which now includes, not only the persons who have directly suffered from the commission of a crime, but also, in the event of their death, relatives in direct line, siblings, dependants and partners living in a stable, *de facto* relationship, thus including same-sex families (constituted both before and after the



2 The Bill was approved with a substantive amendment, foreseeing an exculpatory circumstance for speeches delivered within political parties, trade unions, cultural and healthcare organizations, as well as churches.

enactment of the civil unions law in 2016). Other positive provisions deal with granting special protection to victims within the judicial proceedings, such as the use of video technology, separate waiting rooms, the exclusion of the members of the public from the courtroom, and other victim-sensitive actions.

In contrast, one negative aspect is that the obligation for Italy to periodically provide, to the European Commission, relevant statistical data about the application of national procedures on victims of crime (including at least the number and type of the reported crimes) has a very low impact for LGBT people. Indeed, since the existing provisions in the Italian penal law do not cover sexual orientation and/or gender identity it is not possible to discern, properly, anti-LGBT hate crimes from other hate crimes. Therefore, anti-LGBT hate crimes still are very likely to go unnoticed.

However, the main problem in the implementation of the Directive is the limited access to support services for victims. Indeed, while the Legislative Decree states that victims must have access to confidential support services in accordance with their needs, and that these services must be offered free of charge and through a sufficient geographical distribution across the country, no guidance is provided on how this should be realized. For the time being, no victim support service has been envisaged for LGBT victims of crime, neither have funds been allocated to NGOs providing assistance to victims. Since Member States can freely choose how to set up these services, but have no discretion with regard to their very existence, an infringement proceeding against Italy is likely to be started by the European Commission in the near future.

Professionals and Anti-LGBT Hate Crimes

The Italian professionals interviewed in this research showed a high level of consciousness about what anti-LGBT hate crime is. However, there are indications that the general level of knowledge might be lower, especially among law enforcement professionals. A shared perception of the seriousness of the phenomenon of anti-LGBT hate crimes is missing, probably due, among other things, to the lack of official data on anti-LGBT hate crimes. Furthermore, there is disagreement on whether the law on homosexual civil unions, recently passed in Italy, has resulted in an increased or decreased level of intolerance.

The Italian professionals interviewed in this research have shown a high degree of consciousness about what anti-LGBT hate crime is.³ All of them defined it as a crime motivated by prejudice and hatred against LGBT people because of their sexual orientation/gender identity. In addition, many of the interviewed police officers, either explicitly or implicitly, stressed the importance of bias indicators including: the circumstances of the crime, how the action developed, verbal expressions pronounced by the aggressor, the place and time where the incident happened (e.g. cruising areas or LGBT venues) and the fact that the aggressor belongs to a hate group.

The most common examples of anti-LGBT hate crimes mentioned by the respondents included: insult⁴, defamation, physical assault, personal injuries, threat and crimes against property. Other examples included incitement to suicide (especially connected with bullying at school), stalking, mobbing and murder. Only one professional mentioned that sexual assaults could be hate-related (Reporting center, interview 11), although the rest recognized the relevance of this kind of victimization after the interviewer suggested it. Cyber hate seemed, somehow, to be underestimated too. Some police officers stressed that hate crimes can only consist of acts already punished by the law, and that Italian criminal law does not punish homophobia/transphobia as such, either as a crime or as an aggravating circumstance.

