

Regarding gender identity



# Debated issues regarding new inequalities and gender identity<sup>1</sup>

Alessia Valongo

## 1. Introduction. Transexualism and intersexuality: diversity and common problems of the two phenomena

According to the World Social Report 2020 of UNDESA (United Nations Department of Economic and Social Affairs), inequality around the world has increased in the last thirty years, as demonstrated by the large difference which can be seen between poor and rich countries.

However, the disparities are not only of an economic nature. It is important to contrast patrimonial and financial forms of inequality, but also new causes of inequity which have recently emerged: besides factors such as disability, religion, race or ethnic origin, fundamental index of discrimination is gender. We refer not only to inequalities between women and men, inequalities based on sex and sexual orientation, but also on gender.

While sex is an objective concept, which indicates physical characteristics and belongs to biological aspects, gender is a subjective, psychological and cultural notion, which indicates the perception of oneself as belonging to a male or female category or to another not well defined. An equal treatment must be ensured to every individual, including persons belonging to a diverse gender, such as transgenders (transexuals, transvestites or cross dressers, queers) and intersexuals. Transgenderism must not be confused with the condition of intersexuality. Intersexuality, described in the past as hermaphroditism or androgyny, now defined as «variation of sexual development», indicates the coexistence or lack of male and female sex characteristics in the same individual, due to a biological mutation of chromosomal, gonadic-hormonal and/or anatomical sex. In order to protect their legal position, an intersexual person may ask a judge's intervention in ordering a public officer to rectifying the sex in the civil status records, in compliance with the d.P.R. 3 November 2000 no. 396

(*Civil Status Order*). In this way, the civil officer immediately corrects the sex indicated in the act of birth according to art. 98 (*Corrections*) of d.P.R. 2000/396, which allows the public officer to modify writing errors that have been made. For example, such a procedure is possible where there has been an error of distraction in writing the act of birth: consider the case where an act of birth - registered abroad where a foreign name or a neutral name was indicated (e.g. Andrea) - was mistranslated or misinterpreted by the civil officer. This interpretation is supported by the changes recently made to the d.P.R. 2000/396 by art. 25 of the legislative decree 10 October 2022, no. 149, issued in implementation of the law reforming the civil trial (law 26 November 2021, no. 206).

The Italian legislator has dealt with the issue of legal protection of transgender persons in a different way. The reason for this discrepancy is that intersexuals present, usually from birth, uncertain genital organs, not definable as male or female, while transgenders are only characterized by a gender dysphoria, which is a psychological, and not a physical, difficulty. Their birth certificate is correctly recorded, because the anatomical characters correspond to the sex and the name resulting from the civil status registers, but subsequently, during the growth, the gender identity is oriented in the opposite direction to the biological one, leading the individual to requesting a gender transition.

Apart from the specificities of each one, a common characteristic of both situations seems to be the perception of their sexuality as not corresponding to their own corporeality. This incongruity may give rise, in both cases, to an identity crisis.

The topic in question must be addressed from a different legal standpoint than in the past, as the negative feelings felt by all these persons are no longer considered a medical psychosis, but simply a form of psychological distress. Consequently, the latest version of the Diagnostic Manual of Mental Disorders<sup>2</sup>, which refers to the term «gender dysphoria», establishes that it is not a mental illness, but a psychological discomfort.

## **2. The regulatory framework regarding transgenderism in the Italian legal system**

The term transgenderism, which includes trans-sexualism in its wide sphere, came to prominence in Italy in the 1980s<sup>3</sup>. This political and cultural movement claimed the right for each individual to identify themselves at any position along a spectrum be-

tween the two categories of femininity or masculinity; thus the right against being discriminated on the basis of a discrepancy between the biologically defined body and the body they identified with. The right to having a different sex from the one originally indicated on the birth certificate was recognized by Law no. 164 dated 14 April 1982, regarding the Rectification of Sex Attribution, which abandoned the conception that sexuality is only determined on the basis of physical traits. This is the fundamental right to sexual identity, which was defined for the first time by the Italian Constitutional Court in 1985<sup>4</sup> as the right to having access to a legal and medical procedure to adapt one's body to their psyche. Art. 3, par. 1, of Law no. 164/1982 provides: where it is necessary to adapt the person's sexual characteristics by means of medical or surgical treatment, the court shall deliver a judgment authorising such treatment. In such cases the court shall order the change of legal gender status after verifying that the treatment has been carried out.

