



D.2.2. NATIONAL REPORT ON LEGAL AND QUANTITATIVE/QUALITATIVE RESEARCH (ITALY)

WP2: Restorative justice in current Europe: Qualitative and quantitative transnational research

**Research Team:
(UNIBS – FRANCESCA BERTELLI e GIACOMO VIGGIANI)**



**UNIVERSITÀ
DEGLI STUDI
DI BRESCIA**

SEPTEMBER 2020



Funded by the European Union's Justice Programme (2014-2020).

The content of this document represents the views of the author only and is his/her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

Table of contents

Table of contents	2
Introduction	3
1. Methodology	7
2. Italian legal framework regarding restorative justice and the rights of LGBT victims of crime	10
3. Preventing and combating LGBT violence through public policies and restorative justice. The perspectives of key professionals	15
3.1 Introduction	15
3.2. Analysis of perspectives and knowledge of professionals regarding legislation and policy.	16
3.3. Exploration about the knowledge, beliefs and practices of professionals in relation to restorative justice	19
3.4. Unravelling innovative strategies of restorative justice in relation to (anti-LGBT) hate crimes	23
3.5. Understanding cooperation and training	26
3.6. List (up to 15) main strategies/activities/programmes that could be relevant to the workshop- and training activities	29
Conclusions	32
ANNEXES	39
Annex 1. Qualitative analysis. Profiles of professionals interviewed	39
Annex 2. Quantitative analysis. Survey data	41

Introduction

The research underpinning this report represents a core activity of the two-year project *LetsGoByTalking – Protecting and defending the rights of victims of anti-LGBT hate crimes: Innovative paths through restorative justice*, co-financed by the European Commission's Rights, Equality and Citizenship (2014-2020) program. The project aims at addressing a common need within the European Union to contribute to the reparation of anti-LGBT hate crimes, by guaranteeing the victim's rights, through the promotion of restorative justice (RJ) in the EU. It has seven objectives:

- 1) map EU legislation regarding RJ and the rights of victims;
- 2) analyse the perspectives of victims of anti-LGBT hate crimes and key professionals;
- 3) identify and study programmes of RJ in cases of hate crimes;
- 4) foster the exchange of experiences and the cooperation between professionals;
- 5) develop training guidelines and courses for RJ practitioners;
- 6) raise-awareness about the RJ efficacy;
- 7) enhance the rights of victims established in the Directive 2012/29/EU.

At European level, the *LetsGoByTalking* project contributes to the effective implementation of the Victims Rights' Directive, to the Recommendation CM/Rec (2018)8 of the Committee of Ministers that encourage member States to develop RJ, , as well as the priorities established by the Commission to Advance LGBT Equality by increasing the victim's trust in the judicial system and combating underreporting.

The project is divided into six work packages: coordination, research and analysis, exchange of best practices and networking, training, and dissemination. The objectives of the second work package were to

- map European and national legislations regarding restorative justice and the rights of victims of crime, considering whether those legislations facilitate – or not – the application of RJ in the case of anti-LGBT hate crimes.

- analyze the experiences and needs of victims of anti-LGBT hate crimes, as well as key professionals who deal with anti-LGBT violence and/or RJ programs (policy makers, criminal justice practitioners, RJ mediators, representatives of NGOs, law enforcement authorities) in order to facilitate the application of RJ in anti-LGBT hate crimes.
- identify programs of RJ in cases of hate crimes (with an emphasis on anti-LGBT hate crimes) put in place in European countries, considering their transferability to other national contexts.

The present report and the collection of good practices are the product of desk-based research and interviews with several professionals representing reparative justice experts, equality bodies, victim support services, and LGBTI and generalist human rights organizations in Italy. As part of the second work package, a comparative and transnational report was also drafted based on the national findings, with which an overall perspective was offered, and common trends/gaps detected.

Presentation of the country analysed regarding LGBT issues: the general situation of the LGBT population, LGBT activism, networks and associations, assessment of the public authorities' engagement, main LGBT services, anti-LGBT violence and discrimination. This will also include any relevant literature which may refer these issues.

In Italy, a few steps towards LGBT equality have recently been undertaken (e.g. the recognition of same-sex civil unions in 2016), even if a lot of work remains to be done (same-sex marriage, adoption, medical interventions). This is confirmed by the fact that according to ILGA-Europe's Rainbow Map 2020 reflecting the legal and policy human rights in Europe, Italy achieved a rating of only 23 per cent and ranked 34th of 49 countries analysed. One of the biggest gaps is represented by anti-LGBT violence and discrimination. Despite there are no regular surveys concerning anti-LGBT hate crimes in Italy, available evidence, such as victimisation surveys¹ conducted by NGOs or other entities, suggests, however, that the problem does exist in the country. For example, according to a statistical study carried out

¹ A victimization survey is a survey that asks a sample of people which crimes have been committed against them over a fixed period of time and whether or not they have been reported to the police.

by the Italian NGO Arcigay 2006 (Lelleri, 2006), 18.4 per cent of lesbians and 19.4 per cent of gay men interviewed declared that they have been harassed or insulted because of their sexual orientation. The findings are corroborated by two regional studies in 2011 (Pelullo, Di Giuseppe, Angelillo, 2001), 2013 (Centro Risorse LGBTI, 2013), and one nationwide study in 2020 (Centro Risorse LGBTI, 2020).

On the other hand, other findings suggest that attitudes toward LGBT people in Italy have improved in recent years. According to the European Social Survey (ESS), the respondents who agreed or strongly agreed with the statement that gay men and lesbian women should be free to live their own lives as they wish were 71.7 per cent in 2002, 63.1 per cent in 2004, 72.4 per cent in 2012, and 66.2 per cent in 2016. Results from the *Call It Hate* survey (Bugatti, Togni, 2019) in 2018 confirmed this trend, as eight out of ten respondents agreed that LGBT people should be free to live their own lives as they wish (LG = 85 per cent; B = 83 per cent and T = 79 per cent).

General overview on legal/political framework regarding hate crimes and restorative justice in the analysed country.

Despite Italy has hate crime laws, sexual orientation and gender identity are not recognized as protected grounds. 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 a result, anti-LGBT hate crimes are investigated as common crimes. Also, 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. 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.

As far as the support and protection of victims of crime are concerned, Italy has transposed the Victims' Directive 2012/29/EU, but the results are not fully satisfactory, especially in terms of the monitoring of statistical data on hate crimes and victim support

services. The few services available for anti-LGBT hate crime victims are provided by LGBT NGOs, without the help of public funding. Consequently, the fragmented, patchy, and piecemeal nature of available support services significantly impedes victims' access to justice, including reparative justice. The situation is worsened by the fact the Italian legal framework does not explicitly recognize restorative justice, even if the juvenile criminal system is informed by a restorative approach.

1. Methodology

The aim of the study was to understand the legal and policy situation of restorative justice and the rights of victims of crime. Specifically, the research aimed to elucidate whether the current legislation stimulates, or hinders, the application of restorative justice programmes in case of anti-LGBT hate crimes in Italy. The research used quantitative and qualitative methods of inquiry, including desk-based research of primary and secondary sources, mapping of relevant institutions and organizations, surveys, and in-depth interviews.

As the first step in the research, a mapping of the national legal frameworks regarding restorative justice and the rights of victims of crime was carried out, including, *inter alia*, criminal laws, criminal procedure laws, and laws transposing the Victims' Directive, as well as national anti-hate action-plans, guidelines on policing and prosecuting hate crimes, and other relevant public policy documents.

Following this legal analysis, primary research was conducted to explore and further facilitate the application of restorative justice in such crimes. The first activity consisted of structured, in-depth, individual interviews with victims of anti-LGBT hate crimes and key professionals who deal with restorative justice and/or hate crimes (e.g. criminal justice practitioners, law enforcement authorities, professionals working on victims' support, etc.). To this purpose, a standardised interview model was created. The guiding themes covered²:

- Legislation and policy
- Information, knowledge, beliefs, and practices of professionals in relation to restorative justice
- Experiences, expectations, and notions of restorative justice of victims of (anti-LGBT) hate crimes
- Strategies of restorative justice in relation to (anti-LGBT) hate crimes
- Cooperation and training

² Fuller information about the guiding themes is provided in the Methodology Guide.

Most of the respondents was recruited using a snowball method or personal contacts, taking into consideration the territorial distribution, the responsibilities of the interviewees, the gender, and the diversity of experiences. Interviews were conducted in national languages, on the phone or using video-conferencing tools. To ensure that all participants understood the nature of the research, its goals, confidentiality, the voluntary character of their participation and the possibility of withdrawal at any time, an information sheet and consent form were developed, translated to national languages and distributed before the interview took place. All data were stored and processed for the purpose of analysis using the highest available standards of data protection. In the end, a total of 16 professionals were interviewed (see annex 2), while was not possible to reach the victims of crime due to the Covid-19 outbreak. Although this represents a clear methodological limitation, to some extent the stories of restorative justice told by the professionals have allowed also to understand the perspective of the victim. Another limitation was the lack of experience of professionals in hate crimes against LGBTI, but the failure of the legal framework to recognize them as an autonomous or aggravating case makes it more difficult for professionals to identify and manage them as such.