It is important to underline that all the interviewed police officers either received specific training on anti-LGBT hate crimes or were actively involved in providing training to other police officers (see box below). Thus, the general level of knowledge within criminal justice institutions could be lower. This is especially true within the police force, in relation to the understanding of SOGI issues. Indeed, one of the respondents described being told by some colleagues that they had never even heard of the LGBT acronym (Reporting center, interview 7). This confirms the findings reported by FRA (2016a:57) where a significant number of Italian police officers either showed lack of awareness of LGBT issues or failed to recognize underreporting. A different study by FRA (2016b) highlighted that, generally, there is



- 3 Twenty two Italian professionals were interviewed (11 from reporting centers, mainly police officers, and 11 from support service providers, mainly NGOs volunteers).
- 4 However, the majority of them – especially among police officers – are aware that, after being decriminalized in January 2016, insult is now punished only with an administrative sanction in Italy.

insufficient training on hate crimes for professionals in the criminal justice system. With regard to victim support service providers, respondents demonstrated knowledge of anti-LGBT hate crime in theory, but the answers given by some of them showed difficulty in differentiating between acts that constitute a crime and other forms of discrimination that do not have criminal relevance.

Different perceptions emerged about the prevalence of the public sphere (mainly the street) or private sphere (mainly family, especially for psychological violence) as contexts in which anti-LGBT hate crimes occur. In the private sphere, some difficulties may emerge in distinguishing hate crimes from domestic violence, thus possibly affecting the ability to identify correctly the applicable rules and to provide or to make a referral to the most appropriate support services. Also, the perception of the seriousness of the phenomenon of anti-LGBT hate crimes varies. In general, respondents from LGBT associations are more inclined to see anti-LGBT hate crimes as a severe problem while some of the interviewed police officers think that, although there is a high level of intolerance and discrimination, anti-LGBT crimes are neither quantitatively nor qualitatively serious. For example, one police officer stated: “The issue is perceived as worrisome, but I think that actually, cases are not so numerous. In my experience this is not a pervasive phenomenon, nor is it relevant in terms of the gravity of the facts: mainly, we speak about insults, which are now decriminalized” (Reporting center, interview 9). Nonetheless, it must be said that other interviewed police officers think that the phenomenon is relevant and that, since cultural factors prevent discussion of the problem, it is probably more serious than it appears. One interviewee also stressed that the qualitative importance of the phenomenon (especially for its impact on social culture and on the conception of individual rights, but also for its very deep impact on the victim’s intimacy and self-perception) should not be underestimated just because of its (possible) low quantitative relevance (Reporting centers, interviews 3 and 10). Overall, the possibility of reaching a shared perception of the problem is hindered by the lack of official data on anti-LGBT hate crimes (see section on recording below).

Finally, there is disagreement among the respondents on whether the law on homosexual civil unions, recently passed in Italy (Law no. 76/2016, commonly called *Cirinnà Law*), resulted in an increased or decreased level of intolerance. Some respondents believe that it

resulted in an increased legitimization of LGBT people and also linked the increased number of hate crime reports to the awareness-raising effect of this law. In contrast, other respondents stressed the fact that the higher visibility of LGBT people heightened the reaction of intolerant people, thus leading to more anti-LGBT acts. Also, the negative impact of the high level of intolerance at the political level has been underlined. Indeed, as one respondent suggested: “The statements of some politicians are literally an incitement to hatred: they transmit the idea that assaulting LGBT people is not something so serious” (Reporting centers, interview 2). This also reinforces the warning of the FRA’s study (2016b:19-20), which calls for hate speech to be taken seriously and underlines the negative impact of discriminatory speech on the societal climate, especially emphasizing the language politicians use during election campaigns.

Training and Sensitization of Police Officers

Since 2012, around 10 thousand law enforcement officers from Police and Carabinieri have attended training courses on hate crime and antidiscrimination issues carried out by OSCAD (Observatory for security against acts of discrimination), in cooperation with UNAR (National office against racial discrimination), LGBT Service Torino, Re.A.DY Network (National network of local public administrations against discrimination based on gender identity and sexual orientation), Polis Aperta, Avvocatura per i diritti LGBTI – Rete Lenford, and Amnesty International.

These courses include a 2-hour module on LGBT issues such as: basic concepts and terminology, national and European legal frameworks, good practice when dealing with LGBT persons (especially trans persons).