115

Since 2002<sup>5</sup>, the European Court of Human Rights has started to provide a gradual protection for transgender persons, applying art. 8 (*right to private and family life*) and art. 12 (*right to marriage*) of the European Convention on the Protection for Human Rights and Fundamental Freedoms (ECHR)<sup>6</sup>. Art. 8 of the Convention prohibits any restriction on the right to privacy and family life, unless that restriction is required by law and is necessary for national security, the economic well-being of the country, the prevention of crimes, the protection of health or morality, or the protection of rights and freedom of others. According to the European Court of Human Rights, the right to private and family life must be considered in its broadest sense, including the fundamental need to be able to express one's identity in any form or manner. Therefore, any norm for seen by Italian law that prevents transgenders from exercising their rights because of the non-recognition of the acquired gender would be incompatible with the European law. Indeed, according to art. 14 of the ECHR, the enjoyment of the rights and freedoms recognized in the Convention must be ensured without discrimination, in particular that based on sex, race, colour, language, religion, political views or those of other national or social origin, belonging to a national minority, wealth, birth or any other condition.

In recent decades, there has been a further refinement of the concept, moving from the need of a sex change to the need of realizing one's gender identity, the latter being read as an essential aspect of mental and physical health and personal identity<sup>7</sup>, interpreted also as a specific expression of the right to self-determination in achieving personal equilibrium as a human being<sup>8</sup>.

This evolution implies, as recently underlined by the Italian Constitutional Court<sup>9</sup>, the necessity to differentiate the terms «sex identity» and «gender identity». Facts, in reality, show that personal fulfilment is not necessarily achieved through the identification of an individual as belonging to a masculine or feminine category, but can also be found in an intermediate gender between man and woman. We can observe a wide range of gender identities and not all of them require a surgical solution which identifies them as socially accepted body archetypes.

### 116 3. Significant advances in the Italian jurisprudence within the European framework

An important ruling issued in 2015 by the European Court for Human Rights<sup>10</sup> stated that Turkey can not refuse a transgender person the authorisation to accessing sex reassignment without being previously sterilised, otherwise breaching the right to respect for private life (art.8 of the ECHR).

Following the line of thought designed by the European Court of Strasbourg, the recent shifts in the Italian case law<sup>11</sup> have reflected that surgical intervention concerning primary sexual characteristics is not the only solution for an «ambiguous» person to become what society considers a «normal» human being, man or woman. Currently, the prevailing interpretative orientation is that transgender persons have the right to rectifying their name and sex even without losing their reproductive capacity, simply by changing their secondary sexual characteristics<sup>12</sup>. In particular, the sentence no. 15138 issued by the Italian Court of Cassation on the 20<sup>th</sup> of July 2015, brought an end to the divergence of interpretation in this regard that had existed between the lower courts. Similarly, the Italian Constitutional Court (sentence no. 180, issued on the 13<sup>th</sup> of July 2017, cited at previous note no. 8) asserted that surgical treatment is not a requirement, but only one of the possible treatments that could be used in order to obtain a change of legal gender status. In its judgement, the Italian Constitutional Court clarified that the intervention in primary sex characteristics cannot be justified by a public interest in establishing a certain gender and, consequently, it is not necessary for having one's gender legally recognized. The *rationale* of this trend by the Italian case law is determined by the consideration that the decision of having surgery and whether it is functional to one's physical or psychic well-being, is a personal choice.

At a European level, an individual's recognition of their gender identity is protected in some European Directives<sup>13</sup>, in some European Resolutions<sup>14</sup> and in some rulings of the European Court of Justice<sup>15</sup>, which has repeatedly stressed the close link between the right against being discriminated because of one's gender identity or sexual orientation and respect for human dignity.

The Charter of Fundamental Rights of the European Union<sup>16</sup> does not contain explicit references to gender identity or sexual characteristics, but it establishes that «any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, shall be prohibited» (par. 1 of art. 21 - *Non-discrimination*). Similarly, the European General Data Protection Regulation no. 679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, does not refer to «gender identity» in any way, although it lists information on sexual life and sexual orientation as a «special category of personal data» (art. 9, par. 1).

117

At an international level, the United Nations Convention on the Rights of the Child<sup>17</sup> states that countries which are signatories of the Convention shall respect and ensure the rights contained in the Treaty to each child within their jurisdiction, without any kind of discrimination, in particular regardless of the child's «sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status» (art. 2, par. 1).

