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LGBT CIVIL RIGHTS IN ITALY: 20 YEAR-DELAY WITH RESPECT TO EUROPE.

Italy is still light-years away from the achievements in the field of LGBT rights in comparison to other European countries: this is a detailed analysis of this controversial topic.

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The question of civil rights of **same-sex couples** is a touchy subject in Italy and clearly reflects the social and cultural distance among Italy and other European countries. In the field of civil rights, including euthanasia, adoptions and unconditional basic income, Italy may be considered as “third world”.

Despite the fact that the secularism of the Italian state is one of the central principle of the Italian Constitution, the influence of Catholic Church on these controversial subjects is undeniable and it conditions the political debates, which are biased and, as consequently , in Italy there is a significant deficit of civil rights. Unlike Spain where, despite being traditionally a Catholic country, in 2005 has recognised the rights of LGBT (Lesbian, Gay, Bisexual and Transgender), Italy still does not recognise them, although it would appear that after the last Synod of Bishops there has been openness towards homosexual marriages, even if they would be different from traditional ones.

Obviously, in Italy it is **illegal** to discriminate people at work on account of sexual orientation, but it is a basic right, officially recognised in almost all European countries. As a matter of fact, nowadays, it is only in Italy, Cyprus and Greece and other former communist countries civil unions or homosexual marriages are not allowed, whereas in the other countries there are some legal instruments to guarantee equal rights and to prevent sexual discrimination.

Let us consider the United Kingdom, in which one year ago homosexual couples were given the right to marry: this was possible thanks to parliamentary vote and the approval of Conservative members too. Denmark was the first European country to legalize civil unions in 1989 and in 2003 legalized same-sex marriages as well. In 2014 Finland, where homosexual civil unions and stepchild adoption were legal since 2002, became the thirteenth European country to introduce homosexual marriages, thanks to the popular initiative, that promoted the legalization of homosexual unions. Scandinavian countries, as can be easily deduced, have been the forerunners in the field of LGBT rights; as a matter of fact, Norway and Sweden approved same-sex civil unions in the 90s and marriages at the beginning of the twenty-first century. The Netherlands has been the first country of the world to give LGBT couples the right to marry, whereas Belgium, Portugal, Iceland and France recognised this right a little bit later: the first in 2003, the

second and the third in 2010 and the last only two years ago. To summarize, considering EU members, homosexual civil unions are legal in ten countries: Austria, Croatia, Estonia, Finland, Germany, Ireland, Malta, Czech Republic, Slovenia, Hungary; considering countries outside the EU, same-sex unions are allowed in Australia, Greenland, Ecuador, Colombia and South Africa, whereas homosexual marriages are legal in Canada, Argentina, Mexico and Uruguay.

It can be easily deduced that European Union has lodged a complaint about the situation of “**delay**” in the field of LGBT civil rights in Italy: our country has been sentenced to pay a compensation of 120 million euro in 2012, the highest sum of money paid by a member of European Council. What is more, Italy has the highest rate of non-compliance to sentences passed by the European Court of Human Rights: **2569 unobserved sentences**; in the rankings; only Russia and Turkey have a higher number of unobserved sentences, and for this reason Italy is under the surveillance of the Committee of Ministers of the European Council. According to the data collected by Iga Europe, UK is the country with the highest level of respect towards LGBT people, as the percentage stands at 77 per cent of non-discriminatory attitudes, on the contrary, Italy is one of the last countries in the rankings, with 17 per cent of undiscriminating behaviour, followed by Bulgaria, Bosnia, Turkey, Latvia and Lithuania.

In 2010 the Council passed a sentence (n.138) that not only excludes the unconstitutionality of rules that prevent same-sex marriages but states that homosexual unions have the right to be “legally recognised with their rights and duties”, as sanctioned in the Italian Constitution (article 2); briefly, this sentence aims to encourage the Parliament to “find proper ways to guarantee and to recognise the **right to homosexual union**.” It implies that, if both Italian Houses (Chamber of Deputies and Senate) do not legislate, homosexual couples will have the possibility to turn to the judges to claim the same rights as heterosexual married couples.

Furthermore, another controversial issue is the **registration of marriage acts** (homosexual and heterosexual) signed abroad, which the Court of Grosseto deals with. Now let us consider the sentence n.4184, passed by the Constitutional Court 15 march 2012, about the registration of a marriage act signed in Holland by a same-sex couple. Even though the request of the homosexual couple was denied, the Court has stated that “*the components of a homosexual couple living together have right to family life and to*

lie freely their relationship”, as written in the Italian Constitution (article 2). In this way, the Constitutional Court recognises and upholds the principles expressed in the judgment passed by the European Court of Human Rights, according to which the right to marriage cannot be limited to heterosexual couples but it should include homosexual people as well. This decision confirms the content of the article 14 that forbids any type of discrimination. As a result, after the sentence mentioned above, several progressive mayors have decided to register marriage acts signed abroad; but the Italian Minister of Interior, Angelino Alfano, published a Ministerial Circular in order to revoke the recognition of those marriage acts; nevertheless, to tell the truth, some mayors have refused to apply the Circular and as a result, they are likely to be accused of omission of documentation. A good example of which is the case of Giuliano Pisapia, Mayor of Milan.

Furthermore, the most significant step forward has been done by the Court of Cassation, since it has recognised the **right of same-sex couples to have children**, stating that *“there is no scientific certainty and data, but only prejudices, that confirm that it is dangerous and morally wrong for a child to live with homosexual parents”*. More to the point, the judgement n.170 passed by the Constitutional Court in 2014, that dealt with sexual identity and sexual orientation. The sentence deals with the case of a man, married to a woman, who had decided to have a sex-change - not asking divorce to his wife, but instead asking her approval. Nevertheless, paradoxically, those who want to separate can turn to competent authorities, whereas in case of sex change, people must divorce. The Constitutional Court, at request of Court of Cassation, has declared that it is unconstitutional to impose the divorce to a couple, in which of one of the member has changed sex. Moreover, the Court has demanded to *“intervene promptly in order to overcome the condition of illegitimacy, due to the deficit in the rights of LGBT people.”* In other words, the Italian Parliament is expected to pass a law that provides for a form of **official cohabitation for same-sex couples**; furthermore, as previously decided by the sentence n.138, this law should guarantee the same rights and duties for homosexual couples as heterosexual ones.

Renzi Cabinet has promised to enact a legislation about this issue, on the German model, but has not however kept this promise. Up to now, the Italian State has been unable to pass a law against homophobia - laws that establish **homophobia as an aggravating factor** like sexual, racial and religious discrimination.

It is poignant to note that, according to a recent survey conducted in all countries of EU, Italy accounts for the country with the **highest rate of homophobia**, in relation to some parameters, such as the use of discriminatory language, the limitation of sexual freedom and access to public service.

In conclusion, it can be easily deduced that in our country the Catholic and Conservative ideology has still a great influence and inevitably conditions political decisions about “ethical” issues, preventing the introduction of laws, that in other European countries guarantees civil rights to LGBT people.

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