Reporting Anti-LGBT Hate Crime

Underreporting of anti-LGBT hate crime is a widespread problem in Italy. Reasons for not reporting are varied, ranging from distrust of the police to internalized homophobia/transphobia. At present, specific accessibility protocols for reporting anti-LGBT hate crimes

have not been established, nor do the police have guidelines to govern the reporting of such crimes. In particular, online and third-party reporting are not a possibility, while no specialized police units and/or liaison officers for anti-LGBT hate crimes have been set up.

Italian professionals interviewed in this research share the perception that underreporting of anti-LGBT hate crime is widespread. Some of them, especially from the local or peripheral central police stations, said that they have never registered an anti-LGBT hate crime (or even any hate crime at all). The respondents also stressed that convincing victims to file a report is often hard, and that a significant number of the victims who turn to the service finally opt out of formalizing a report.

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According to the respondents there are several reasons that could explain underreporting, including: distrust of the police (fear that the police could share the same discriminatory attitude of the offender or not treat the victim in a sympathetic manner), a close personal relationship between the victim and the aggressor, fear of retaliation, desire to forget, shame and embarrassment (especially if the victim did not come out), internalized homophobia/transphobia, and the lack of awareness, in victims, of their rights. Many of the respondents also underlined the negative impact of the lack of a specific law against homophobia/transphobia which increases the feeling that reporting would not lead to any tangible result. These findings support those of previous studies (e.g. FRA 2016b:30).

To file a formal report, the victim has only two options, i.e. either to go in person to a police station, or to bring a written report directly to the prosecutor's office. If the victim chooses the former option (which is very often the case) it is likely that her/his report and statements will be taken in conditions which may not provide for the necessary comfort (for example, the rooms could be crowded and not welcoming) because no specific/separate reporting desks for hate crimes are available. All the interviewed law enforcement professionals agreed that there is a need to facilitate access of anti-LGBT hate crime victims to reporting centers. Despite this, neither specific accessibility protocols nor procedures for reporting anti-LGBT hate crimes have been established, nor do the police have policies or guidelines to govern the reporting of such crimes. In particular, online and third-party reporting are still not possible in Italy, while neither specialized police units nor liaison officers for anti-LGBT hate crimes have been put in place.

However, it is worth mentioning that the Observatory for security against acts of discrimination (OSCAD), which was instituted by the Ministry of the Interior within the Department of Public Security – Central Directorate of Criminal Police, may act as an intermediary between the victim and the police, thus facilitating the victim in receiving appropriate treatment when accessing the police station. Victims may reach out to OSCAD by email, including anonymously, and they will be contacted by phone only if they agree to it. Informal reports may be addressed by phone or online also to the National office against racial discrimination (UNAR), established by the government within the Department for equal opportunities. UNAR is an equality body which also deals with discrimination on the grounds of SOGI. Thanks to a cooperation protocol between UNAR and OSCAD, any report received by UNAR which has a criminal relevance is immediately referred to OSCAD. Reports to OSCAD and UNAR are also important for collecting data on anti-LGBT incidents (see section on recording below).

People who contact OSCAD and UNAR are often advised to do so by NGOs. More generally, many respondents stressed the importance of cooperation between NGOs and the police since, in their experience, victims are more likely to reach out to the police if NGOs support them in taking this step. Indeed, NGOs are often the first contact for victims; in addition, as far as NGOs are involved, social networks (e.g. Facebook) may play an important role in the victim taking a first step towards reporting. Some respondents also stressed the importance of anonymous help lines. In any case, as one respondent stressed, the police always seem to be “the last resort” (Reporting center, interview 6).

Awareness raising actions emerged as central tools for recognizing hate acts and discourses against LGBT people as criminal offenses. As far as the awareness of police officers is concerned, training activities have been provided by OSCAD (see box above), although the number of beneficiaries still needs to be increased. Indeed, systematic training is only provided for new police recruits rather than existing officers. However, as already stressed by the FRA (2016a:52), “older police officers, especially those officers in more rural areas, are less accepting of LGBT persons’ fundamental rights and equality agendas than their younger and more urban counterparts”. Therefore, they are probably the ones who are most in need of specific training on anti-LGBT hate crimes.