#### **4. The need of streamlining the gender reassignment procedure**

As highlighted in the previous paragraph and following a long evolution, the majority of the current Italian case law believes that transgenders can rectify their name and sex simply by changing their secondary sexual characteristics.

However, for more than thirty years after the enactment of law no. 164/1982, a double judicial procedure was still considered necessary for the purpose of gender change: one procedure to authorize surgery and the other to change sex and name; consequently, the rectification always followed two sentences, through a long, exhausting and tortuous process.

In reality, a prior authorization for surgery might not be requested in some cases, such as when the person asks to modify sex without un-

dergoing the operation for reasons related to old age or health or simply because they have already reached a level of personal equilibrium after the secondary changes (for example, psychological treatments and hormone therapies). This entails that a second decision is no longer required in order to obtain a change of legal gender status. Indeed, after heated debates by case-law, a single judicial procedure for the modification of sex and name is now sufficient and the judge simply verifies that adequate modifications have been made to confirm the successful transition.

118

Nevertheless, we must underline that a problem still remains, as our Italian law does not specify if those modifications must concern primary or secondary sexual characteristics; for this ambiguity in the formulation of the legislative text, some judges and also most recently, still require the need of resorting to surgery, effectively contravening the Italian Constitution (art. 32, par. 2, Const.), according to which no one can be subjected to a medical treatment without prior consent, as any treatment that is coercively imposed violates the human right to self-determination. Indeed, only the individual who is actually involved in a single treatment can evaluate what the «sufficient» modifications are, to confirm their successful gender transition.

Another item to highlight regards the current judicial intervention. The Constitutional Court in 2017 (see sentence previously cited at note no. 8) rejected the argument that gender recognition can arise solely from the will of an applicant. The reading of this judgment and the objective assessment of the facts characterizing the disputes in this field prompt to acknowledge that the change of gender is also a «public matter» that requires an external state control; but this state intervention shouldn't infringe the private sphere and inflict damage upon human dignity. In fact, according to art. 8 of the European Convention for the Protection of Human Rights, there must be no interference by a public authority with the exercise of this right to respect his private and family life «except where such interference is in accordance with the law and necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others». In an attempt to interpret this article of the Convention in the most appropriate manner, a legislative reform could aim at regulating the issue of gender reassignment more flexibly, for the purpose of simplification, transparency and uniforming the procedure.

Currently, in our system, the procedure related to the name is still legally linked to the sex; consequently, you cannot change your name if



you don't change your sex at the same time or in two successive moments. This is a particularly critical aspect for the Italian legal order, as shown by the conviction of Italy by the European Court of Human Rights in 2018<sup>18</sup>.

The case originates in an application against Italy lodged by an Italian citizen born in 1965 to the Court under art. 34 of the European Convention for the Protection of Human Rights. The applicant stated that, at birth, she was registered in the civil-status register as a male and was given a male name, but she had always identified herself as female and lived in society as a woman. In addition, her work colleagues had always called her by her female name and her identity card photo resembled a woman. In 2000 she applied to the Rome District Court in order to complete the transition process by changing her primary sexual characteristics permanently. While awaiting the authorization for surgery, she applied to the Prefect of Rome to change her name under art. 89<sup>19</sup> of the d.P.R. 2000/396, arguing that, in view of her physical appearance, the fact that her identity papers indicated a male name was a constant source of humiliation and embarrassment. She also asserted that the waiting period for the gender transition process was approximately four years and the long wait had seriously damaged her. The Prefect refused the applicant's request on the grounds that the name could not be changed in the absence of a final court ruling ordering the change of sex for the purposes of Law no. 164 of 1982. The applicant appealed against the decision to the Lazio Regional Administrative Court, which held that art. 89 of the d.P.R. 2000/396 concerning changes of one's name was not applicable to the case in question, which actually came within the scope of Law no. 164 of 1982. In 2001 the applicant underwent a mammoplasty and was placed on a waiting list for surgery to alter her primary sexual characteristics, but the operation was done only in 2003. In substance, the subject of the matter focused on the delay by the national authorities in granting permission to change the name, as the applicant's inability to obtain that change owing to the refusal of the judicial authorities, exceeded two and a half years. After a careful evaluation of the case, the European Court of Strasbourg affirmed that the Italian authorities' refusal to authorise a person with a female appearance to change her male name before her gender reassignment surgery, constitutes a violation of art. 8 of the European Convention on Human Rights.