The fieldwork took place from April to June 2020. The in-depth interviews conducted were later synthetize in factsheets in English to facilitate the comparative analysis and summarize the information analytically under the guiding themes.

Complementing the qualitative research, a quantitative survey was carried out. The objectives of the questionnaire were to

- gather the opinions of the main LGBT associations and other civil organizations that fight against discrimination in relation to the application of RJ in hate crimes
- know the existing programs on RJ in Italy
- complement the qualitative research

For analytical purposes, the participating organizations and institutions were divided in two different categories: LGBT and other NGOs. The second category included transversal (covering all types of discrimination), race/ethnicity, religion and other (e.g. aporophobia, vs.

functional diversity, etc.) organizations. Organizations with different scope (international, national, regional, local) have been asked to respond the survey in order to ensure the possibility to collect different perspectives (see Annex 2, Part. B.4). The survey was elaborated following some guiding themes to ensure that all objectives are addressed and to guarantee the triangulation between quantitative and qualitative data. In particular, the research tool contained five blocks of research questions (organizational questions, knowledge about restorative justice, training needs, organization positioning about restorative justice) and a set of socio-demographic questions. In the end, 46 out of 55 answers were considered eligible for analysis. The data-collection took place in April and May 2020.

2. Italian legal framework regarding restorative justice and the rights of LGBT victims of crime

2.1. Analysis of the rights of LGBT people:

Despite Italy has signed international treaties and human rights declarations prohibiting discrimination based on Sexual Orientation and Gender Identity (SOGI), including the EU Framework Directive 2000/78/EC and the UN Rights Declarations on Sexual Orientation and Gender Identity, in Italy acceptance of LGBT people score nearly 3 on a 1- to-10 acceptance scale, two points below the average OECD score (OECD, 2019).

On the civil law side, the Italian still conservatory approach towards family law entails inequalities in respect to LGBT people: art. 29 Cost. establishes that family is a natural society founded on marriage, and the Italian legislator is not obliged by the constitution to recognize the right to same-sex marriage.

Anyhow, the right of same-sex partners to “family life” has been affirmed by the Court of Cassation even before a legal regulation of same-sex unions (Court of Cassation, 15 March 2012, No. 4184), but their constitutional protection seemed to rely on art. 2 of the Italian constitution, protecting social formations (Ferrando, 2017).

Same-sex marriages are not allowed in Italy, but l. 76/2016 has offered a legal regulation for same-sex Unions, which are similar to marriages for many aspects, but still not placed on an equal footing by the law. For example, adoption in same-sex unions is not legally recognized and it is, indeed, object of vigorous debate and judicial controversies.

In Italy non-binary genders are not recognized. In relation to binary-genders, the recognition procedures require individuals to apply to their domestic courts in order to have their gender officially acknowledged (van den Brink, Dunne, 2018, According to which “Requiring individuals to submit their request before national courts creates an additional layer of formality, which many people find both intimidating and difficult to navigate. Where obtaining recognition necessitates additional legal knowledge, this may dissuade individuals from making an application. It may also require legal assistance which many people – especially those in situations of economic vulnerability – may be unable to afford. In

addition, in certain jurisdictions, judicial procedures place domestic judges in a ‘gate-keeper’ role”). In 2017, the Italian Constitutional court stated that gender recognition can’t depend solely from the will of the applicant (Italian Constitutional Court, 13 July 2017, No. 180): even if surgery is no longer considered by the courts as precondition for gender recognition, a medical diagnosis and medical and psychological treatments are necessary (Court of Cassation, 20 July 2015, No. 15138).

2.2. Analysis of the legal measures against bias-motivated violence and discrimination, as well as the rights of victims of crime:

The Italian Constitution doesn’t prohibit explicitly discriminations based on SOGI, but its arts. 2 and 3, dedicated to human rights protection and to a general principle of equality and non-discrimination could be interpreted to offer protection to LGBT people’s rights in the whole system.

Nonetheless, on the criminal law one, LGBT people only have limited protection: Italy has hate crime laws, but the aggravating circumstance for hate crimes, considering ethnicity, race, nationality or religion as protected grounds, doesn’t include SOGI. Therefore, anti-LGBT hate crimes, when reported, are investigated as common crimes and punished accordingly to their common discipline. Another consequence is that anti-LGBT crimes are not registered as such, hindering the possibility of officially appointing an institution for data collection and hardening the possibility to challenge the issue appropriately (so called under-reporting) (Parolari, Viggiani, 2018).

Italy has transposed Victims’ Directive 2012/29/EU through the legislative decree 15 December 2015, No. 212, but just partially (Servizio Studi Camera dei Deputati, *Il sistema di protezione delle vittime: principi sovranazionali e normativa nazionale Dalla ratifica della Convenzione di Lanzarote al decreto legislativo n. 212 del 2015 12 gennaio 2016*): specific provisions concerning restorative justice measures have not been implemented into the national system. Thus, dir. 2012/2019 had a marginal impact on the situation of anti-LGBT hate crime victims, mainly leading to the possibility of considering LGBT victims as “vulnerable” and therefore to apply some protection measures (the ones considered by art. 190 *bis* of the code of criminal procedure) during the trial, safeguarding the dignity of the victims and avoiding secondary victimizations.

One of the crucial problems in the implementation of the Directive is the limited access to support services for victims. Indeed, while Victims' directive stresses the importance of RJ and the transposing Legislative Decree states that victims must have access to free support, no victim support service has been envisaged for LGBT victims of crimes, which is therefore mainly provided by LGBT NGOs with their own (limited) funding. The Italian legislator has focused on the theme of procedural rights, mostly disregarding the general aim of the directive, whose purpose would require a more comprehensive approach to justice and to victims' needs.

2.3. Analysis of the legal framework regarding restorative justice:

The Italian legal system doesn't explicitly recognize RJ. Anyhow, there are fragmented and heterogeneous hypothesis within the criminal procedure and especially in juvenile justice and in proceedings in front of the justice of peace (Abbamonte, Cavaliere, 2016, according to which the Victim-Offender Mediation centres were established for the first time in the early 90s within the juvenile criminal justice system, "Such a system is functionally connected with, and somewhat dependent on, a complex network of subjects and institutions such as the national and local social services, the judicial police for juveniles, voluntary work associations, and rehabilitation communities, where the juvenile offenders may be placed for the term of their sentence (probation, rehabilitation, etc.)"; Massaro, 2013; Baldry, 1998) that can be led – not effortless – to a restorative approach (Parlato, 2017).

For the latter, the minor nature of crimes involved and the need for judicial deflation authorize alternative methods of resolution, in which opportunities of comparison between the victim and offender are encouraged. In general terms, it can be stated that in this case a conciliatory spirit, aimed at reconciliation and at discouraging the offender from committing similar crimes characterize a discipline, in which a mandatory attempt of conciliation for crimes prosecutable upon lawsuit is imposed and where victim-offender mediation procedures can be carried out by public or private authors within the territory (Picotti, 2002).

In more general terms, in criminal justice proceedings mediation procedures can assume relevance as far as *remission of the lawsuit* (art. 340 Code of Criminal procedure), and *probation* (art. 464 *bis* Code of Criminal Procedure) are concerned.

First of all, for a group of smaller crimes prosecutable on lawsuit, the remission accepted by the accused determines the extinction of the crime: the possibility to establish a dialogue between victim and offender outside the trial and to restore the victim recognizing the wrong suffered could lead to remission.

Secondly, since 2014 *Probation* is possible for crimes punished with pecuniary penalty or prison sentence up to 4 years (art. 168 bis of the code of criminal procedure) (Bove, 2014).

Probation is a proceeding that combines a restorative function, since its aim is to re-educate and re-insert the offender in its own community through mandatory social activities and criminal mediation with a deflationary function for criminal proceedings.

If the offender succeeds in Probation by providing restorative and compensatory actions through specific conducts and programs of public utility works, the judge will declare the extinction of the crime (art. 464 *septies* Code of Criminal Procedure). Through the introduction of probation the Italian judicial system has moved a step forward toward a restorative approach to criminal justice, but it must be noted that, within the probation procedure, a victim-offender mediation is not compulsory, it is only stated that the probation programme, customized on the offender profile, include “conducts aimed at promoting, when possible, mediation with the victim” (art. 464 *bis*, co. 4, letter c) (Parlato, 2017).

Lastly, during the phase of execution of the final judgment, mediation procedures aimed at offenders' rehabilitation can be carried out, but the profile of the relation with the victim lays on the background since it looks that the activities are focused on the relation with the community (Bernardi, 2014; Mannozi, 2016).

The analysis of these patchy legal hypotheses highlights the lack of a general discipline acting as general legal framework for restorative justice.

2.4. Analysis of the main legal facilitators/barriers that facilitate/hinder the application of RJ in case of anti-LGBT hate crimes in the analysed country

Despite many barriers in the application of RJ such as the lack of awareness about criminal mediation, the difficult cooperation with the judiciary system and the huge gaps in training and educational activities for professionals (Abbamonte, Cavaliere, 2016; for the perception

of the main obstacles according to NGOs perspective, see Annex 3, Part E.6), ambitious projects about restorative justice have started (Patrizi, 2017; Iudici, Vallorani, Antonello, 2013)³, with the purpose of involving communities in the reconstruction of the relationships of their citizens and practices of RJ, especially victim-offender mediation procedures (VOM) have been gaining ground in many Italian cities.