No specific policies have been adopted by the police so far, at the national level, for raising awareness about anti-LGBT hate crimes (e.g. to encourage victims to report). Some respondents from the police lamented that no extra resources are allocated to this purpose. However, examples of local initiatives exist. For instance, one interviewed police officer explained that they organize information campaigns in “hot zones” of the city for distributing flyers about what a hate crime is and how to report it (Reporting center, interview 8). Another police officer said that they participate in public events (often invited by schools or, sometimes by journalists) and in training courses for healthcare professionals, although these events and forms of cooperation mainly concern, for instance, domestic and gender violence, child abuse, bullying and stalking in general, and not LGBT issues as such (Reporting center, interview 9). This suggests that possible actions (if any) are left to the free initiative of each central police headquarter (Reporting center, interview 9).

In general, public authorities still show a low level of commitment with regard to countering anti-LGBT crimes. UNAR seems to be the only institution which, in recent years, has received some funding (also from the Council of Europe, e.g. in the case of the “National LGBT Strategy”, 2013-2015⁵) to address the general public with specific awareness-raising activities on LGBT issues. In addition, UNAR has distributed funding to NGOs through *ad hoc* calls for projects and it also works for the creation of a network with NGOs, both at national and local level (Reporting center, interview 3).

In this context, NGOs play the most important role in raising awareness of anti-LGBT hate crimes. Some NGOs admit that reaching out to the LGBT population is sometimes difficult. Indeed, according to one respondent, “it is hard to talk with persons who do not want to come out, because they only want to keep their secret, even if they have suffered violence” (Victim support service provider, interview 11). Nevertheless, NGOs carry out a wide range of awareness-raising activities. This includes, for example, public events, social networks, media work, presence in LGBT bars and clubs, community meetings, cooperation with public institutions, and participation in the national network of local public administrations against discrimination based on gender identity and sexual orientation (Re.A.DY Network). While some organizations work exclusively with LGBT communities, others



5 <http://www.unar.it/unar/portal/?p=1921>.

cooperate with NGOs also working with other groups.

Rights of Victims of Anti-LGBT Hate Crimes in the Criminal Justice Process

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The law enforcement professionals interviewed within this project consider anti-LGBT hate crime victims to be vulnerable subjects. However, guidelines for avoiding secondary victimization are still lacking, with any initiative being left to the personal sensitivity and expertise of each, individual law enforcement professional. Furthermore, while victims' information rights in the criminal justice process recently have been implemented in Italy, guarantees of protection for victims still need to be strengthened.

According to article 90-bis of the Code of Penal Procedure (introduced by Legislative Decree no. 212/2015), law enforcement professionals have to inform the victims immediately (in a language they can understand) about: how to file a report, how the procedure will develop after reporting, the victim's rights in the judicial proceedings (including the right to legal assistance and the right to an interpreter), and the available supporting services (including healthcare services, anti-violence centers, foster homes, and shelters).

Article 90-quater of the Code of Penal Procedure (also introduced by the Legislative Decree no. 212/2015) establishes the specific cases in which the victim may qualify as vulnerable. In particular, victims are understood to be vulnerable on the basis of predetermined subjective features (age, infirmity, mental deficiency) or objective factors: e.g. type and circumstances of crime; if the victim is emotionally, psychologically or economically dependent on the aggressor; if the crime is motivated by racial hatred or committed with discriminatory intent. Although no explicit reference is made to homophobia/transphobia, the discriminatory intent of the aggressor in anti-LGBT hate crime must be taken into account.