In this regard, a step forward was recently made by the French legislator in granting appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular, enabling the change of one's name on all official documents (e.g. identity

card, educational or work certificates). The French option can represent a model for the Italian lawmaker that could expand the legal protection of the right to respect one's name, overcoming the obstacles posed by bureaucracy. More precisely, the French legal system provides that anyone, regardless of age, even if a minor, can apply to the public authority in order to change only the name and to adapt it to the perception of oneself and to their own external appearance, regardless of any change in sex; the change of sex is possible in a rapid, transparent and accessible manner, if the applicant publicly demonstrates that they belong to the sex claimed in family and social relationships and have already obtained the change of the name.

120

## **5. Final reflections: some implications of gender inequality on the legal order**

At the end of this analysis, we can conclude that - after forty years from its approval - Law no. 164 of 1982 should respond more effectively to the real needs of the person.

It is undeniable that any type of medical intervention must take place without impositions by third parties, each individual being free to express their personality spontaneously, in terms of sexuality and gender identity. For this reason, the scientific community in the European Union<sup>20</sup> rightly condemns the so called «conversion therapies», a term referring to those educational and psychological paths that aim at inducing the subject to conform to their biological sex; also defined as «reparative therapy» or «gay cure therapy»-they attempt to prevent these persons from being homosexual or from living as a different gender. Conversion therapies can include prayers, talking therapies and other forms of counselling with educators and sometimes even based on extreme means, such as exorcism and food deprivation. Since these interventions are aimed at changing sexual orientation or gender identity, we certainly cannot speak of «therapies», due to the lack of any medical-scientific foundation and the clear contrast with the medical and psychological codes of ethics and with the general principles of the Italian-European legal system. Indeed, these practices, rather than combatting prejudice and discrimination, favor their diffusion and inflict upon human dignity, as they claim to «cure» what is not a disease.

As previously noted, the enactment of a renewed law that would grant the possibility of changing the name alone, regardless of the change of

sex, would be desirable in Italy: the result would be an easier process, with a consequent reduction in costs, time, bureaucratic obstacles and most importantly human suffering.

Gender inequality is a kind of disparity that determines disadvantages in various areas of daily life (for example, at school, in the job market, in the health system, in access to justice, in political life, etc.); the Covid-19 pandemic and more recently the war in Ukraine, have contributed to aggravating these difficult conditions.

The discussions caused by the new inequalities that arise around gender identity provide us with a lot of suggestions. One of them concerns a desired law regulating homophobia and transphobia.

121

In this regard, there is a gap, as the lawmaker has not yet issued a legislative discipline on the matter<sup>21</sup>.

Although a lot of progress has been made in Italy, some critical elements persist with regard to the barriers that persons with gender dysphoria encounter in everyday life.

Lack of information and ignorance lead to a non-inclusive society that often does not recognize certain rights to people of gender nonconforming to the male-female binarism and tend to deny their natural inclinations. On this ground, they are often victims of bullying, exclusion, constrictions, violence, labelling and abuse in every social context. Thus, it is necessary to fight against this injustice, implementing the Italian Constitution's principles that aim at removing all forms of discrimination and preventing the social and economic participation of all persons considered weak and vulnerable.

## Note

<sup>1</sup>This contribution summarizes the introduction to the fourth session (*New inequalities and gender identity*) of the international Conference *Legality and Participation, Trends, challenges and perspectives*, University of Perugia, 16<sup>th</sup>-17<sup>th</sup> June 2022, organized by the Department of Political Sciences within the project of Excellence 2018-2022. The paper addresses the need of enhancing the rights's protection of all transgender and intersexual persons and promoting anti-discrimination policies in Italy.

<sup>2</sup> See DSM V, fifth edition of the Classification Manual of Mental Disorders, American Psychiatric Association, J. Morrison (ed E. Sacchetti, C. Mencacci) *DSM - V Made Easy, Percorsi alladiagnosi*, (Milano: Edizioni Edra, 2014), 370-375. On the legal notion of transexualism, see P. PERLINGIERI, *Note introduttive ai problemi giuridici del mutamento di sesso*, in «Diritto e giurisprudenza», n.26, 1970, pp.830-843; B. PEZZINI, *Transessualismo, salute e identità sessuale*, in «Rassegna diritto civile», n.2, 1984, p. 463; J. BALDARO VERDE, A. GRAZIOTTIN,

*L'enigma dell'identità, Il transessualismo*, Gruppo Abele, Torino 1991), p.7; M. IORIO, G. ROCCHIETTI, P. SERAFINI, *Sessualità e legge*, Minerva Medica, Torino 2000, p. 134; S. PATTI, *Il transessualismo*, in S. PATTI, M.G. CUBEDDU (eds), *Diritto della famiglia*, Giuffré, Milano 2011, pp. 943-959.

