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Italy: the new government must be vocal in addressing double standards on hate motivated violence

On 14 February 2012, a young trans woman was beaten up by several people in a club in Catania (a big city in Sicily). One of the assailants attempted to flirt with her on the dance floor. When she turned down his advances, he realized that she had a masculine voice and shouted “oh you are a faggot!!” before punching her on the face. Michelle told Amnesty International that then at least ten people who were in the club started punching and kicking her and shouted derogatory language such as “How disgusting! You are a man, a faggot!!”

Michelle reported the attack to the police and indicated that she perceived it as being motivated by her gender identity. One person (a minor) has been indicted for causing bodily injuries. The judicial procedure has not yet started, as of today. However, it is unlikely that the specific alleged transphobic hate motive will be duly taken into account in investigating and prosecuting this crime, since there is no specific basis for it in the Criminal Code. Some authorities which Amnesty International has spoken to, including the Observatory for Security against Discriminatory Acts (OSCAD) and the Office of the Prosecutor of Palermo, have highlighted that this legislative gap is a major hindrance in collecting data and in ensuring that homophobic and transphobic motives are duly taken into account in the investigation and prosecution phases.

Italian LGBTI organizations have reported dozens of cases of homophobic and transphobic hate crime in recent years. All of them have highlighted, on the basis of the cases they have been informed about but where the victims did not want to refer to the police, that underreporting is a major problem. Although comprehensive data are not available on these forms of violence, especially because no official data collection system exists, there are indications that they occur frequently.

According to the OSCAD, set up in September 2010 with the aim of tackling hate motivated crimes by enhancing data collection and cooperation between law enforcement forces and civil society, almost 30 per cent of the overall hate crime cases referred to them up to March 2013 were perpetrated on the ground of sexual orientation (40 out of 140 cases).

The Gay Help Line, which provides free legal and psychological counselling to victims of discrimination and violence nation-wide, received information about 750 cases of verbal and physical attacks targeting LGBTI individuals in 2011. The organization told Amnesty International that information about a similar number of cases was collected in 2012.

The OSCAD told Amnesty International that official data are collected on the basis of the specific typologies of crime existing in the Criminal Code. Since 2010, an alleged discriminatory motive such as sexual orientation, gender identity, age or disability, associated with an offence may be recorded by those law enforcement agents who receive the victims’ reports. In cases of crimes perpetrated on grounds such as ethnic origin or religion, the registration is automatic as these crimes correspond to specific typologies in the Criminal Code. The absence of official and comprehensive data on hate crime perpetrated on grounds of sexual orientation and gender identity hinders the adoption of public authorities and measures aimed at effectively combating homophobia and transphobia.

LGBTI people are targeted with violence in different contexts: on the street, in or around LGBTI venues or other places where people gather, and also at home by their family members. Amnesty International spoke to Francesca Marceca, the responsible of the provincial branch in Palermo of the Association of Homosexuals' Parents (AGEDO). Since 1998, the association has been providing invaluable support to more than a thousand young LGBTI people who are experiencing problems with their families or to parents who have difficulties in coping with the sexual orientation or gender identity of their children. Francesca said "the family should be a safe space for all young people including those who are LGBTI, unfortunately that is far from being the case".

The association has been approached by many trans teenagers experiencing rejection, discrimination and in some cases violence within their families. Claudio Cappotto, who provides psychological support with AGEDO, encountered cases of extreme violence experienced by trans people within their families. They include situations where trans teenagers have been abused by their relatives, sometimes with a punitive purpose, especially against female-to-male trans individuals, as well as cases where they have been either banished from home, or locked up at home, or referred to "sorcerers" to help them in "fixing" their sexual orientation or gender identity.

He told Amnesty International that "these cases have never been reported to the authorities. Some of the trans people who contacted us via email or phone experienced a high level of vulnerability, do not trust anyone and are reluctant to share their experiences. Most of the time there are no shelters or other facilities to cater for the needs of trans people who experience domestic violence".

Trans individuals are particularly vulnerable to discrimination and violence as well as to high levels of prejudice from the public and, in some instances, law enforcement agents. Twenty murders of trans people have been reported in Italy between 2008 and 2012 according to the data from the Transgender Europe's project Trans Murder Monitoring Project. Amnesty International was told by trans organizations including the Transsexual Identity Movement (MIT) and Libellula that many trans sex workers are victims of daily discrimination and violence, especially in instances where they have been trafficked to Italy and where they do not report violence and discrimination to the authorities because of lack of trust in those authorities and a fear of being deported.

Anna is a trans woman living in Bologna. She has never experienced problems with her family, which has been supporting her in the process aimed at seeking legal recognition of her female gender. In July 2011, she was physically attacked in an area of the city where trans sex workers work, although she is not a sex worker herself -- she went there to meet a friend who was working in the area. She was approached by two young men who started to physically harass her; when she refused their advances, they started punching and kicking her. She was rescued by her friend and taken to the hospital. Anna was severely injured and had to undertake several facial reconstruction surgeries.

She shared with Amnesty International her experience when she reported the attack to the police. "Someone who is there [in that area where sex workers work] and who is trans is considered to be worth nothing. I had to explain to the police that I was not a sex worker, they were assuming I was....even if I was wearing casual dress and trainers...but that's not the problem...would that have made a difference in terms of the physical violence I had experienced? My friend called the police who came to the hospital, more than anything else they inquired why I was hanging around in that areathey said -eh, you were there so late in the night....but what were you doing there-. They asked the same when I went to the police station to provide further details -but why were you there? You can tell us-."