In relation to the problem of anti-LGBT hate crimes, it has been pointed out that criminal mediation would represent a useful tool for both victim and offender, since these crimes are often suitable for a restorative approach that allows the recognition of the violated rights of the victim and the empowerment of the responsibility of the offender and of the whole community in relation to criminal issues (D'Ippoliti, Schuster, 2011).

Anyhow, the widespread problem of underreporting and the impossibility to qualify hate crimes based on SOGI as specific crime hypothesis and the general fact that professionals working in and around the justice system are not prepared to deal with LGBT people are hindering and almost paralyzing the access to forms of restorative justice for anti LGBT hate crimes (Parolari, Viggiani, 2018).

Support services for anti-LGBT hate crime victims are not equally spread on the national territory and anyhow they are mainly provided by LGBT NGOs on a voluntary basis and without a complete support of public funding (Parolari, Viggiani, 2018) (see also Annex 2, Part B: according to the qualitative analysis, only a 16% of the responding NGOs is totally funded with public funds; the double – 32% receive no public fundings). Therefore, fragmented and discontinuous nature of available services jeopardizes the usefulness and scope of VMO.

³ One of the main examples is the ongoing project of a restorative community in Tempio Pausania, an Italian town in the North of Sardinia, experimenting the realization of a restorative city, on the UK model of Hull and Leeds, readapted and reviewed in consideration of the local culture, social and economic context. See *Programma Sistema Informativo e governance delle politiche di intervento e contrasto del crimine*; other examples are Progetto "COntatto"; sometimes projects are linked with UEPE (which is an articulation of the Ministry of Justice) local offices (e.g. Progetto "Se Caino Aiuta Abele"; Progetto "Eleutheria: percorsi di inclusione sociale e lavorativa di persone con problemi di giustizia") and with with volunteers centers (e.g. "Ripuliamo le cattive strade", "Minori messi alla prova", "Anche noi contro le stragi sulle strade").

3. Preventing and combating LGBT violence through public policies and restorative justice. The perspectives of key professionals

3.1 Introduction

As far as Italy is concerned, the data collection aimed at getting the perspective of RJ professionals and people working in the justice system started from a first interview with one of the maximum experts of RJ in Italy who is involved in organizing training activities for professionals and NGOs, member of the European Forum for Restorative Justice and who has implemented pilot projects in Italy, focused on RJ and characterised by a strong inter-agency cooperation on the territory where they have been developed. The first interview with a key stakeholder, on the one hand, helped to outline in general terms the main facilitators and barriers to RJ from a legal and socio-cultural perspective and to adapt the structured interview to the Italian context; on the other hand, this first contact successfully allowed to apply a snowball sampling methodology. Thanks to the snowball sampling process, the names of potential stakeholders to involve in the research – given by the first interviewed and step by step by each interviewed – have been listed and to grouped considering their specific professional role and expertise, as well as geographical location, working field and gender. Each interviewed stakeholder helped in recruiting future subjects for the qualitative research from its own acquaintances. The sample group was built up – like a snowball – progressively until enough categories of stakeholders among justice professional, experts of RJ and NGOs have been identified and enough data gathered to be useful for the research. The interviews included RJ experts (professors and/or policy makers; participants in projects on RJ or research poles focused on RJ); RJ professionals (victim-offender mediators; lawyers and provider of RJ services); NGOs working in the justice field or focused on the advocacy of LGBT people’s rights. COVID19 have partially impacted on the qualitative research, influencing both modalities and tools used for interviews and availability of some categories of professionals during the pandemic. As far as the latter aspect is concerned, professionals working in the penitentiary system affirmed to be busy with other urgent issues and priorities during the scheduled period for the interviews due to the emergency measures adopted for the pandemic and that they were forced to deal with it with absolute priority. RJ professionals working in connection with the health system also

were under pressure during the pandemic and therefore some names of potential interviewed have been discarded due to their lack of availability for professional reasons. Regarding tools and technologies used during the interviews, in three cases interviews have been conducted through phone calls, while all the other interviewed agreed to use skype, zoom or meet for a face to face connection. With the stakeholders' consent, most of the interviews have been audio or audio and video recorded and transcribed; then the pivotal points have been reported in individual factsheets. Overall, despite the challenges launched by COVID19, the scheduled interviews with NGO and professionals have been carried out without delays: flexibility and availability to postpone or anticipate the timing of the interviews and the variety of digital tools to interact with the professionals have been essential to the purpose. Due to COVID19 and to the complexity of factors involved in interviews with victims, especially considering that – since the Italian legislation doesn't provide a legal discipline for anti LGBT hate crime, which are, consequently recorded as common crimes – the identification of victims would require research on fields; LGBT victims have not been included in the qualitative data collection, whereas the number of professional has been increased.

3.2. Analysis of perspectives and knowledge of professionals regarding legislation and policy.

The experiences and personal opinions of the interviewed stakeholders, as well as the data collected through the survey allowed to go far beyond the desk research in the understanding of obstacles and barriers for accessing restorative justice measures in Italy.

First of all, it is necessary to point out that the idea itself of restorative justice among professionals involved in interviews is controversial. The definition of restorative justice given by the EU directive 29/2019, according to which 'restorative justice' "means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party" is well known and almost univocally accepted but, from the empirical side and taking into consideration if and to what extent some existing measures in Italy could be considered as restorative practices, the stakeholders' view shifted from diametrically opposite positions.

In particular, some professionals – especially lawyers – consider the institute of *Probation*⁴, as well as socially useful works⁵ as forms of restorative justice for which the Code of criminal procedure provides a legal framework. Some others, conversely, emphasize that there is a tendency to overlap compensation with reparation and stress that if there is no “encounter” of the victim and the offender or if, at least, the process aimed at allowing this encounter doesn’t start at all, it is impossible to speak about restorative justice.

However, stakeholders have confirmed the huge differences existing between the adult criminal justice system – where restorative justice has a limited space and recognition – and the Juvenile one in which, since the entry into force of the provisions contained in d.p.r. n. 488/1988 regulating the juvenile criminal proceedings, re-education and rehabilitation of the offender are priorities and, consequently, restorative paths have a larger diffusion and have been successfully implemented for quite a long time. In this perspective, the cultural approach for younger offenders that is not focused on “punishment” but on the personality of the offender, surely represents a facilitator.

The same consideration on the controversial nature of what restorative justice means in practice can be extended to the extent of the concept itself of restorative justice, that in mediators’ and in legal professionals’ perspective is mainly related to the *iter* leading to victim-offender mediation, while in professionals with a background in psychological or social studies also includes and empowers the community dimension of the process of restoration.

Despite professionals revealed to have different perspectives about what should be considered a restorative practice according to the Italian legal framework, they all agreed that the cultural and policy framework surrounding hate crimes and restorative justice highlights institutional deficiencies and gaps, as well as the need for a change of perspective in the general public as well as in policy makers. The interviewed professionals perceived that Italian people are still anchored to a traditional view of criminal law and that, overall, at policy level there is an important cultural obstacle that involves the perspective of the general public and the lack of knowledge in policy makers about the purpose and aim of restorative justice.

⁴ See art. 168 *bis* ff. Criminal Code

⁵ As alternative punishment for minor crimes or as complementary sanction.

The Italian tradition is bounded with a retributive vision of justice and, in many cases, it appears to be anchored to an idea of the criminal sanction as a “punishment” to be inflicted to the perpetrator, forgetting the re-educative function and neglecting the restorative one (this aspect has also been pointed out as an obstacle to the application of RJ during the qualitative analysis. See Annex 2, part E).

On these grounds, a few policy makers are discussing the topic of restorative justice in order to introduce concrete measures or a legal framework dedicated to RJ. In particular, some stakeholders stressed out that policy makers trying to widen spaces for restorative justice could appear unpopular among the voters who don't have yet a minimum knowledge of what restorative justice means and, in particular, that restoration doesn't erase the profiles of criminal responsibility and liability of the offender.

The experience of Tavolo 13, created during Stati Generali dell'esecuzione penale, with the aim to align the experiences of RJ developed in Italy with the ones of other EU countries more advanced in RJ, taking as main reference the principles and goals of the “Victim's rights directive”, has been mentioned and signaled as a very important moment of reflection on the potential and benefits of a restorative approach to justice, according to which the offender is required to undertake restorative activities towards the victim and its own community, through a path that should allow for a re-elaboration of the conflicts and the reasons underpinning it, as well as for a recognition and elaboration of the existing responsibilities. Tavolo 13 has produced many attached documents, among which there are a list of best practices and a proposal for the reformation of the penitentiary system that foresees restorative justice programmes, but up to now the proposed dispositions have neither been introduced, nor discussed at legislative lever.

The legal framework around hate crimes and, more specifically, anti-LGBT hate crimes, adds another hurdle for LGBT people in accessing justice and, even more, restorative justice. In particular, the fact that the Italian legal system doesn't include SOGI into the protected grounds legitimating the application of the aggravating circumstance *ex art. 604 ter c.p.*, lead to consequence that anti-LGBT hate crimes, being punished as common crimes, are also recorded as such and therefore under-recorded and underestimated (In May 2018, the proposal for an amendment of the discipline of hate crimes, aimed at the introduction of SOGI as protected factor has been presented and it is now under discussion and object of a debate; Parolari, Viggiani, 2018; Viggiani, 2020).