The possibility of including anti-LGBT crime victims within the notion of vulnerable victim is very important, since this implies special protection rights, such as using video technology for statement taking, granting separate waiting rooms, excluding the public from the courtroom during the trial, and other victim-sensitive procedures. Effective access to these rights is imperative for avoiding secondary victim-

ization. However, this may be hindered by several factors including the difficulty of recognizing the homophobic/transphobic motive of the crime and ignorance of the special needs of anti-LGBT hate crime victims. For these reasons, only adequately trained police officers and magistrates should deal with these victims.

Within this perspective, it is worth noting that the law enforcement professionals interviewed in this project consider anti-LGBT hate crime victims to be vulnerable subjects who should be referred to special police units for vulnerable victims, where they exist. However, such units can only be found in the major central police stations, and they are not specifically for (anti-LGBT) hate crime victims. Moreover, according to the interviewed police officers, no policies or guidelines exist on how to avoid secondary victimization despite the fact that this is actually one of the biggest problems that law enforcement professionals have to face.

Respondents from the police listed several examples of good practice that they autonomously try to follow in order to address the special needs of anti-LGBT hate crime victims. In particular, it has been stressed that the first contact with the victim is always crucial. Anti-LGBT hate crime victims should not be left waiting for hours in a common waiting room; an evaluation of the gravity of the crime should be undertaken immediately by professionals with specific training, in a separate, quiet, isolated, clean and well illuminated room. Anti-LGBT hate crime victims call for attention to their very personal situation and need particular empathy, sensitivity, discretion and a “personalized” approach. Commenting on this, one professional said that “the idea of treating everyone in the same way doesn’t work in these cases” (Reporting center, interview 2). For example, it was noted that the interview could take longer than usual, as the victim may bring up issues which might not have significance for the case. As one of the respondents pointed out, when the victim is particularly shocked, the police should avoid asking questions immediately after the incident, but rather provide the victim with adequate assistance and support first (Reporting center, interview 9). Another professional stressed the importance of conducting an exhaustive interview (in order to avoid the necessity of going back to the victims for more questions, time and again, in the future) and said that the victim should be handled by the same officer from the beginning to the end of the procedure

(Reporting center, interview 3). At the present time however, whether these good practices are followed or not depends solely on the personal sensitivity and expertise of the professionals involved in the case.

More generally, any systematic approach to anti-LGBT hate crime is lacking within the penal/judicial system. Therefore, the goal of avoiding secondary victimization on a wider and more stable basis calls both for the elaboration of precise protocols and guidelines and for the establishment of special units (or at least liaison officers/magistrates) for (anti-LGBT) hate crime victims, within the police and the judicial system.

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As far as protection of the victim is concerned, respondents stated that they do provide protection according to the law. In the case of anti-LGBT hate crime victims, however, the protection of victims is often far from being effective. For this reason, some respondents argued that the existing measures for countering violence against women should be extended to anti-LGBT hate crime victims (Reporting centers, interviews 1, 3 and 11), even if these measures still do not seem to be very effective or fully implemented for women either (Reporting center, interview 7). Some of the respondents also said that they give advice to the victims for their self-protection, such as: avoid risky situations, contact an LGBT NGO for support, and immediately reach out to the police if other problems arise, in order to add the new incident to their report. However, simply advising people to avoid risky situations may be problematic. Indeed, by focusing on the behavior of the victims rather than on the responsibility of the aggressor, this approach may eventually end up affecting the victims' freedom and rights, or even (implicitly) blaming them for their "incautious" conduct.

Recording Anti-LGBT Hate Crime

Protocols or guidelines about how to record anti-LGBT hate crimes do not exist. In particular, no binding regulations and protocols oblige police officers to record possible bias indicators. Furthermore, the absence of a specific law against homophobia/transphobia results in the lack of official data and statistics on anti-LGBT hate crimes and impacts negatively on the possibility of tackling them effectively.

