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Haut Commissariat des Nations Unies pour les réfugiés

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

- **General context:**

4.2 million people were registered as stateless by 76 countries in 2019, but UNHCR believes the actual number to be significantly higher. 400,000 stateless persons live in the European Union alone.¹ 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, the campaign's reference framework, is a set of 10 actions to be undertaken to end statelessness within 10 years developed in consultation with States, civil society and international organizations.²

Although there are no comprehensive official statistics on the stateless population in Italy, estimates suggest 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 the remaining stateless persons originate from countries or territories such as the former USSR, Cuba, China (Tibet) and Occupied Palestinian Territories.

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**. 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 generally comply 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 examination by the Parliament.³

Italy is one of the few countries in the world that has established a procedure for statelessness determination. **In Italy, there are two alternatives for the recognition of statelessness, an administrative and a judicial procedure.**⁴ Once formally determined, the stateless status

¹ UNHCR, *Global Trends; Forced Displacement in 2020*, June 2021, <https://www.unhcr.org/flagship-reports/globaltrends/>.

² UNHCR, *Global Action Plan to End Statelessness*, <https://www.unhcr.org/ibelong/global-action-plan-2014-2024/>.

³ Draft bills nos. 105, 717, 920, under exam in the Chamber of Deputies.

⁴ 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.



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gives access to a set of rights generally in accordance with the 1954 Convention (i.e. travel document, access to work, facilitated access to naturalization).

- **The stateless population**

Although there are no comprehensive official statistics on the extent of statelessness, according to currently available information, UNHCR estimates there are approximately 3,000 stateless persons or persons at risk of statelessness living in Italy. The majority belong to **Roma communities originating from ex-Yugoslavia**, whereas the remaining originate primarily from countries or territories such as the former USSR, Cuba, China (Tibet) and Occupied Palestinian Territories. According to available information, the majority of stateless persons and persons at risk of statelessness live in Lazio, Campania and Piedmont regions. 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 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 without a nationality. Stateless persons can also be identified among asylum seekers and refugees belonging to stateless minorities or originating from countries with large stateless populations or with discriminatory nationality laws.

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

Italy has two alternatives for the recognition of statelessness: an administrative and a judicial procedure.

Some aspects of the **administrative statelessness determination procedure (SDP)** lack 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 relevant document supporting the statelessness claim.⁵ In practice, these requirements result in the administrative SDP being available only to persons already entitled to a residence permit. Moreover, the procedure can be excessively lengthy, many years in some cases, despite an 895 days limit set by law⁶.

Since the administrative 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 statelessness determination through the **judicial procedure**. There is no explicit provision regulating the judicial statelessness determination procedure,

⁵ Art. 17, Presidential Decree no. 572 of 12 October 1993.

⁶ Decree of the Ministry of Interior no. 142 of 18 April 2000, Annex A.



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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.⁷ 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. These specialized court sections are also competent in statelessness determination matters; determinations are made using summary ordinary proceedings. Law Decree 13/2017 did not address the existing gaps in terms of procedural guarantees foreseen by international standards. While the judicial statelessness determination procedure is open to undocumented persons, applicants may be denied state-funded legal aid because they cannot obtain a waiver of the requirement to submit certification of their financial situation by the consulate of their country of origin.⁸

The shortcomings of both existing statelessness determination procedures result in a limited number of persons being formally recognized as stateless (according to the National Statistics Institute only 552 recognized stateless persons currently live in Italy⁹), meaning that the vast majority of the stateless population in Italy has not obtained a formal recognition of statelessness, and therefore are 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 new cases of statelessness (see section “Statelessness and citizenship”).

- **Statelessness and rights**

Stateless status recognition provides access to a set of rights generally in line with the 1954 Convention, such as the right to work, access higher education, property rights, facilitated access to naturalization, 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 generally issued a residence permit on statelessness grounds, in direct application of the 1954 Convention given that the existing legal framework

⁷ More in detail, UNHCR observed inconsistencies on the adopted standard of proof as well as the burden of proof, lack of protection from expulsion pending the procedure, excessive length of the procedure. For more information on standards and 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>.

