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## UNHCR RECOMMENDATIONS ON THE RELEVANT ASPECTS OF THE PROTECTION OF STATELESS PERSONS IN ITALY

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- **General context:**

There are millions of people in the world who are denied a nationality and a child is born stateless every 10 minutes. 400.000 stateless persons live in the European Union alone<sup>1</sup>. On 4 November 2014, UNHCR launched the #iBelong global campaign, with the aim to end statelessness within 10 years. The Global Action Plan to End Statelessness is the campaign's reference framework, a set of 10 actions to be undertaken in order to end statelessness within 10 years and developed in consultation with States, civil society and international organizations<sup>2</sup>.

Although there are no comprehensive official statistics on the stateless population in Italy, one can assume that the **largest group of stateless persons can be found among the Roma communities** originating from ex-Yugoslavia who have been living in Italy for many years, whereas most of the rest of the stateless persons originate from countries or territories such as the former USSR, Occupied Palestinian Territories and China (Tibet).

Italy is a State party to both the **1954 Convention Relating to the Status of Stateless Persons** and the **1961 Convention on the Reduction of Statelessness**.<sup>3</sup> Moreover, Italy has signed, but not yet ratified, the 1997 European Convention on Nationality.

The national law regulating citizenship includes provisions aimed at preventing and reducing statelessness that are generally complying with the rules of the 1961 Convention. In late 2018, a provision on nationality deprivation that may result in statelessness was introduced in the nationality law. Three draft bills reforming the nationality law and the criteria for the acquisition of citizenship are currently under exam by the Parliament<sup>4</sup>.

Italy is one of the few countries in the world having established a determination procedure of the stateless status. **In Italy, two alternative ways for the recognition of statelessness**

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<sup>1</sup>UNHCR, *Global Trends; Forced Displacement in 2018*, June 2019, <https://www.unhcr.org/5d08d7ee7.pdf>.

<sup>2</sup> UNHCR, *Global Action Plan to End Statelessness*, <http://www.refworld.org/docid/545b47d64.html>.

<sup>3</sup> The definition of a stateless person is stated in art. 1 of the New York Convention of 28 September 1954. See also: UNHCR Guidelines on Statelessness, *The definition of "Stateless Person" in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons*, April 2012.

<sup>4</sup> Draft bills nos. 105, 717, 920, under exam in the Chamber of Deputies.



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**exist, the administrative and the judicial procedure**<sup>5</sup>. Once formally determined, the stateless status gives access to a set of rights in accordance with the 1954 Convention (i.e. travel document, access to work, access to social welfare, facilitated access to naturalization).

- **The stateless population**

Although there are no comprehensive official statistics on the stateless population in Italy, according to the available estimates, there are 3.000 to 15.000 stateless persons living in Italy<sup>6</sup>. Most of the stateless population belongs to **Roma communities originating from ex-Yugoslavia**, whereas the rest of the stateless persons mainly originate from countries or territories such as the former USSR, Occupied Palestinian Territories and China (Tibet). According to available information, the majority of stateless persons and persons at risk of statelessness live in Rome, Naples and Turin. Roma communities affected by statelessness mainly live in settlements, either formal or informal, often with sub-standard housing conditions and limited access to services. While the main cause of their statelessness can be traced back to the dissolution of Yugoslavia, statelessness continues to be transmitted to next generations, meaning that the mentioned estimates include many persons who were born and raised in Italy, but anyway without a nationality. Lastly, stateless persons can be identified among asylum seekers and refugees originating from Countries with discriminatory nationality laws, on basis such as gender, race or ethnicity.

- **Statelessness and statelessness determination procedures (SDPs)**

Italy has two alternative ways for the recognition of statelessness, an administrative and a judicial procedure.

Some aspects of the **administrative statelessness determination procedure (SDP)** lack in clarity and transparency. One of the most critical issues concerns access to the procedure, as applicants are required to submit a birth certificate, documentation related to residency in Italy and every adequate document supporting the statelessness claim<sup>7</sup>. As a matter of facts, these requirements result in the administrative SDP being only available to persons already entitled to a residence permit. Moreover, the procedure can take very long, in some cases up to many years, despite an 895 days limit set by law<sup>8</sup>.

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<sup>5</sup> Some aspects of the administrative statelessness determination procedure in the Italian system are regulated in art. 17 of the Presidential Decree no. 572 of 12 October 1993, but an organic law regulating statelessness matters does not yet exist.

<sup>6</sup>Estimates by Tavolo Apolidia, a network of NGOs working on statelessness facilitated by UNHCR. See: [www.tavoloapolidia.org](http://www.tavoloapolidia.org).

<sup>7</sup> Art. 17, Presidential Decree no. 572 of 12 October 1993.

<sup>8</sup> Decree of the Ministry of Interior no. 142 of 18 April 2000, Annex A.