Protocols or guidelines about how to record anti-LGBT hate crimes do not exist. Official reports of incidents only have to include the personal data of the victims according to their ID card, the identification of possible witnesses, and the narration of the incident, as a free text field. If trans people are involved the report identifies them according to their ID, although the police officer can specify that they are known under, or want to be called by, a different name. Since there are no binding regulations and protocols obliging police officers to record possible bias indicators, their actual recognition and recording depends solely, case by case, on the personal knowledge and sensitivity of the police officer who receives and registers the report. This may be a serious problem since, when the police officer lacks specific training on anti-LGBT hate crimes, important elements are very likely to be missed, with detrimental effects on both the possibility of correctly prosecuting the aggressor and assessing the victim's vulnerability and needs.

Official data and statistics on anti-LGBT hate crimes are lacking. Indeed, since the official police database relies only on offenses punished by the national criminal law, the absence of a specific law against homophobia/transphobia not only makes it harder to punish anti-LGBT hate crimes as such, but also prevents the police from extracting reliable statistical data about them, and thus from estimating their frequency and seriousness. This means that although OSCAD reports hate crimes to ODIHR, the reported data concerning anti-LGBT hate crimes can in no way be considered exhaustive. This is true also for data on discrimination collected by UNAR, which sends an annual report to the Parliament to evaluate the impact of the implemented equality policies and to underline the necessary actions to be taken.⁶ In December 2017, a permanent commission was established by the Minister of Justice to monitor hate crimes and hate speech committed on different grounds (Decree of the Minister of Justice, December 14, 2017). The commission should carry out advisory functions and support the Ministry of Justice with regard to the actions to be taken at both national and European level. It should also present reports and proposals based on monitoring and analysis of discriminatory



6 <http://www.unar.it/unar/portal/?p=1733>

social practices, in order to offer elements of evaluation of the impact of the policies for countering discrimination and hate crimes. Some LGBT NGOs take part in the commission. While it is still too early for any assessment of the possible impact of their activity, it seems that reliable statistical data on anti-LGBT hate crimes are unlikely to be collected unless a law on homophobia/transphobia is adopted.

With regard to the data gathered by NGOs, the interviews found that only one has any protocols for registering reports and collecting data (Victim support service provider, interview 3), and only one organization has ever drafted an unpublished report (between 2011 and 2014) on the cases it dealt with (Victim support service provider, interview 2). On the contrary, most respondents said that their organizations do not write reports on the cases they follow and do not collect data, while other organizations may collect data only informally and unsystematically (for instance, data contained in email correspondence, regarding the victims and the reasons why they contacted the organization), but without producing any anonymized report. Furthermore, these data concern only the limited field of action of each NGO (see also section on support for victims below). Therefore, it seems that the lack of official information denounced above cannot be filled through data collected by civil society organizations.

Support for Victims of Anti-LGBT Hate Crime

There is a widespread belief among police officers that supporting crime victims is not a police responsibility. Specific support services for anti-LGBT hate crime victims are mainly provided by LGBT NGOs, without the help of public funding. As a consequence the fragmented, patchy and piecemeal nature of available support services significantly impedes victims' access to justice.

Most of the police officers interviewed in this research think that supporting the victims is not a police responsibility. While police inform the victim about the available support service providers, as required by the law, no specific procedure has been set up for referring anti-LGBT hate crime victims to those services. Moreover, while Italy implemented the Victims' Directive on the grounds of information rights, no step has been taken to strengthen the existing support services for the victim. In particular, no specific support services have

been provided for anti-LGBT hate crime victims; indeed, since the Directive leaves it to member states as to whether to establish specialist services separately and in addition to general support services, Italy simply did not choose this option. As a consequence, at present, support services for anti-LGBT hate crime victims are mainly provided by NGOs, without any financial support from the state.