As far as the access to justice for LGBT people is concerned, the transposition of the EU directive 2012/29 has implied a minimum empowerment to anti-LGBT hate crimes victims' rights, since the mayor benefits appear to be connected: a) with the definition of "victim", that now also includes relatives to the person who is directly offended, and b) with some procedural cautions that, in presence of the prescribed elements, allow to consider the LGBT victim as "vulnerable" and, therefore, to adopt procedural tools to avoid secondary victimisation in the process (the directive has been transposed in the Italian legal system with the legislative decree 212/2015; see Parolari, Viggiani, 2018).

3.3. Exploration about the knowledge, beliefs and practices of professionals in relation to restorative justice

The stakeholders interviewed (professionals of justice and NGOs) had a pool of information, data and beliefs regarding restorative justice broadly different from one to another as far as the usefulness, extent and implementation of restorative justice in Italy are concerned. The justice professionals who are not experts in the field of RJ provided a scholastic definition of restorative justice, modelled on the one provided by the EU directive 2012/29, but the core ideas and mechanisms, as well as the deep *ratio* of restorative practices were still nebulous. In particular, in lawyers' view, restorative justice appears primarily intended from an offender-centred perspective, as a tool to obtain benefits for the client, a way to mitigate the harshness of the sanction or to avoid the criminal proceeding. Experts of restorative justice, in several occasions, highlighted both the closed approach to RJ of most of the Italian lawyers, as well as the "utilitarian" use of RJ – aimed at having benefits in terms of criminal proceeding or criminal execution for the offender – that is generally associated to restorative paths and stressed out that a broader knowledge of law professionals about the concepts on which RJ is based would help to reveal and exploit its full potential. This perspective is not in line with the data emerging from the quantitative analysis, according to which the 67% of respondents believes that the victims represents the actor who would benefit the most from restorative paths (see Annex 2, Part E.4).

On the other hand, the knowledge of RJ and RJ practices in NGOs is not wide since, according to the results of the survey, only a 4% of the respondents feel confident with the

theme, whereas the majority declared to be aware of RJ potentialities to a small or moderate extent and a significant percentage affirmed to be completely unaware of the meaning of restorative justice (12%) and about existing RJ programmes in Italy (75%) (see Annex 2, especially part C).

Through the vision offered by key actors of restorative justice and restorative practices in Italy, it emerged that the communities where the victim and the offender live and develop their personalities can assume more or less important roles in the restoration process, in relation with the fact that RJ is intended from an humanistic view, mostly focused on the relationship between the victim and the offender and, therefore, on criminal mediations techniques (according to J. Morineau's model) (Morineau, 1998; Pelikan, C. & Trenczek, 2006), rather than more ingrained in the whole community as the place on which restorative cities are built up (following the models of Hulls and Leeds) (Anderson, Ross, 2018). The different approach to Restorative Justice as a whole process in which victim-offender mediation is only a part, but doesn't represent the whole depends on the educational background of RJ professionals and, during one of the interview, one stakeholder suggested that a better communication, exchange of knowledge and cooperation amongst RJ professional with a psychological or humanistic training and the ones with a legal education would surely enrich the debate on Restorative Justice in Italy and help in its successful implementation.

None of the interviewed professionals had specific experiences regarding RJ practices directly applied to anti-LGBT hate crimes: in some cases crimes were based on bias and prejudices related to sexual orientation and gender identity, but considering that they were recorded and treated as common crimes, SOGI factors have not been considered as particularly relevant or tackled independently. Anyhow, the interviewed agreed upon the fact that evaluations on the possibility to undertake a restorative path should be made case by case, therefore a different protocol to deal with LGBT victims is not necessary.

All the stakeholders intervened in the qualitative data collection stressed out that, in general terms, paths of restorative justice would be useful for victims of anti LGBT hate crimes, but also for the offender and for the community where the victim lives, since the essential violation of the human dignity that is provoked by crimes based on discriminations represents a strong ground where common values could be met and where humanity and

recognition of the suffered wrongs and harms opens space for dialogue and, in so doing, helps in eradicating stereotypes and unconscious biases surrounding hate crimes.

The successful implementation of restorative practice in case of anti-LGBT hate crimes, in the perspective presented by some experts, would both allow the victim to abandon the role of “victim”, facing the offender and asking for answers, and the perpetrator to understand the harmfulness of its action and to realize its responsibility toward another person’s sufferings.

Only one voice was out of the chorus, pointing out that when the crime based on prejudice related to sexual orientation or gender identity is a major crime, there is no space for restorative justice because victims would suffer from a secondary victimisation or have negative psychological repercussions from a restorative approach. The majority of professionals considers RJ a process that can be started whenever the victims freely consent to do it and also pointed out that victims have the right to be informed about the existence of restorative practices and the possibility to undertake a restorative path, aware that the encounter with the offender only represents its possible and almost eventual outcome. Concerning the right of victims to be informed about RJ, some professionals underlined that getting in contact with victims, modalities to do it appropriately and privacy issues represent a very delicate point and that a wider opening of lawyers to RJ would certainly make the procedure easier.

In addition to this, many professionals mentioned that literature is coherent in saying that RJ has not a fertile ground to take roots when applied to minor crimes or, more precisely, to crimes that don’t involve fundamental rights and dignity; on the contrary, the value of the life of the human being represents a common value, regardless to the race, ethnicity, prejudices and stereotypes: the essence of the human being offers the ground to establish a dialogue between people who reciprocally recognize themselves as such: the more profound the wound caused by the offender is, the more a need for answers and restoration is present in victims.

The involved professionals experienced restorative justice with different kind of crimes and various entity of provoked wounds in victims; in general in the form of victim-offender mediation, but in some cases also as community activities (e.g. progetto COnTatto, that has inserted the restorative process in a community dimension, also working with a-specific victim-offender groups) were carried on and represented a benchmark to evaluate the

positive impact of restoration on communities. Key actors in the restorative process are mediators and facilitators, who are in first line in preparing the parties to the encounter and facilitating their dialogue, without assuming paternalistic attitudes. UEPE (offices for external criminal execution – articulations of the Ministry of Justice) cover a very important function, connecting offenders with RJ professionals.

Anyhow, the Italian criminal system and proceeding appears to be still very offender-centred and, for this reason, the attentions paid to victims in the national territory are still a *punctum dolens* and, moreover the shy legislative openings to RJ appear to be focused on the offender rather than on the victim, which currently is only a potential part of the criminal proceeding.

The role played by lawyers and judges can be either very significant, or represent an obstacle, depending on the sensitiveness of the professional involved in the concrete case to the theme of RJ, on the awareness of the potential benefits connected with restoration, and on the possible distorted view that restoration would eliminate other forms of compensation.

In particular, lawyers could solve a decisive task in increasing victims' awareness about RJ and existing RJ programmes. In spite of this, the interviewed professionals stated that the degree of awareness in lawyers itself should be object of discussion, since in some cities, where restorative practices have been supported by local administration for many years and offices have been opened – such as Milan or Turin (Centro per la Giustizia Riparativa e per la Mediazione di Milano; Ufficio per la Mediazione Penale di Torino) –, professionals working into the justice system have a positive approach to restorative justice practices and recognize their usefulness, whereas in some other regions lawyers are not even completely aware of which are the main positive implications of RJ programmes. The patchy diffusion of RJ services in the Italian territory, therefore, influences the attitude of justice professional toward restorative justice and, at the same time, the attitude of the general public: coherent and effective awareness-raising activities targeting communities have been suggested as a first strategy to promote a cultural change that would hopefully allow to leave behind the retributive vision of justice and start approaching the theme of restoration, united with re-education and rehabilitation.

Given this framework in relation to the general knowledge of professionals working in the justice system who are not experts of RJ, it is self-evident that the degree of awareness of

victims about RJ is extremely low. Once aware about the existence of RJ programmes, however, most of the victims demonstrate interest for undertaking a RJ path, and for evaluating if there is the possibility and the opportunity to establish a dialogue with their offender. In the perspective offered by the interviewed professionals, there are no differences influencing the propension to undertake a restorative programme in connection to a specific type of crime, but it is rather necessary that the conduct and action of the offender have created a damage that needs restoration in the identity or fundamental rights of the victim.

The impact of intersectional factors (such as sex, age, gender, nationality, religion etc.) on the positioning of victims about RJ has not been considered in deep by professionals during their careers, but criminal mediators guessed that people under fifty-five/sixty years of age have generally show a better predisposition with regard to restorative justice and pointed out that sometimes the willingness to participate (or not) in RJ programmes is determined by the culture of justice spread in the country where the victim has grown up and by the context where he or she lives in.

Professionals working in LGBT organisations are not completely aware of the benefits that restorative programmes could produce in victims of anti-LGBT hate crimes, unless some members of the board already work with restorative justice, but all the NGOs involved affirmed that it would be interesting to organize some training or educational activities in order to approach RJ.