<sup>3</sup> The Italian Constitutional Court first dealt with the issue of transsexualism in 1979 (Constitutional Court 1st August 1979 no. 98, *Rassegna diritto civile*, 1980, 507, with comment of P. D'ADDINO SERRAVALLE, *Le trasformazioni chirurgiche del sesso nella sentenza n. 98 della Corte Costituzionale*).

<sup>4</sup> Constitutional Court, no. 161, 23 May of 1985, *Giurisprudenza italiana*, I, 235 (1987).

<sup>5</sup> European Court of Human Rights, G.C., 11 July 2002 (application no. 28957/95, *Goodwin v. United Kingdom* at [www.echr.coe.int](http://www.echr.coe.int)), which condemned Britain for denying a transgender person the right to marry. Subsequently, in 2004, in the United Kingdom, the Gender Recognition Act was passed, allowing for gender reassignment. In literature, see L. TRUCCO, *Il transessualismo nella giurisprudenza della Corte europea dei diritti dell'uomo alla luce del diritto comparato*, in «*Diritto pubblico comparato europeo*», n.1, 2003p.371.

<sup>6</sup> Regarding the European Convention on Human Rights and Fundamental Freedoms, signed by the member States of the Council of Europe in Rome on 4 November 1950, see: V. ZAGREBELSKY, *Corte, convenzione europea dei diritti dell'uomo e sistema europeo di protezione dei diritti fondamentali?*, in «*Foro italiano*» n.4, 2006, p.353; J. LONG, *La Convenzione europea dei diritti dell'uomo e il diritto italiano della famiglia*, in P. ZATTI(ed.), *Trattato di diritto di famiglia*, Giuffré, Milano 2006, p.1.

<sup>7</sup> P. STANZIONE, *Transessualismo e sensibilità del giurista: una rilettura attuale della legge n. 164/82*, in «*Diritto di famiglia e delle persone*», n.715, 2009; E. PASCOLO-FABRICI, F. SANDRI, A. SAULLO, T. BONAVIDO, *Identità di genere*, EUT, Trieste 2016), pp. 27-29; M.C. DE CICCIO, *Il diritto alla diversità come espressione del diritto all'identità personale*, in E. CATERINI, L. DI NELLA, A. FLAMINI, L. MEZZASOMA, S. POLIDORI (eds.) *Scritti in onore di Vito Rizzo. Persona, mercato, contratto e rapporti di consumo*, Edizioni Scientifiche Italiane, Napoli 2017) ed.2,p. 505.

<sup>8</sup> In this regard, see G. PALMERI, M.C. VENUTI, *Il transessualismo tra autonomia privata ed indisponibilità del corpo*, in «*Diritto di famiglia e delle persone*», n.1331, 1999; V. LINGIARDI, *Orientamento sessuale e genere: declinazioni molteplici e ampie le intersezioni*, in «*Famiglia e minori Guida al diritto*», n.7, 2011, pp. 19-21; A. LORENZETTI, *Diritti in transito. La condizione giuridica delle persone transessuali*, Franco Angeli, Milano 2013, p. 20; F. BILOTTA, *Transessualismo, Digesto discipline privatistiche, Sez. civ.*, Torino, 715, 2013.

<sup>9</sup> Constitutional Court, no. 180, 13 of July of 2017, available at: [www.cortecostituzionale.it](http://www.cortecostituzionale.it).

<sup>10</sup> European Court for Human Rights, 10 March 2015 (application no. 14793/08, *Y.Y. v. Turkey*), available at [www.echr.coe.int](http://www.echr.coe.int). The ruling refers to self-determination regarding reproductive health, discussing the reproductive capacity as a condition to access surgical interventions. In the literature, see, among the Italian scholars, S. PATTI, *Il transessualismo tra legge e giurisprudenza*

della Corte europea dei diritti dell'uomo (e delle Corti costituzionali), in «Nuova giurisprudenza civile commentata», n.1, 2016, p. 143.