⁸ UNHCR observed inconsistent approaches by the competent territorial bar associations, resulting in similar applications reaching opposite outcomes.

⁹ Number of persons living in Italy with a valid residence permit and nationality “stateless”. See: dati.istat.it.



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does not explicitly foresee such a permit. The lack of a comprehensive legal framework of reference results in some territorial inconsistencies, for example in terms of duration of such residence permits.

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. Even though a residence permit on “special protection” grounds was reintroduced by Law Decree no. 130/2020, with similar features to the one abolished in 2018, many stateless persons faced difficulties with renewal of residence permits in the period from October 2018 to October 2020. In some cases, without the possibility to renew the old permit or to have a different type of residence permit issued, this suddenly resulted in irregular stay, further aggravating situations of deprivation and marginalization. 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.¹⁰

Regarding protection from expulsion of applicants pending the SDP, the law provides for the issuance of a **specific residence permit** only for stateless status applicants who are already entitled to another type of residence permit.¹¹

- **Statelessness and citizenship**

Concerning **citizenship at birth**, the Italian nationality law provides for safeguards against statelessness at birth generally in line with the provisions of the 1961 Convention, as requested in Action 2 (no child is born stateless) of the Global Action Plan.¹² According to the legislation, Italian citizenship is granted at birth (i) to children born in Italy to stateless parents, (ii) to children who do not acquire the citizenship of their parents according to the law of their State(s) of nationality, and (iii) to foundlings when impossible to determine another nationality. However, many of the stateless children born in Italy who are entitled to acquire Italian citizenship at birth by operation of law face obstacles in demonstrating they did not and cannot acquire the citizenship of their parents. These obstacles include the lack of formal recognition of the stateless status of the parents, difficulties in accessing information on laws regulating citizenship in the country of origin of the parents and the correct interpretation of

¹⁰ Supreme Court of Cassation, Sentence no. 16489 of 19 June 2019

¹¹ Art. 11, paragraph 1, letter c) of the Presidential Decree no. 394 of 31st August 1999.

¹² Art. 1, law no. 91/1992.



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such laws. Moreover, safeguards against statelessness at birth are not systematically applied retroactively and if the parents obtain formal recognition of stateless status after the birth of the child, the child often remains stateless.

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**. Under the law, in order to be naturalized, the stateless person must have 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.¹³ Unfortunately, amendments to provisions on naturalization in 2018 and 2020 extended the maximum duration of the procedure from 2 to a maximum of 3 years, increased the cost of the procedure to 250 Euros and introduced 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.¹⁴ The provision on nationality deprivation does not contain any exception clause to avoid statelessness and is in breach of the obligations descending from article 8 of the 1961 Convention.¹⁵

- **Statelessness and access to information**

Many stateless persons and persons at risk of statelessness are often unaware of the existing procedures for statelessness determination or for accessing naturalization. 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. Many of these 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.

¹³Art. 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.

¹⁴ Article 10-bis of Law 91/1992 lists the crimes that may result in nationality deprivation as those contained in art. 407, para. 2, letter a), section no. 4 of the criminal procedure code, and in articles 270-ter and 270-quinquies.2 of the criminal code.

¹⁵ Article 8 of the 1961 Convention prohibits nationality deprivation if results in statelessness. A list of exceptions is listed in the same article, which a contracting State may only avail of if at the time of signature, ratification or accession it specifies so and if the provisions on nationality deprivation are already in force at that time. Italy acceded to the 1961 Convention in late 2015, while the provisions on nationality deprivation were introduced in late 2018.



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UNHCR Recommendations:

- 1. UNHCR recommends the Italian Government to promote 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 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 that guarantee the effective application of the legal provisions regulating the acquisition of Italian citizenship at birth to otherwise stateless children, in order to guarantee the right to acquire a nationality as provided for 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,. Moreover, UNHCR recommends that undocumented stateless persons who are seeking to have 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

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