3.4. Unravelling innovative strategies of restorative justice in relation to (anti-LGBT) hate crimes

The minimal legal framework surrounding restorative justice, as well as the lack of specific provisions in the Italian criminal code protecting sexual orientation and gender identity among the factors of discrimination that allow for the application of the aggravating circumstance for hate crimes to crimes motivated by anti-LGBT hate represents an important obstacle for the evaluation of the application of RJ to anti-LGBT hate crimes, whose under-reporting and under-recording have already been denounced in the outputs of previous EU project focused on the theme (See, in particular, the EU funded projects “Call It Hate: Raising

Awareness of Anti-LGBT Hate Crime – CIH” and "Come Forward: Empowering and Supporting Victims of Anti-LGBT Hate Crimes).

Therefore, the current context of application of RJ to this specific kind of crimes is poor and far behind from the exploitation of the whole potential restoration process in cases of anti-LGBT hate crimes. According to the experiences and opinions of the professionals interviewed, there are no specific RJ programmes for anti-LGBT hate crimes and, considering that evaluations are made on a case by case analysis of the victim, his/her needs and characteristics, professionals doesn't believe that the adoption of a peculiar protocol for LGBT people victims of hate crimes would be necessary. The opinion of the interviewed professional has been confirmed by the quantitative analysis, in which no respondents was able to mention a specific justice program for hate crimes or anti-LGBT hate crimes (see Annex 2, Part C.5).

The lack of the possibility for police officers to record anti-LGBT hate crimes as such in the informatic system implies that when cases that could easily be classified as hate crimes based on SOGI as discriminating factors are referred to RJ programme by UEPE or on suggestion of the justice professionals involved in the case, they are referred as common crimes (violence, stalking etc.): the biggest barrier to having more cases of anti-LGBT hate crimes reaching restorative justice mechanisms, is first of all, the lack of a specific legal framework for them.

In general terms, RJ services are provided by centres for criminal mediation, or, in some other cases, RJ programmes are established inside no-profit NGO or local projects (e.g., see, for the former, Caritas Italiana with some specific experiences of RJ services at local level – such as Bergamo – and Il Gabbiano Onlus, or Cooperativa l'Ovile and, for the latter, progetto COnTatto or Tempio Pausania Città riparativa; see also Annex 2, part. C.3: only 5 respondents to the survey were able to indicate a RJ program taking place in Italy (Juvenile criminal mediation; Restorative conducts, probation, compensation as necessary element for deflaction; Probation; and Rete Dafne di Torino; Offices for criminal mediation have been mentioned). The most common restorative practice used in Italy is certainly represented by victim-offender mediation, who is provided by mediators working as professional mediators for their organisation or offering their services – after training activities – volunteers. The mediation process is an articulated path that doesn't lead with certainty to the dialogue between the victim and the offender, but it allows for a deeper knowledge of the concrete

circumstances and for the evaluation of the opportunity to undertake further steps in the programme. Due to the need for this concrete evaluation of factual circumstances and of the personalities of both victim and offender, some among the interviewed professionals found hard to establish, in general terms, the appropriateness of restorative justice in cases of anti-LGBT hate crimes, but stressed out that no preclusion should be made in relation to anti-LGBT hate crimes because of the particular sensitiveness of the involved interests and that a conscious work of a prepared mediator or facilitator, together with the free and voluntary consent of the parties, would help to recognize the other party of the conflict as an equal human being with a baggage of equal rights, regardless of its sexual orientation or gender identity.

In the perspective of the interviewed professionals, the conformation of the Italian criminal justice system and the principles operating in penal law (in particular the principle of innocence) complicate and somehow contrast the access to restorative justice before the execution of the sentence, which is the phase where restorative justice mostly takes place, at least for the adult system (in juvenile justice, spaces for restorative programmes are also conceived to allow restoration and rehabilitation during the trial and as alternative to the sentence).

The involvement of local communities in the restoration process is quite low, with the exceptions of some pilot (but mainly local) project conceiving RJ in a community dimension and, in so doing, involving local public administrations and public bodies, employees, as well as citizens of the territory, in the planned activities with prisoners (in this perspective, the projects started in Nuchis and Tempio Pausania as restorative communities and project COnTatto are, *inter alia*, virtuous examples of good practices). According to the professionals' and LGBT NGOs' perspective, two sides of the coin should be considered when discussing the issue to access RJ in a community dimension for anti-LGBT hate crimes. The first one, the positive side, is related to the cultural change and behavioural transformation that would be encouraged by showing the community the deep lacerations in the identity of the victim and the profound wounds in his/her dignity produced by hate crimes; the other side, the negative one, appears connected with the reluctance of LGBT people to share their experiences with people who might have more or less conscious biases involving homosexuality, bisexuality and transsexualism, and with the difficulties connected with the coming out that involve both community and family life. Relations with families of origin

seem to represent still a delicate theme in Italy, since many youngsters are wounded in the place where they should be free to develop and express their personalities and by the people who are supposed to offer support: NGOs working with the advocacy of LGBT people rights reported cases in which a family member was the offender and others were silent bystander, also declaring that a restorative mechanism has not been activated in most of the cases, probably because a partial lack of knowledge of the social services and professionals involved, but also because of a cultural preclusion operating in adult members of the family. Anyhow, the involved interviewed stated that the rejection of the family and the bounds existing inside of family relationships create a deep need for restoration and dialogue in the victim and, on the other hand, represent a ground of values and connection where restoration could successfully be implemented.

3.5. Understanding cooperation and training

a) Cooperation

According to the experiences and opinions of the professionals interviewed, in cities and realities where RJ has more consolidated roots and where some projects have started in the past years involving local institutions, there are some positive examples of inter-agency cooperation. In these cases, the restorative approach starts from the grounds of the education system, involving schools and students in seminars and activities aimed at explaining the main concepts and ideas underpinning RJ and trying to apply its principles at institutional level (e.g. for cases of bullying or cyberbullying), and cooperation exists at many levels, taking place between RJ professionals as promoter and engine of the project activities, Universities, NGOs, penitentiary system and local employees, as well as other activities and realities on the territory, so that reciprocal knowledge and mutual sense of responsibility for the re-introduction of the offender in the communities can be established. The wide range of institutional and private subjects involved in projects of RJ in community perspective surely represents a good practice, but good practices are also the ones established in some cities (i.a. Milan, Brescia, Bergamo, Piacenza, Reggio Emilia, Florence, Bologna) where organisations offering RJ services work in synergy with offices for criminal execution, social services and, more in general, with the justice system.

The juvenile justice system also represents a source of inspiration, since in the juvenile spaces for restorative programmes are more developed, justice professionals appears more oriented toward a restorative approach and social services providers, communities and offices surrounding the proceeding have established stronger forms of cooperation with RJ professionals.

As far as the application of RJ to anti-LGBT hate crimes is concerned, it is hard to find out good practices since the theme is quite unexplored in Italy and neither professionals are used to treat case of anti-LGBT hate crimes, nor LGBT NGOs are used to cooperate with RJ professionals, unless they are part of the organisation.

Considering the Italian framework, a closer cooperation between LGBT NGOs working on the advocacy of LGBT people rights and justice professional should be encouraged in order to increase awareness about the potentialities of RJ in cases of anti-LGBT hate crimes, but also to improve the knowledge of LGBT people as victims of prejudices based on sexual orientation and gender identity.

Awareness-raising campaigns and activities would be helpful to sustain LGBT people and made them realize that the suffered wounds can be object of restoration and to allow professionals to understand what are LGBT victims' main needs inside the justice system and, therefore, enhance victims' rights in accordance with the purpose of the EU dir. 2012/29.

b) Training

In order to use RJ in cases of crimes based on sexual orientation or gender identity, it is necessary to promote a cultural transformation and spread the main ideas and concepts on which restorative programmes are based, starting from the general public and actively engaging anti LGBT NGOs in training and educational activities, conceived to explain in simple terms the main benefits that could be reached with a restorative path. An amendment of the criminal code, aimed at offering special protection to SOGI, would represent a first step to protect the rights of LGBT people, but it doesn't represent a sufficient condition to tackle the problem of anti-LGBT hate crimes and to fight against the problem of their under-reporting: awareness-raising activities, considering the Italian contexts should be extended to the whole issue of anti-LGBT hate crimes, increasing

awareness in victims about the importance of denouncing the suffered wrong and then about the possibility to access a restorative mechanism.

Among good practices, the training initiative for police officers about anti-LGBT hate crimes or LGBT victims promoted by LGBT NGOs, the initiative of OSCAD (Osservatorio per la sicurezza contro gli atti discriminatori), that is providing since 2012 theoretical content about LGBT-related issues (hate crimes, gender-friendly vocabulary, legal framework, vulnerabilities of LGBT people) (Viggiani, 2020), as well as the trainings offered to police officers during the implementation of the EU Project Come Forward deserve to be mentioned.

Going on with the undertaken training initiatives with police officers about anti-LGBT hate crimes and homotrans-phobic grounds for discriminations surely will help in tackling the phenomena of under-recording; but other initiatives involving LGBT communities should be taken into consideration to minimize as much as possible the risk of under-reporting and to spread the fundamentals concepts of RJ.

