

Ending Childhood Statelessness:

A Study on Italy

Working Paper 07/15



EUROPEAN NETWORK ON STATELESSNESS

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This working paper was commissioned by the European Network on Statelessness (ENS) a civil society alliance with 100 members in over 30 countries, committed to addressing statelessness in Europe. Among other objectives, ENS advocates for the enjoyment of a right to a nationality by all. This working paper is part of a series that has been produced in support of the ENS Campaign “None of Europe’s children should be stateless” which was launched in November 2014. ENS wishes to acknowledge the generous support for this campaign received from the Sigrid Rausing Trust and the Office of the United Nations High Commissioner for Refugees (UNHCR).

This paper was researched and written by Daniela Maccioni, consultant at the legal office of Italian Council for Refugees (CIR) – an Associate Member of ENS. The report has been drafted under the supervision of Daniela Di Rado of the Italian Council for Refugees. Support was provided by Jessica J. Gonzalez for case studies and for carrying out some interviews with stakeholders.

European Network on Statelessness
Club Union House, 253-254 Upper Street
London, N1 1RY
United Kingdom
Charity Number 1158414

info@statelessness.eu

www.statelessness.eu

For further information about ENS, its activities or proposals for research or other collaboration, contact ENS Director Chris Nash at chris.nash@statelessness.eu.

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Introduction

This report was drafted in the context of the campaign “None of Europe’s children should be stateless”, promoted by the European Network on Statelessness (ENS), of whom CIR is a member. This initiative aims to promote measures that ensure the right to a nationality to children born in Europe and to prevent childhood statelessness. Over the last few years, the problem of childhood statelessness has gained in importance in Italy. The need to adopt adequate policies as well as legislative and practical measures to reduce and to avoid the risk of stateless children has become a priority. CIR is proactively engaged in raising awareness on the causes and especially the serious consequences of statelessness in terms of the enjoyment of fundamental human rights for those children born on Italian territory.

Despite it being clear that statelessness is a significant challenge, no precise data is available in order to identify the full scope of the phenomenon in Italy. Nevertheless, in the Italian context, it can be assumed that among the different situations of children at risk of statelessness the largest group is children born on Italian territory who have inherited this status from their parents. This is the case with children of Roma communities coming from the former Yugoslavia and who are now the second or third generation living in Italy: they have spent their whole life in the country, yet they have never had their statelessness status determined nor the opportunity to acquire Italian citizenship, due to a number of reasons such as their lack of a regular permit of stay.¹ Other children find themselves in a situation of uncertain or undetermined nationality, or are at risk of statelessness because of a gap or a conflict in nationalities laws. This is, for instance, the case with some children whose parents also came to Italy after the dismantlement of the former Yugoslavia and Soviet Union and the creation of new States.² Another group at risk of statelessness comprises children born in Italy to parents coming from a country where the laws do not permit them to confer nationality when the child is born abroad because of the provision of *jus soli* criterion. This is the case with children of nationals from Cuba, Chile and Paraguay. Stateless children are also born to persons coming from other countries or territories such as the Palestine, Tibet, Eritrea, Ethiopia and Somalia.³

This report analyses legislation and practice concerning the acquisition of Italian nationality by children born in Italy who are at risk of statelessness. It shows that Italian legislation provides a number of routes to ensure the reduction and the prevention of statelessness for children born on Italian territory. Nevertheless, the report also points out some legislative gaps and the persistence of certain shortcomings concerning the interpretation of the norms by the authorities. Moreover, as will be discussed further in this report, there is also a need for a comprehensive and organic reform of Italian legislation on citizenship to balance the general rule on acquisition of nationality based on *jus sanguinis* with the criterion of *jus soli* with a view to respond in a more adequate manner to changes in society.

¹ CIR, In the Sun, Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013, available at: http://www.cir-onlus.org/images/pdf/'In%20the%20sun'_CIR_last%20review_final.pdf; ASGI Project “Out of Limbo – Promuovere il diritto delle persone Rom prive di documenti e apolidi a uno status legale in Italia”, available at: <http://www.asgi.it/progetti/out-of-limbo-english-version/>

² CIR, In the Sun, Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013, available at: http://www.cir-onlus.org/images/pdf/'In%20the%20sun'_CIR_last%20review_final.pdf

³ UNHCR, Recommendations on the Relevant Aspects of the Protection of Stateless Persons in Italy, October 2014, http://www.unhcr.it/sites/53a16110b80eeaac7000002/assets/544f74360b80eed420001a74/Advocacy_paper_on_Statelessness_en.pdf; Paolo Farci, I migranti apolidi di Lampedusa, Giuffrè editore, 2014.