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Since the procedure may be very lengthy and because of the mandatory prerequisites for accessing the administrative SDP, many stateless persons lacking a residence permit are obliged to apply for the stateless status through the **judiciary procedure**. There is no explicit provision regulating the judiciary statelessness determination procedure, thus it was the jurisprudence, mainly of the Court of Cassation, that defined its procedural features. The lack of a comprehensive legal framework on statelessness determination resulted in the absence of some procedural guarantees foreseen by international standards<sup>9</sup>. The law decree no. 13/2017, converted into law 46/2017, introduced 26 specialized court sections on immigration, international protection and freedom of movement of EU citizens. Among the novelties, the specialized court sections are competent also in statelessness *status* determination matters, that should be decided according to summary ordinary proceedings. The reform did not address the existing gaps in terms of procedural guarantees foreseen by international standards. Moreover, the judicial statelessness determination procedure is open to undocumented persons: however, applicants may be denied State funded legal aid since they cannot obtain a waiver concerning the submission of the required certification of their financial situation issued by the Consulate of their country of origin<sup>10</sup>.

The shortcomings of both the existing statelessness determination procedures result in a limited number of persons being formally recognized as stateless (according to the National Statistics Institute only 822 recognized stateless persons currently reside in Italy<sup>11</sup>), meaning that the vast majority of the stateless population in Italy has not obtained a formal recognition of the stateless status, therefore is not benefitting from the protection and the rights envisaged by international law. This situation has major consequences in terms of statelessness reduction, because unrecognized stateless persons lack facilitated access to naturalization and transmit their condition to the next generation, leading to the insurgency of new cases of statelessness (see section “Statelessness and citizenship”).

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<sup>9</sup> More in detail, UNHCR observed the lack of a right to be heard, inhomogeneity on the adopted standard of proof, lack of protection from expulsion or detention pending the procedure, excessive length of the procedure. For more information on the procedural safeguards related to statelessness determination procedures, please see: UNHCR, *Handbook for the Protection of Stateless Persons*, 30 June 2014, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=57b6bff14>.

<sup>10</sup> UNHCR observed inconsistent approaches by the competent territorial bar associations, resulting in similar applications reaching opposite outcomes.

<sup>11</sup> See: dati.istat.it.



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- **Statelessness and rights**

Statelessness status recognition provides access to a set of rights in line with the 1954 Convention, such as right to work, access non-compulsory education, property rights, access to welfare, as well as identity and travel documents. Nevertheless, effective enjoyment of such rights may be hampered in practice mostly due to difficult bureaucratic procedures and lack of information among public officials and service providers. A person formally **recognised as stateless** is not always entitled to a residence permit based on their stateless status, since the existing legal framework does not explicitly foresee a “stateless” residence permit, while many different types of residence permits exist in Italy: in those cases, it can happen that a stateless person is not in the position to enjoy some of the rights set by law, such as the possibility to obtain a long-term residence permit and the possibility to apply for Italian citizenship at facilitated conditions.

Stateless persons lacking formal status recognition do not benefit from protection and have limited access to the rights they should be entitled to. Many unrecognized stateless persons had been residing in Italy with a residence permit on humanitarian grounds, which was abolished by Law Decree no. 113/2018. Those unable to fulfil the requirements for other typologies of residence permit, suddenly found themselves without entitlement to regular stay, risking being exposed to increased marginalization and further limiting their access to rights and services. Moreover, unrecognized stateless persons who lack a residence permit may be issued with an expulsion order and placed in immigration detention. In 2019, the First Section of the Supreme Court of Cassation ruled that the prohibition of expulsion of stateless persons should be extended also to those cases where, even if lacking formal status recognition, the condition of statelessness clearly arises from the available information and documentation<sup>12</sup>.

With regard to protection from expulsion of applicants pending the SDP, the law provides for the issuance of a **specific residence permit** only for statelessness status applicants who are already entitled to another type of residence permit<sup>13</sup>.

- **Statelessness and citizenship**

Concerning **citizenship at birth**, the Italian nationality law guarantees citizenship at birth to the child born in Italy who does not acquire the citizenship of their parents and would otherwise be stateless, in line with Action 2 (no child is born stateless) of the Global Action

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<sup>12</sup> Supreme Court of Cassation, Sentence no. 16489 of 19 June 2019

<sup>13</sup> Art. 11, paragraph 1, letter c) of the Presidential Decree no. 394 of 31<sup>st</sup> August 1999.



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Plan<sup>14</sup>. According to the legislation, Italian citizenship is granted at birth to children born in Italy from stateless parents, to children who do not acquire the citizenship of their parents according to the law of the State they are nationals of, and to foundlings when impossible to determine another nationality. Such provisions are in line both with the principle of the reduction of statelessness as set out in the 1961 Convention and with the right to acquire a nationality<sup>15</sup>. However, many of the stateless children born in Italy who are entitled to acquire Italian citizenship at birth by operation of law face several obstacles in demonstrating they did not and cannot acquire the citizenship of their parents. These obstacles are often linked to the lack of formal recognition of the statelessness status of the parents or to difficulties in accessing to information on laws regulating citizenship in the country of origin of the parents as well as to the correct interpretation of such laws<sup>16</sup>. Moreover, safeguards against statelessness at birth are not applied retroactively and if the parents obtain formal recognition of statelessness status after the birth of the child, the child nevertheless remains stateless.