In this sense, if a stronger cooperation and connection between RJ professional and LGBT NGOs were established, they would both successfully benefit from reciprocal experiences and expertise and contribute to a mutual exchange of knowledge: indeed, LGBT NGOs could receive information about concepts and purpose of restorative practices and work in order to allow victims of anti-LGBT hate crimes to start a restorative process. In this perspective a mutual learning approach characterizing the relationships to build between RJ professionals and LGBT NGOs would represent a smart strategy to encourage the application of RJ to cases of anti-LGBT hate crimes. Anyhow, the current lack of information in LGBT organizations about restorative justice requires that all the training activities organized to promote the use of RJ for anti-LGBT hate crimes start from the very basic information about the mechanism and purpose of RJ and that some campaigns concerning RJ are also addressed to the general public who has concerns about the believed “softness” of RJ for the condemned offender and, therefore, a very skeptical attitude towards restorative approaches.

The quantitative survey also highlighted that a theoretical approach to RJ and LGBT issues would be helpful for NGOs (see Annex 2, Parts D and E).

A wide range of operators and professionals working in the justice system should also be involved in training and educational activities in order to promote the use of RJ in cases of hate crimes: in particular, from the opinions and perspectives of professionals interviewed,

lawyers could play a very supportive role for RJ mechanisms if they were aware about its functioning and benefits for both the parties of the conflicts. At the same time, a deeper awareness of judges about the possibility to introduce restorative practices to deal with the controversy would help the access to RJ.

At the current state, training seminars and educational activities on RJ are not regulated at institutional level and they are mostly provided by private entities or group of experts of restorative justice which have different kinds of backgrounds, educations, and view of RJ. According to the opinion of some of the RJ professionals interviewed, an attempt to combine RJ professionals with different expertise and methodologies to approach the theme would allow to exploit the full potential of restorative justice and to give a comprehensive overview of the restoration process, including both its legal and the psychological implication.

For this reasons, it would be useful to include RJ professionals with different views and approaches in training seminars for justice professionals and other educational activities for national LGBT NGOs, with different headquarters dislocated on the territory that could facilitate the access to RJ in local context; whenever possible, the opportunity to speak about existing projects and successful stories of restoration, involving the emotional sphere and showing how RJ practices has worked on the victim’s well-being, would help in eradicating the idea that justice should be only seen as a punishment for the offender and help to promote a more restorative approach.

3.6. List (up to 15) main strategies/activities/programmes that could be relevant to the workshop- and training activities

Type (e.g. Program, Strategy)	Title	Organiser (NGO, Government...)	Target Group	Description
Activity	What does Restorative Justice Means?	University/Professional order	Lawyers	Educational events targeting lawyers, aimed at raising awareness

				about RJ
Strategy	Restorative Practices	Universities	Law Students	University degree courses following pilot cases existing in other Italian Universities (e.g. Sassari, Milan Catholic University and Insubria).
Strategy	Fundamentals about RJ	Experts of RJ	Students	Seminars to stimulate a cultural change starting from younger generations
Strategy	Justice and Restoration	Government	General Public	Awareness-raising initiative about RJ
Activity	Restorative Justice for anti-LGBT hate crimes	Experts of RJ	LGBT NGO	Introduce the theme of RJ in LGBT NGO
Activity	Restorative Justice for anti-LGBT hate crimes	Experts of RJ; LGBT NGO	Mediators and RJ professionals	Seminars aimed at connecting the theme of anti-LGBT hate crimes to the one of RJ to raise awareness in RJ professionals
Strategy	United for LGBT rights	RJ professionals and NGOs	RJ professionals and NGOs	Cooperation to establish mutual learning, sharing knowledge and expertise

				about LGBT issues and RJ concepts
--	--	--	--	---

Conclusions

The qualitative data collection through the conducted interviews allowed to outline the main needs connected to RJ in Italy, as well as the main obstacles and barriers determining the Italian backwardness in the implementation of Restorative Justice. The cultural factor and the reluctance of policy makers in approaching the theme of Restorative Justice at legislative level, despite the many inputs given by Tavolo 13 or the solicitations of Italian experts of Restorative Justice, who are pioneers in discipline – aligned with international literature and highly qualified professionals – is attributable to the lack of knowledge about the deep *ratio* and meaning of restorative justice and to a traditional but outdated view of the function of criminal sanctions.

Some spaces for restorative practices, in particular for victim offender mediation, have been left open in the criminal code. Anyhow, the lack of a well-defined legal framework for RJ, as well as the general lack of knowledge and the prejudices concerning RJ of a large part of justice professionals imply that restorative approaches in the Italian legal system are one step behind if compared with some other EU Countries. Despite this, some successful project of restorative cities (in a community perspective of RJ) and centres for RJ, strongly connected with the justice system with whom synergies and cooperation are established, have been created and carried out.

Some key actors of RJ are also creating research poles around which education, trainings, awareness raising activities and projects are gravitating.

The theme of the use of RJ in cases of anti-LGBT hate crimes is mostly unexplored in Italy, both from the perspective of RJ professionals and from the perspective of members of LGBT NGOs.

In general terms, crimes generating a profound identitary wound or threatening dignity of the victims are suitable for a restorative approach and, according to the opinion of the majority of the interviewed professionals, the harms caused by anti-LGBT hate crimes could be restored through an encounter and a dialogue aimed at understanding the deep reasons of the conflict, of course not neglecting the profiles of compensation and responsibility. In fact, according to the experiences and studies of the interviewed stakeholders, the possibility to meet the offender (sometimes even a a-specific offender) and to ask the questions with whom the victim is struggling can, on the one hand, allow the offender to understand the importance of his/her conduct and to recognize the provoked damage in

another human being and, on the other hand, allow the victim to abandon the “tag” of victim, overcoming the suffered wrong.

In a community perspective, the possibility to tackle cases of anti-LGBT crime could also represent a way to fight against unconscious bias and stigmatisation of LGBT people and, in particular, of transsexual people, and to recognize the human being who has been victim of a crime, regardless of his/her sexual orientation or gender identity and, in so doing, would encourage a cultural transformation towards the equality of LGBT people.

The problems of under-reporting and under-recording are surely affecting the rate of anti-LGBT hate crimes in Italy and will also affect the use of RJ in such cases. In order to promote the use of RJ for anti LGBT hate crimes, it is therefore necessary to put a light on the problem of anti-LGBT hate crimes in Italy and try to tackle it appropriately.

In this perspective, organizations for the advocacy of LGBT people’s right could play a determinant role in encouraging victims to denounce to the authorities, but also in introducing LGBT victims to the theme of restorative justice that, in minor case, could also be presented as an alternative solution of the conflict.

The centres, NGOs and projects dealing with restorative justice are leopard-spotted in Italy: the cultural obstacles slowing down the spread of and the rise of centres for restorative practices within the Italian territory could be removed through institutional programmes laying the foundation of restorative justice among general stakeholders and defining specific training activities and awareness-raising initiative at national level that could also create a uniform framework for the training of RJ professionals, since there are virtuous guidelines and examples of best practices elaborated by the Osservatorio Permanente Osservatorio permanente per la giustizia riparativa e la mediazione, but still far away from being followed by all the training-providers.

The other obstacle to the use of RJ is, as already sketched, related to the architecture of the Italian criminal proceeding, which is offender-centred and relegates the victim to a marginal and not even necessary part of the criminal process. This structure of the criminal process has also circumscribed the implementation of the Victim’s Rights directive in Italy, leading to the introduction of some procedural cautions for the victim but flying over the core *ratio* of the directive. Restorative justice also meets some barriers in such a structured procedure, in which the protected interest is the super-individual one of the State, while the rights of the victims can be enforced in other contexts. Anyhow, the raise of awareness about RJ in the

Italian context and the use of restorative practices into the criminal proceeding could help to overcome the cultural obstacles and to challenge the limits of an offender-centred approach, enhancing the role of the victim and giving new tools to solve existing conflicts-

Restorative justice, therefore, could represent both a goal and a strategy for the Italian legal system and help in the harmonization with the EU directive 29/2012, also when referring to anti-LGBT hate crimes: the lack of information in professionals and in the general public and the importance of cultural factors characterize both RJ and anti-LGBT hate crimes. These problems could be tackled outreaching justice professionals as well as other direct and indirect stakeholders via national campaigns in which LGBT NGOs and organizations working in the field of Restorative Justice could cooperate to meet common objectives and encourage a transformation that, starting from the approach to justice, could contribute to the eradication of a retributive vision of the criminal sanction and, at the same time, help in fighting against the prejudice towards LGBT people and in enhancing the right of victims to be listened (*ex. art. 10 dir. 2012/29*).

References

Abbamonte, L., & Cavaliere, F. (2016) *Restorative Justice, a comparative analysis of discursive practices: Dialogistic exchanges in the USA and Italy*. In G. Tessuto e C. Williams (Eds.), *Language in the Negotiation of Justice: Contexts, Issues and Applications*: Ashgate Publishing.

Anderson, J. & Ross, N. M. (2018). "A Restorative City for New South Wales - Could Newcastle Be a Model?". *Journal of Judicial Administration*, 27(2): 74 ff.

Baldry, A.C. (1998) "Victim—Offender Mediation in the Italian Juvenile Justice System: The Role of the Social Worker". *The British Journal of Social Work*, 729 ff.

Bernardi, A. (2014). "Il progetto di ricerca "prison overcrowding and alternatives to detention": contesto e linee programmatiche". *Riv. It. Dir. Proc. Pen.*: 1739ff.