<sup>11</sup> Court of Cassation, 20 July 2015, no. 15138, *Studiiumiuris*, 4, 400 (2016), with comment of V. Greco, 'Mutamento di sesso senza costringimento al bisturi'. See, also, Rovereto Court, 3 May 2013, *Nuova giurisprudenza civile commentata*, I, 1116, 2013, with comment of F. BILOTTA, *Identità di genere e diritti fondamentali della persona*; Roma Court, 14 April 2011, no. 5896, *Famiglia e minori, Guida al diritto*, 7, 15-16 (2011), with comment of F. BILOTTA, *Rettifica dell'atto di nascita anche senza l'intervento chirurgico del sesso, Decisione rispettosa delle garanzie fondamentali di dignità e autodeterminazione*.

<sup>12</sup> Secondary sexual characteristics are defined: distribution of muscle mass, fat, hairs, tone of the voice. Primary sexual characteristics are considered genital and reproductive organs.

<sup>13</sup> Equal Treatment Directives: Directive 1976/207/EC; Directive 2006/54/EC. See, more recently, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

<sup>14</sup> Reference is made to: European Parliament Resolution of 28 September 2011 on human rights, sexual orientation and gender identity at the United Nations; European Parliament Resolution of 12 March 2015 on the Annual Report on Human Rights and Democracy in the World 2013 and the European Union's policy on the matter; European Parliament resolution of 12 December 2018 on the annual report on human rights and democracy in the world 2017 and the European Union's policy on the matter, which acknowledges that sexual orientation and gender identity can increase the risks of discrimination, violence and persecution; European Parliament Resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones.

<sup>15</sup> European Court of Justice, 30 April 1996 (C-13/94, *P. c. S. e Cornwall County Council*), available at: [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu). More recently, see Court of Justice of the European Union, G.C., 26 June 2018 (Case C451/16), available at [www.curia.europa.eu](http://www.curia.europa.eu). Among legal scholars, see E. LONGO, *La Corte di Giustizia, i diritti dei transessuali e la riduzione delle competenze statali*, in «Quaderni costituzionali», n.581, 2006; M. DE SALVIA, V. ZAGREBELSKY, *Diritti dell'uomo e libertà fondamentali. La giurisprudenza della Corte europea dei diritti dell'uomo e della Corte di giustizia delle Comunità europee*, Giuffrè, Milano 2007), III, 52.

<sup>16</sup> The Charter of Fundamental Rights of the European Union, proclaimed on 7 December 2000 by the European Parliament and European Commission, had full legal effect with the entry into force of the Treaty of Lisbon on 1 December 2009.

<sup>17</sup> The United Nations Convention on the Rights of the Child (signed in New York on 20 November 1989, ratified by Italy with law 27 May 1991, no. 176) is the first legally binding international instrument aimed at protecting children and recognizing their human rights. On the issue, see C. FOCARELLI, *La Con-*

*venzione di New York sui diritti del fanciullo e il concetto di «best interest of the child».*In «Rivista diritto internazionale», n. 981, 2010; R. VIRZO, *La Convenzione delle Nazioni Unite sui diritti del fanciullo e l'orientamento sessuale del minore*, in B.E. HERNÁNDEZ-TRUYOL, R. VIRZO (eds), *Orientamento sessuale, identità di genere e tutela dei minori*, Edizioni Scientifiche Italiane, Napoli 2016, pp.108-130.

<sup>18</sup> European Court for Human Rights: 11 October 2018 (application no. 55216/08, *S.V. v. Italy*), available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>19</sup>According to Article 89 of the same d.P.R. 2000/396, persons seeking to change their name or to add another name to the existing one, or to change their surname because of its shameful or ridiculous nature, must submit a request to the competent prefect.

**124** <sup>20</sup>The European Parliament Resolution of 17 September 2020, at point no. 63, deplores the Polish Episcopate's official position calling for «conversion therapies» for LGBTI persons, reiterates the position of the Parliament encouraging Member States to criminalise such inhumane practices.

<sup>21</sup> In November 2020, the Italian House of Representatives approved a Proposal of law (no. 2005), known as the «ddl Zan», in order to punish acts of discrimination and violence against gays, lesbians, transsexuals, transgenders, intersexuals and also disabled people. *This proposal of reform* sparked controversy and opposition mainly from right-wing parties and did not pass through Parliament.