The Italian legislation applies favourable conditions concerning the acquisition of citizenship to recognized stateless persons, in line with the 1954 Convention and Action 6 of the Global Action Plan, that calls for **facilitated naturalization of stateless persons**: it is required indeed that the stateless person legally resided on the territory of the State for five years, similarly to refugees, while the general norm foresees a residency term of at least 10 years<sup>17</sup>. Nevertheless, Law Decree no. 113/2018 (converted with Law no. 132 of 1 December 2018) amended some provisions related to naturalization extending the maximum duration of the procedure from 2 to 4 years, increasing the cost of the procedure to 250 Euros and introducing a language requirement (at least CEFRL B1 level).

Law Decree no. 113/2018 introduced the possibility to deprive a person of Italian nationality when convicted of serious crimes, such as terrorism<sup>18</sup>. The provision on

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<sup>14</sup> Art. 1, law no. 91/1992.

<sup>15</sup> Art. 7, Convention on the Rights of the Child.

<sup>16</sup> See also the conclusions of the seminar organised in Prato on the 27th and 28th May 2010 by UNHCR, gathering experts on statelessness: <http://www.unhcr.org/4cb2fe326.pdf>.

<sup>17</sup> Art. 9 (1-e), law no. 91/1992. The nationality law requires 5 years of uninterrupted residency in order to be eligible for naturalization, in practice these should be counted starting from the moment of status recognition.

<sup>18</sup> L'art. 10 bis della Legge 91/1992 elenca tali reati, ovvero quelli previsti dall'articolo 407, comma 2, lettera a), n. 4), del codice di procedura penale, e i reati di cui agli articoli 270-ter e 270-quinquies.2, del codice penale.



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nationality deprivation does not contain any exception in order to avoid statelessness and is in breach of the obligations descending from article 8 of the 1961 Convention<sup>19</sup>.

- **Statelessness and access to information**

Many stateless persons and persons at risk of statelessness are often unaware of the existing procedures for the recognition of statelessness status. Even though some of those people may have a residence permit on other grounds than statelessness, they may face difficulties due to their lack of nationality when they have to enjoy some specific rights for which a proof of nationality (i.e. passport) is required. Stateless persons who obtained formal recognition may still face obstacles in accessing services and enjoying rights, mainly due to the general lack of information and understanding about statelessness among service providers, public officials and social workers. For those people, as well as for the organizations and institutions they enter in touch with (NGOs, hospitals, National Registrar, etc.), many problems could be solved through campaigns disseminating information on statelessness and on the situation of stateless persons, including guidance on how to access the existing SDPs, as also suggested in Action 1 of the Global Action Plan.

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<sup>19</sup> L'art.8 della Convenzione del 1961 dispone il divieto di privazione o revoca della cittadinanza ove ciò risulti in apolidia. Lo stesso articolo prevede delle eccezioni di cui gli Stati si possono avvalere nel caso in cui la privazione o revoca risulti in apolidia, tuttavia perché queste siano applicabili è necessario che le disposizioni interne relative alle misure di privazione o revoca della cittadinanza siano già in vigore al momento della ratifica o adesione alla Convenzione del 1961. L'Italia ha aderito alla Convenzione del 1961 a fine 2015, mentre le disposizioni sulla revoca della cittadinanza sono state introdotte a fine 2018.



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## **UNHCR Recommendations:**

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- 1. UNHCR recommends the Italian Government to adopt a comprehensive law aimed at improving the statelessness determination procedure, fostering rationalization, efficiency and transparency. To this end, UNHCR looks for the re-deposit, scheduling and adoption during the XVIII legislature of the draft bill resulted from the joint cooperation of the Extraordinary Commission on Human Rights of the Senate, UNHCR and the Italian Refugee Council, already presented in the Senate on 26 November 2015, which includes the main guarantees prescribed by international standards and laid out in the Handbook for the Protection of Stateless Persons;**
- 2. UNHCR urges the Italian Government to take the necessary steps to address the situation of stateless persons or persons at risk of statelessness belonging to Roma communities, opting where possible for nationality verification efforts and access to naturalization, given their long-term habitual residence and long-established ties to Italy;**
- 3. UNHCR recommends the adoption of measures aiming at preventing statelessness and guarantee the effective application of the law provisions regulating the acquisition of Italian citizenship at birth to otherwise stateless children, in order to guarantee the right to acquire a nationality as set in international instruments and in Action 2 of the Global Action Plan;**
- 4. UNHCR underlines the necessity of protecting undocumented stateless persons, by protecting them from the risk of being subject to expulsion or unfair immigration detention, and granting them access to information on the SDP, in line with the provisions on international protection. Moreover, UNHCR recommends that undocumented stateless persons who are seeking their status recognized through an SDP are granted a specific residence permit pending the procedure, as foreseen in Action 6 of the Global Action Plan.**

UNHCR Representation for Italy, The Holy See and San Marino

Rome, April 2020