Bove, V. "L'istituto della messa alla prova "per gli adulti": indicazioni operative per il giudice e provvedimenti adottabili (27 November 2014)". *Diritto penale contemporaneo*, available at:

https://www.penalecontemporaneo.it/upload/1403258448BOVE_Messa%20alla%20prova.pdf

Bugatti, L. & Togni, E. (2019) *Italian Attitudes Towards LGBT People: A Long and Winding Road*. In P. Godzisz & G. Viggiani (eds), *Awareness of Anti-LGBT Hate Crime in the European Union*: Lambda Warsaw, 137 ff.

Centro Risorse LGBTI, *Documentation of homophobic and transphobic violence*, 2013, available at: www.risorselgbti.eu

Centro Risorse LGBTI, *Hate Crimes No More*, 2020, available at: www.risorselgbti.eu

D'Ippoliti, C., & Schuster, A. (Eds.) (2011). *DisOrientamenti – Discriminazione ed esclusione sociale delle famiglie LGVT in Italia*: Armando editore

Documenti di lavoro tavolo 13, available at https://www.giustizia.it/giustizia/it/mg_2_19_1_13.page; see, in particular https://www.giustizia.it/resources/cms/documents/sgep_tavolo13_allegato12.pdf

Ferrando, G. (2017). *Le unioni civili nella recente riforma*. In G. Viarengo (Ed.), *Unioni di fatto: Dal diritto romano ai diritti attuali*: Giappichelli.

Iudici, A., Vallorani, M., & Antonello A. (2013). "Innovative Law Old Services: Application and Limitations in the Application of Restorative Justice in Italy: Description and Analysis of a Case Study". *International Journal of Innovation and Applied Studies*, 4(1), 43 ff.

Legge regionale 7 agosto 2007 n. 7 Regione Autonoma della Sardegna

Lelleri, R., *Survey nazionale su stato di salute, comportamenti protettivi e percezione del rischio di HIV nella popolazione omo-bisessuale*, 2006, available at: www.lelleri.it

Mannozi, G. (2016). "Le aperture alla giustizia riparativa nell'ambito delle misure alternative alla detenzione". *Giur. It.*, 1530 ff.

Massaro, P. (2013). "Prospects for restorative justice in the juvenile justice system". *Interdisciplinary Journal of Family Studies*, 18(2): 132 ff.

Morineau, J. (1998). *Lo spirito della mediazione*: Franco Angeli

OECD, *Society at a Glance*, 2019, available at: https://www.oecd-ilibrary.org/sites/soc_glance-2019-en/index.html?itemId=/content/publication/soc_glance-2019-en

Parlato L. (2017). Restorative justice and criminal proceedings in Italy. In C.D. Spinellis, N. Theodorakis, E. Billis, G. Papadimitrakopoulos (Eds.), *Europe in Crisis: Crime, Criminal Justice, and the Way Forward. Essays in Honour of Nestor Courakis*, II, Ant. N. Sakkoulas: 184 ff.

Parolari, P., & Viggiani, G. (2018) Filling the Gaps: Combating Anti-LGBT Hate Crimes in Italy in the Silence of Law. In P. Godzisz & G. Viggiani (Eds.), *Running through Hurdles: Obstacles in the Access to Justice for Victims of Anti-LGBTI Hate Crimes*: Lambda Warsaw Association: 177 ff.

Patrizi P. (2017). “Giustizia e pratiche riparative. Per una nuova giustizia di comunità”. *Diritto @ Storia, Rivista Internazionale di Scienze Giuridiche e Tradizione Romana*, available at: <http://www.dirittoestoria.it/15/innovazione/Patrizi-Giustizia-pratiche-riparative-nuova-giustizia-comunita.htm>

Pelikan, C. & Trenczek, T. (2006). Victim Offender Mediation and Restorative Justice: The European Landscape. In Sullivan, D. & Tifft, L. (eds.) *Handbook of Restorative Justice: A Global Perspective*: Routledge International: 63 ff.

Pelullo, C., G. Di Giuseppe e I. Angelillo (2011), “Frequency of Discrimination, Harassment, and Violence in Lesbian, Gay Men, and Bisexual in Italy”. *Plos One*: 1 ff.

Picotti L. (2002). Giudice di pace e nuovi strumenti di diritto penale sostanziale per una giustizia conciliativa. Considerazioni introduttive. in L. Picotti & G. Spangher (Eds.), *Verso Una Giustizia Penale ‘Conciliativa’? Il volto delineato dalla legge sulla competenza penale del giudice di pace*: Giuffrè

Proposta di legge (to amend the arts. 604 bis and 604 ter) code of Criminal procedure, available at: <http://documenti.camera.it/leg18/pdl/pdf/leg.18.pdl.camera.569.18PDL0012340.pdf>

Servizio Studi Camera dei Deputati, *Il sistema di protezione delle vittime: principi sovranazionali e normativa nazionale Dalla ratifica della Convenzione di Lanzarote al decreto legislativo n. 212 del 2015 12 gennaio 2016.*

Tavolo 13 – Giustizia riparativa, mediazione e tutela delle vittime. Allegato 5. 'Proposte di riforma dell'ordinamento penitenziario, del relativo regolamento di esecuzione, del codice penale e del codice di procedura penale', available at: https://www.giustizia.it/resources/cms/documents/sgep_tavolo13_allegato5.pdf

van den Brink, M., & Dunne, P. (2018). *Trans and intersex equality rights in Europe – a comparative analysis*. Directorate-General for Justice and Consumers, 57 ff.

Viggiani, G. (2020). "Quando l'odio (non) diventa reato. Il punto sul fenomeno dei crimini d'odio di matrice omotransfobica in Italia". *Genlus* 2020(1), , available at http://www.geniusreview.eu/wp-content/uploads/2020/06/Viggiani_crimini_odio.pdf

ANNEXES

Annex 1. Qualitative analysis. Profiles of professionals interviewed

No	Organization/Stakeholder	Services provided by the organization	Role of the interviewee
IT-P-1	Arcigay	Support and advocacy for LGBT People	Member of the national board
IT-P-2	ACET	Support, advocacy and awareness raising activities for Trans people	Member of the board and criminal mediator
IT-P-3	Mediator	Criminal Mediation	RJ Professional
IT-P-4	Working for the Ministry of Justice	Justice services	Working in a central administration office
IT-P-5	Progetto COnTatto	Restorative Community	Founder
IT-P-6	Gabbiano Onlus	Housing and support to minorities	Founder
IT-P-7	Spondé	RJ services	Founder and RJ professional
IT-P-8	RJ Professional– Team Restorative Practices UNI Sassari	RJ paths	Coordinator
IT-P-9	Retelenford	Advocacy of LGBT people’s rights	Treasuries and lawyer
IT-P-10	RJ Professional	Education – RJ paths	Professor
IT-P-11	Caritas Italiana	Social inclusion	Employee
IT-P-12	RJ Professional	Restorative practices	Psychologist, founder of RJ Communities
IT-P-13	Mediator	Juvenile Criminal Mediation	RJ Professional in Juvenile Justice

IT-P-14	Cooperativa L'Ovile	Social inclusion services – RJ services	Responsible for the mediation service
IT-P-15	Retelenford	Advocacy of LGBT people's rights	Associate - Lawyer
IT-P-16	Mediator	Mediation	Mediator (family and VOM)

Annex 2. Quantitative analysis. Survey data

The UdG team will provide to all partners the main figures issued from the questionnaires in each country. The data will be structured according to the following axes:

- A. Socio-demographic questions.
- B. Organizational questions.
- C. Professional knowledge about RJ.
- D. Training needs linked to RJ and hate crimes.
- E. Organization positioning about RJ.

The first figure should be the following one:

Number of organizations in Italy	Type of organization
85	LGBT NGOs
97	Anti-discrimination/anti-hate crimes/victim's assistance NGOs. Please specify the anti-discrimination sector:
38	<ul style="list-style-type: none"> • Transversal organizations (they cover all types of discrimination).
35	<ul style="list-style-type: none"> • Race/ethnicity: Racism, xenophobia, Romaphobia.
9	<ul style="list-style-type: none"> • Religion: Islamophobia, antisemitism.
15	<ul style="list-style-type: none"> • Others: e.g. aporophobia, vs. functional diversity, etc.

Organizations	Italy (IT)
Nº contacted organizations	182
Nº responses x country	55
Response rate	30,2%
Nº valid responses x country	46

Part A: Socio-demographic questions

A.1 How old are you?

<i>N</i> =212	IT
M (SD)	42,67 (12,297)

Age range 16-71 years old.

A.2 What is your highest educational qualification?

	IT	%
MA or combined BA/MA	21	37,3
BA	6	26,4
Post-secondary education	9	11,7
Secondary education	5	7,1
PhD	2	7,1
<i>Missing data</i>	3	9,6
Other (*)	0	0,8
Total	46	100%

(*) Other qualification: **NL**: HBO. **PL**: professional title Doctor of Medicine

A.3 What is your country of birth?

	IT	%
Poland	0	20,1
Netherlands	0	17,6
Italy	41	17,2
Spain	0	15,5
Bulgaria	0	7,5
Belgium	0	5,0
Other (*)	2	7,5
<i>Missing data</i>	3	9,6
Total	46	100%

(*) Other country of birth: Chile (2), Colombia (2), Honduras (2), Cuba, Ethiopia, Filipinas, Germany, Nicaragua, Paraguay, Peru, UK, Romania, Russian, Uganda.