Support services provided by NGOs include different options. Many organizations offer phone/email help lines and free psychological and/or legal counseling, either through in-house or outside professionals. Some also offer crisis intervention and support groups. However, lack of funding is a major problem for NGOs, which may negatively affect both the kind of services provided and, to some extent, their overall effectiveness. For instance, most respondents said that their organizations lack the necessary resources for setting up face to face help desks/advice services which stay open to the public on a regular basis. Only one respondent said that his organization provides assistance in case of rehousing needs (Victim support service provider, interview 4) while none of the organizations have emergency shelters suitable for LGBT victims. This is partly due to the fact that many of the NGOs that provide support to the victim are very small and cover only a very limited geographical area. Furthermore, the human resources of NGOs consist mainly of volunteers who often lack adequate training on hate crimes. Indeed, most NGOs deal mainly with SOGI discrimination issues in general and not with anti-LGBT hate crimes specifically. This may be a problem, because they may have limited experience in advising victims about their rights in criminal proceedings, including the risk of secondary victimization in various stages of the police and criminal justice process (See also FRA 2016b:40). The prevalence of volunteering in victim support service providers also prevents the possibility of ensuring continuity of service. Finally, since no governmental, systemic interventions have been carried out so far, the distribution of support services varies between regions. In conclusion, the respondents confirmed the fragmented, patchy and piecemeal nature of the support services available, something which was already lamented by FRA (2016b:40) as a major factor impeding victims' access to justice.

The length of time spent supporting the victim may vary depending on the organizations involved, the nature of the cases, and the victim's will. One of the interviewees said that they accompany the victim for at least one month (Victim support service provider, interview 11) while another said for at least three months (Victim support service provider, interview 4). In the more structured organizations, a recovery plan may be produced, with regular weekly meetings (Victim support service provider, interview 3). However, the duration of the accompaniment never exceeds one year: as one of the interviewees pointed out, "long term psychological counseling is not a competence of anti-violence centers" (Victim support service provider, interview 3). In the organizations focused on legal aid, the assistance may stop when a report is filed or last until the end of the judicial proceedings, according to the victim's will. Usually, meetings and phone calls are more frequent immediately after the incident.

Many interviewees said that their organizations work in coordination with other associations, services or external professionals, mainly psychologists and lawyers. Three interviewees said that their organizations cooperate with human rights NGOs which help migrants and asylum seekers arriving from countries where LGBT people are persecuted (Victim support service providers, interviews 4, 8 and 11). However, some interviewees complained that cooperation is sometimes difficult, even among LGBT associations, because some of them are used to working alone, and sometimes show a competitive attitude towards other associations.

Considering secondary victimization, support service providers take into account that victims of anti-LGBT hate crimes generally need a welcoming environment, empathy, patience, confidentiality and psychological support. One of the interviewees stressed the importance of devoting especial attention to young people because of their particular vulnerability (Victim support service provider, interview 11). Another underlined the view that psychological support should also be provided with regard to the judiciary proceedings, which may be very traumatic (Victim support service provider, interview 3). Furthermore, it was stressed that secondary victimization can be avoided only by well-trained institutional operators, meaning not only the police but also judges, forensic psychologists (Victim support service provider, interview 3), and attorneys: "Attention should be paid to avoid the possibility that attorneys may be perceived as being 'a part of the system'" (Victim support service provider, interview 2).

In relation to mechanisms to protect victims from new situations of anti-LGBT discrimination or hate crimes, the interviewees stressed the importance of reporting, asking for help, increasing self-esteem, self-awareness and empowerment, and creating a network of social relationships around the victim. They also underlined the need for a law against homophobia/transphobia. More generally, they called for attention to the widespread homophobia/transphobia in wider society, which should be tackled through awareness-raising activities. One of the interviewees also drew attention to the importance of shelters: “It would be useful to have buildings and goods confiscated from the mafia” (Victim support service provider, interview 7). The respondents generally said that it is hard to evaluate whether, when and how their system is effective.