In terms of methodology, a stocktaking activity was conducted to collect International, European, and national legislation and existing policy documents, jurisprudence of international and domestic tribunals, the available academic sources, and institutional and non-governmental reports. Qualitative interviews with a variety of relevant stakeholders were then carried out. Finally, to better understand the main obstacles encountered in accessing nationality by stateless children born in Italy under different circumstances, some case studies were identified, each of them representing a specific critical aspect concerning the legislation and practices.

1. Statelessness in the national context

International obligations

Italy has ratified a significant number of international instruments which are relevant in the field of statelessness and citizenship, namely:

- 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
- 1951 Convention relating to the Status of Refugees
- 1954 Convention relating to the Status of Stateless Persons
- 1961 Optional Protocol to the Vienna Convention on Diplomatic Relations Concerning Acquisition of Nationality
- 1963 Optional Protocol to the Vienna Convention on Consular Relations Concerning Acquisition of Nationality
- 1963 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality
- 1964 ICCS Convention no.8 on the Exchange of Information concerning Acquisition of Nationality
- 1966 International Covenant on Civil and Political Rights
- 1966 International Convention on the Elimination of all Forms of Racial Discrimination
- 1967 Convention on the Adoption of Children
- 1979 Convention on the Elimination of all forms of Discrimination Against Women
- 1989 Convention on the Rights of the Child

Italy has signed, but not ratified, the 1997 European Convention on Nationality. **Italy is not currently a state party to the 1961 Convention on the Reduction of Statelessness – even though the Council of Ministries on 1 December 2014 has adopted a law proposal to accede to this Convention.** Moreover, Italy has not ratified the 1973 ICCS Convention no.13 to Reduce the Number of Cases of Statelessness or the 2006 Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.

In the national legislative framework, **the central instrument regulating the acquisition and loss of citizenship in Italy is Law n. 91 relating to “new norms on Italian citizenship”, which was adopted on 5 February 1992.** This Law has been partly modified during recent years, with the most important of these amendments introduced with Decree Law 69 of 21 June 2013 concerning “Urgent provisions for economic recovery” (converted by Law 98 of 9 August 2013 and entered into force on 20 August 2013). The

legislation on acquisition of Italian citizenship has been implemented through two Regulations, namely: Implementing Regulation adopted through the Presidential Decree 572 of 12 October 1993; and Implementing Regulation adopted through Presidential Decree 362 of 18 April 1994.⁴

With regard to birth registration, the relevant acts are the Italian Civil Code and the Regulation concerning the revision and simplification of Civil/Population Register System, adopted through the Presidential Decree 396 of 3 November 2000.

Decisions relating to the application of the nationality regulations are open to review. There are two different appeal procedures that can be followed, depending on what rule the dispute relates to. If the application for acquisition of nationality is presented by a foreign national under the naturalization procedure, then the competent judicial authority is an Administrative Tribunal (TAR) since the situation at stake is considered to amount to legitimate interest.⁵ In such cases, there is no agreement on whether the competent body is the TAR of the municipality which has denied the nationality or the TAR of Lazio where the Ministry of Interior is located. By contrast, on the basis of consolidated jurisprudence, for the refusal to grant nationality issued by a municipality in respect of an application filed on the ground of birth on Italian territory (*jus soli*) or marriage with an Italian national, the competence for judicial review of a negative decision lies with a civil Tribunal. In these cases, the acquisition of nationality is considered to be a subjective right and not a mere legitimate interest.⁶ In this regard, the Cassation court has ruled that “controversies concerning the acquisition of nationality are under the jurisdiction of the Civil Court since they relate to the status of the person”.⁷

2. Grant of nationality to otherwise stateless children born on the territory, or born abroad to an Italian national

Under Italian legislation on citizenship, the general rule on acquisition of nationality by children is mainly based on *jus sanguinis*, whereas the criterion of *jus soli* is applied “exclusively in a residual manner”.⁸ By virtue of the Citizenship Law 91/1992 “*An Italian national at birth (is) the individual whose father or mother is a national*”.⁹

⁴ Some issues related to the acquisition of nationality of otherwise stateless children and further specific details are provided by circulars issued by the Ministry of Interior – in particular, the following: Circular K.60.1 of 5 January 2007; Circular N. 22/07 of 7 November 2007; Circular n. 19 of 7 August 2009.