Violence motivated by the sexual orientation or gender identity of the victim is a deliberate and extremely harmful form of discrimination and often has a very negative impact on the physical

and psychological well-being of the victims. Michelle told Amnesty International “I am still afraid...after the attack I could not walk in the street without repeatedly turning back to check if someone was coming from behind to attack me....I am still traumatized, sometimes I have nightmares...After the attack I was depressed because at the beginning I thought that they had beaten me up because they were not attracted by me, because I have a masculine face....then I realized that they probably punched me just because I had turned down their advances”.

On the occasion of the International Day Against Homophobia and Transphobia, Amnesty International calls on the Italian government to address without any further delay the legislative and policy gaps to ensure that homophobic and transphobic hate motives associated with any crimes are identified and recorded and that such crimes are vigorously, , promptly, effectively and thoroughly investigated and prosecuted. Discrimination on grounds of sexual orientation and gender identity, including homophobic and transphobic violence, is as much prohibited by international human rights law as discrimination on grounds of race, ethnic origin, nationality or religion and Italian authorities have the obligation under international law to combat all forms of discrimination.

To this end, the Italian government should:

- Ensure that sexual orientation and gender identity are explicitly mentioned in article 3 of law 654 of 13 October 1975 (as currently in force); along with race, ethnic origin, nationality and religion so that crimes perpetrated on grounds of sexual orientation and gender identity, like any other crimes with a hate motive can be effectively tackled ;
- Ensure that binding guidelines are designed, adopted and implemented in order to ensure that any alleged hate motive, including on grounds of sexual orientation and gender identity, is identified and such crimes are vigorously, effectively , promptly and thoroughly investigated by law enforcement agents and judicial authorities;
- Put in place a comprehensive system aimed at collecting data on hate crimes disaggregated by hate motive, and including sexual orientation and gender identity, at the levels of reporting, indictment and sentencing;
- Ensure that law enforcement agents are provided with training on addressing homophobia and transphobia and ensure that similar training is comprehensively provided to judicial authorities;
- Take duly into account domestic violence experienced by children and young adults on the grounds of their sexual orientation and gender identity in all legislation, policies and practices aimed at tackling domestic violence, and provide victims, including trans people, with the possibility to access shelters and other programmes for victims of domestic violence;

Legal background

Violence and other crimes committed with a discriminatory motive are an abuse of human rights. Hate crimes¹ perpetrated on the ground of real or perceived sexual orientation or gender identity of the victims are a flagrant manifestation of discrimination. The authorities must, in particular, take active steps to identify any homophobic or transphobic motivation on the basis of which a crime is perpetrated, ensure that such crimes are vigorously investigated and prosecuted, and ensure the collection and recording of data on the incidence of such crimes, as a measure towards identifying the extent of homophobia and transphobia in society, and so that effective legal and public policy measures can be taken to tackle it, and to ensure the protection of LGBTI people against hate crime and other forms of discrimination.

1 The OSCE defines hate crime as “ A) Any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence are selected because of their real or perceived connection, attachment, affiliation, support, or membership with a group as defined in Part B. B) A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor”.

Discrimination on the basis of sexual orientation and gender identity are prohibited under international human rights law.² States must ensure that their authorities do not discriminate against individuals on these grounds and, furthermore, must exercise due diligence to ensure that discrimination by non-state parties is effectively prevented and tackled.³

States must provide comprehensive protection against discrimination on grounds of sexual orientation and gender identity in their civil anti-discrimination laws. In the instance of hate crime motivated by the victim's sexual orientation or gender identity, states must put in place legislation, policies and practices aimed at preventing and effectively investigating such crimes. It is crucial that states in their criminal law recognise sexual orientation and gender identity as specific discriminatory motives for perpetration of a criminal offence. Any alleged homophobic and transphobic motive should always be registered by law enforcement agents and be the object of effective, thorough and impartial investigation and also duly taken into account in the prosecution phase.

The European Court of Human Rights has found that authorities have the duty to take all reasonable possible steps to unmask any racist motive that has allegedly played a role in the perpetration of a crime.⁴ The same standards should be applied to hate crime perpetrated on other prohibited grounds such as religion or belief, age, disability, sexual orientation or gender identity.

Article 3.b of law 654 of 13 October 1975, subsequently amended in 1989, 1993 and 2006 punishes violence, or instigation to commit violence, perpetrated on grounds of race, ethnic origin, nationality or religion.

The Italian Criminal Code foresees the application of general aggravating circumstances in cases where a crime is perpetrated for trivial purposes or in a cruel manner (article 61.1 and 61.4 of the Criminal Code). Such aggravating circumstances have in fact, although rarely, been applied to homophobic hate crimes.

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² See HRC case-law: see for instance *Toonen v. Australia*, no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994), and *Mr. Edward Young v. Australia*, Communication No. 941/2000, U.N. Doc. CCPR/C/78/D/941/2000 (2003).

ECtHR case-law: see for instance *Schalk and Kopf v. Austria*, no. 30141/04, 24 June 2010, *Lustig-Prean and Beckett v. The United Kingdom*, 31417/96; 32377/96, , 27 September 1999, *Smith and Grady v. United Kingdom*, nos. 33985/96 and 33986/96, 27 September 1999, *Salgueiro da Silva Mouta vs. Portugal*, no.33290/96, 21 December 1999.

See also CESCR, General comment No.20, on Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, 17 November 2011.

³ Human Rights Committee, General Comment No. 31 on Article 2 [on non-discrimination] of the International Covenant on Civil and Political Rights: “ (...) The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”

⁴ *Nachova and Others v. Bulgaria*, Applications nos. 43577/98 and 43579/98, 6 July 2005, at paragraph 160, *Stoica v. Romania*, Application no.42722/02, 4 March 2008, *Šečić v. Croatia*, Application no. 40116/02, 31 May 2007