Conclusions and Recommendations

Concluding remarks

The failure to include SOGI as a protected ground in the Italian hate crimes legislation both reflects and contributes to the persistence of a widespread underestimation of the frequency and seriousness of anti-LGBT hate crimes. At the same time, by preventing the opportunity to collect reliable statistical data, this gap in the Italian legal system risks rendering these crimes almost invisible.

Several negative consequences stem from this situation including, for instance: (a) the insufficient level of commitment of the public bodies to promoting awareness raising activity against homophobia and transphobia, and to monitoring their efficacy; (b) the absence of any serious effort to tackle underreporting, for instance by adopting policies for facilitating the access of victims to reporting centers; (c) the lack of protocols and guidelines which could help reporting centers in carrying out their activities effectively and without causing unnecessary secondary victimization; (d) the lack of public support services specifically tailored to LGBT people. Furthermore, the underestimation of anti-LGBT hate crimes may have played a role in failing to give specific attention to anti-LGBT hate crimes victims in the general rules implementing the Victims’ Directive. Indeed, although the discriminatory intent of the crime may lead to a consideration of the victim as vulnerable, SOGI are not explicitly mentioned as grounds for special protection.

Although good practices have been found, both among some reporting centers and victims support service providers, voluntarism is not an adequate basis for tackling anti-LGBT hate crimes and addressing the special needs of the victims of these crimes. Systematic training is still not provided for professionals in reporting centers and for support service providers. Furthermore, official cooperation protocols between reporting centers and victim support service providers (if any) are still left to the initiative of local actors, without any national directive.

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In this context, the overall defective character of the Italian response to anti-LGBT hate crimes often impedes the effective access to justice for the victims and may result in the violation of their rights, inevitably turning into a disincentive to report crimes.

Recommendations:

1. Adopt a law against homophobia/transphobia.
2. Set up a mechanism for monitoring and collecting data about anti-LGBT discrimination and hate crimes.
3. Design and implement policies for facilitating access to justice for victims of anti-LGBT hate crimes, including online and third-party reporting, specialized police units and liaison or contact officers.
4. Ensure that appropriate training and sensitization is provided to law enforcement professionals to avoid secondary victimization and to ensure that bias motives are not overlooked when assessing victims' protection needs, in accordance with Article 22 of the Victims' Rights Directive.
5. Set up a specific procedure for police referring the victim of anti-LGBT hate crime to the available support services.
6. Implement the EU Victim's Directive in the field of support to the victim, in order to overcome the fragmentation of victim support services and ensure that appropriate support services are available to all victims of hate crime, including free and extensive services providing legal and psychological support, as well as shelters.
7. Ensure appropriate training to victim support service provider professionals.

8. Conduct public awareness policies and programs in cooperation with LGBT NGOs, to change cultural paradigms and attitudes in order to encourage and promote respect for LGBTI persons and fight against prejudice and discrimination against them.
9. Carry out follow-up mechanisms that enable verification of the implementation and impact of norms and measures adopted to promote equal rights and to confront anti-LGBT discrimination and hate crimes.

References

- FRA (2012), *European LGBT Survey*. (<http://fra.europa.eu/en/survey/2012/eu-lgbt-survey>)
- FRA (2016a), *Professionally Speaking: Challenges to Achieving Equality for LGBT People*. (<http://fra.europa.eu/en/publication/2016/professional-views-lgbt-equality>)
- FRA (2016b), *Ensuring justice for hate crime victims: professional perspectives*. (<http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>)

List of legislation

- Bill C. 1658 (2009) Chamber of Deputies on the introduction of a general aggravating circumstance for crimes motivated by homophobic/transphobic hate.
- Bill C. 245 (2013) Chamber of Deputies, on combating homophobia and transphobia.
- Decree of the Minister of Justice, December 14, 2017, establishing a permanent committee on hate crime and hate speech.
- Law no. 205/1993, on urgent measures against racial, ethnic and religious discrimination and hate.
- Law no. 76/2016, on same-sex civil unions.
- Legislative Decree no. 212/2015, implementing the Victims' Directive.