A.4 What gender do you identify with?

	IT	%
Men	22	44,8
Women	19	40,2
Would rather not say	1	1,7
Other (*)	1	3,7
<i>Missing data</i>	3	9,6
Total	46	100%

(*) Other gender: **ES**: Queer/No binario, Trans No binaria, Agenero. **IT**: agender **NL**: male non binary. **PL**: non-binary, non-binary person.

A.5 What is your sexual orientation?

	IT	%
--	----	---

Gay / Lesbian	30	46,9
Heterosexual	10	28,0
Bisexual	2	9,2
Would rather not say	0	1,7
Other (*)	1	3,3
<i>Missing data</i>	3	10,9
Total	46	100%

(*) Other sexual orientation: **IT**: complicated. **NL**: Asexual (2), queer. **PL**: pansexual (2), queer or 2 on the Kinsey scale.

A.6 What is your religion?

	IT	%
No religion (atheistic, agnostic)	23	50,2
Christian (Protestant, Catholic, Orthodox,...)	15	26,8
Would rather not say	1	5,4
Jewish	1	0,8
Muslim	0	0,8
Other (*)	3	5,4
<i>Missing data</i>	3	10,0
Total	46	100%

(*) Other religion: **ES**: Izquierda, Espiritual, El mio propio (animismo). **IT**: Human potential movement (2), Spiritual. **NL**: less religious more spiritual, unbound. **PL**: Buddhism (3)

A.7 On an ideological scale, where 1 is far-right and 10 far-left, where would you position yourself?

N=213	IT
M (SD)	7,00 (1,746)

Part B: Organizational questions

B1. What is the name of the organization you work for? See the Annex (p.30) for the names.

B1.2. Number of organizations identified per country and type of information provided

	IT
It provides the name of the organization and country	26
It provides some information (e.g. country) but not the name of organization	3
Total of organizations that have provided info	29
No name or other information	17
TOTAL	46

B.2. In what country is the headquarters where you work?

Headquarters In:	IT	%
------------------	----	---

Spain	0	17,6
Poland	0	16,3
Netherlands	0	15,1
Italy	26	10,9
Bulgaria	0	7,1
Belgium	0	5,0
Other: At multiple Countries / USA	0	1,2
Total	26	100%

B.3 In what anti-discrimination field and/or promotion of civil rights does your organization work in?

	<i>N=198 (+)</i>	IT
LGBT NGO		15
Transversal NGO (all types discrimination)		8
Race/ethnicity		3
Religion		6
Aporophobia, social exclusion		3
Other		4

Multi-response (N=198).

(*) Other fields:

IT	<ul style="list-style-type: none"> • None of these • Discrimination for age • Protection of freedom of sexual orientation • Advocacy of prisoners' rights
-----------	---

B.4 What is the scope of your organization?

	<i>N=198</i>	IT
International		4
National		15
Regional		5
Local		10

B.5 How many locations does your organization have?

	IT
1	16
2	1
3-10	0
More than 10	5
I don't know	3
Other (*)	0

B.6 Is your organization funded with public funds?

	IT	%
No	14	32,0
Yes, partially	12	51,7
Yes, totally	1	16,3
Total	27	100%

B.7 Does your organization collaborate with public administrations in the provision of services?

	IT	%
Yes	13	65,3
No	11	34,7

Total	24	100%
-------	----	------

B.8 How would you describe the location of your organization where you work?

	IT	%
In a big city (more than 1.500.000 of inhabitants)	9	34,9
In a medium city (from 300.000 to 1.500.000)	7	34,9
In a town or a small city (from 30.000 to 300.000)	11	27,3
A country village (less than 30.000 inhabitants)	1	2,9
Total	28	100%

B.9 What is your role in the organization?

	IT	%
Executive worker	2	33,7
President (non-executive)	1	11,6
Chief Executive Officer	1	10,5
Head of department	2	7,0
Other (*)	20	37,2
Total	26	100%

(*) Other role in your organization:

IT	Associate (6) /employee (2) / Volunteer (2) /Collaborator, participant (2) / President of the local committee / None-participant / Member of the board / Consultant / Vice-president / Treasurer
-----------	--

B.10 How long have you been working in your organization for?

	IT	%
1 to 5 years	12	41,9
More than 10 years	8	27,1
6 to 10 years	5	19,5
Less than 1 year	1	11,5
Total	26	100%

B11. Does your organization provide services for victims?

	N=174	IT
Yes		11

B.12 What kind of victims' services does your organization provide?

	N= 105	IT	%
Counselling		9	90,5
Reporting		2	53,3
Emotional and		3	66,7

psychological support		
Housing	1	13,3
Legal advocacy	8	57,1
Social support	7	44,8
Financial support	1	7,6
Other (*)		

B13. B14. Does your organization usually deal with ...

	IT
B.13 Victims of hate crimes? (N=102)	8
B.14 Victims of anti-LGBT hate crimes? (N=105)	8

Part C: Knowledge about restorative justice

C1. To what extent do you feel confident in your understanding of restorative justice?

	IT	%
1. None	2	12,0
2. To a small extent	6	30,7
3. To a moderate extent	13	34,9
4. To a large extent	5	17,5
5. Totally	0	4,9
Total	26	100%

C2. Do you know which restorative justice programs exist in your country?

	IT	%
I don't know	16	75,7
There are not RJ programs in my country	4	7,9
Yes	6	16,4
Total	26	100%

C3. Could you mention any restorative justice program put in place in your country?

IT
5

C4. Are there any specific restorative justice programs for hate crimes in your country?

	IT
I don't know	1
No	4
Yes	1

C5. Could you mention any specific restorative justice program for hate crimes put in place in your country?

IT
0

C6. Do you know what restorative justice techniques are put in place to deal with hate crimes in your country?

N=7	IT
Victim/Offender Mediation or Dialogue	1
Conferencing	0
Peace making circles	0
Other (*)	

IT: risarcimento del danno condizione necessaria per riti deflattivi

C7. At what stage of the criminal procedure are being applied the restorative justice programs for hate crimes in your country?

N=7	IT
Before the trial	1
During the trial	1
After court sentence	1
As an alternative sentence	0
In prison	0
Separate from the justice system	0
Other	

C8. Who provides the restorative justice programs in case of hate crimes in your country?

N=7	IT
Public administration (*)	1
Civil society organization (**)	0
Mixed institution (public/private) (***)	0

C9. Are there any specific restorative justice programs for anti-LGBT hate crimes in your country?

	IT
I don't Know	0
Yes	1
No	0

C.10 Could you mention any specific restorative justice program for anti-LGBT hate crimes put in place in your country?

IT
0

C11. Do you know what restorative justice techniques are put in place to deal with anti-LGBT hate crimes in your country?

	N=2	IT
Victim/Offender Mediation or Dialogue		0
Conferencing		0
Peace making circles		0
Other		

C12. At what stage of the criminal procedure are being applied the restorative justice programs for anti-LGBT hate crimes in your country?

	N=2	IT
Before the trial		0
During the trial		0
After court sentence		0
As an alternative sentence		0
In prison		0
Separate from the justice system		0

C13. Who provides the restorative justice programs in case of anti-LGBT hate crimes in your country?

	N=2	IT
Public administration (*)		0
Civil society organization (**)		0
Mixed institution (public/private)		0

Part D. Training needs

D1. In your opinion, how relevant for your organization are the following topics to be covered in a training on LGBT issues? From 1 = not at all, to 10 = totally

	IT
LGBT concepts and terminology, inclusive language	8,05 (2,681)
Social prejudices against LGBT people	8,00 (2,862)
LGBT people and vulnerable intersections (age, race, ethnicity, disability)	8,05 (2,104)
Legal assistance to victims of anti-LGBT hate crimes	7,91 (2,635)
Social, emotional and psychological assistance to	7,64 (2,718)

victims of anti-LGBT hate crimes	
Identification of anti-LGBT hate crimes	7,77 (2,671)
First contact with victims of LGBT hate crimes	7,64 (2,536)
Strategies to avoid secondary victimization of LGBT victims	8,09 (2,348)
Barriers to access to restorative justice by victims of anti-LGBT hate crimes	7,32 (2,514)
Strategies and techniques for applying restorative justice in anti-LGBT hate crimes	7,71 (2,552)
Specific needs of LGBT victims	8,14 (2,356)

Part E. Organization positioning about restorative justice

E1. Has the issue of restorative justice been discussed in your organization?

	IT	%
No	19	78,2
Yes	3	21,8
Total		100%

E3. In your opinion, how useful are the following topics regarding restorative justice for your organization? From 1=Extremely useless to 5= Extremely useful

	N=31	IT
The utility of restorative justice in general		4,33 (,577)
The utility of restorative justice in the specific anti-discrimination field of your organization		4,67 (,577)
The utility of restorative justice in hate crimes		4,67 (,577)
The utility of restorative justice in anti-LGBT hate crimes		4,67 (,577)

E4. Which actor do you think benefits the most from restorative justice?

	N=153	IT	%
Offender		13	39,2
Victim		11	67,3
Other: Both		1	

Other: Community. society	1	
Other: the people they live with	0	
Other: I do not know	0	