⁵ Administrative regional Tribunal of Campania (Section VI), application n. 17315, X.X. v. Ministry of Interior and others, 06 September 2010; Administrative regional Tribunal of Lazio, application n. 3419, 19 April 2011; Tribunal of Genova (Section X), case Al.Ny. v. Ministry of Interior and others, 29 November 2012; Tribunal of Imperia, application n. 1295/2011, 11 Spetember 2012; Administrative regional Tribunal of Lombardia (Section IV), case Ta.Rh. v. Ministry of Interior, 09 January 2014.

⁶ Administrative regional Tribunal of Lazio, application n. 3419, 19 April 2011; Tribunal of Genova (Section X), case Al.Ny. v. Ministry of Interior and others, 29 November 2012; Tribunal of Imperia, application n. 1295/2011, 11 September 2012.

⁷ Cassation Court, sentence n. 7614 of 9 March 2011, available at:

<http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snciv&id=/20110405/snciv@s10@a2011@n07614@tS.clean.pdf>

⁸ Circular K.60.1 of 11 November 1992.

⁹ Article 1 paragraph 1a of Law n. 91 of 5 February 1992 “*New norms on citizenship*”. See also EUDO Citizenship Observatory, Country Report Italy, January 2013, at p. 22, available at: http://www.eudo-citizenship.eu/images/docs/Italy_Citizenship_Report_update_2013%20AMENDED.pdf.

Although Italy has not ratified the 1961 Convention and albeit there is no general provision prescribing that all children born on the territory of the state have a right to nationality under the law if they would otherwise be stateless, **Italian legislation does set out safeguards for otherwise stateless children born on the territory to acquire nationality.**¹⁰ In particular the Law prescribes different routes to Italian nationality in order to reduce and to prevent that children born on Italian territory are otherwise stateless. It provides for the automatic acquisition of nationality upon birth when a child is born on Italian soil and both parents are unknown or stateless, or the child does not follow the citizenship of his/her parents in accordance with the laws of their State of origin. Moreover, Law 91/92 introduces an additional mode of acquisition of nationality upon application when the child born in Italy reaches the age of majority, subject to the fulfilment of some conditions.

Acquisition of Italian nationality at birth

Italian legislation provides for the **acquisition of nationality at birth under the jus soli criterion of otherwise stateless children born on its territory in certain delimited circumstances.** According to article 1 of the Law n. 91 of 5 February 1992 on New Provisions on Citizenship:

*“It is an Italian national at birth: (...) who is born on the territory of the Republic if both parents are unknown or stateless, or if the child does not follow the citizenship of his/her parents in accordance with the laws of their State of origin”.*¹¹

On this point, UNHCR deems that “such provision is in line with both the principle of the reduction of statelessness as set out in the 1961 Convention and with the right to acquire a nationality”.¹² However, in practice it is emphasized that “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 being registered as Italian nationals”,¹³ as will be explored below.

With regard to the first part, Italian nationality is recognized at birth to **the child whose parents are both unknown and who is found on the Italian territory.** However, a further requirement must be fulfilled: the law, in fact, prescribes that *“it has not been proven [that the person concerned] possesses any other citizenship”.*¹⁴

Under the second ground, a **child who is born on the territory of the Republic is also an Italian national at birth if both parents are stateless.** According to Article 1(b) of Law 91/92, Italian nationality is recognized at birth only to those children whose parents fall within the scope of article 1 (1) of the 1954 Convention

¹⁰ As discussed further below, this research has shown that the main difficulties concern the interpretation and application of the law in practice by the competent authorities.

¹¹ Article 1 paragraph 1b of Law n. 91 of 5 February 1992 “New norms on citizenship”.

¹² UNHCR, Recommendations on the Relevant Aspects of the Protection of Stateless Persons in Italy, October 2014, http://www.unhcr.it/sites/53a161110b80eeaac7000002/assets/544f74360b80eed420001a74/Advocacy_paper_on_Statelessness_en.pdf.

¹³ UNHCR, Recommendations on the Relevant Aspects of the Protection of Stateless Persons in Italy, October 2014, http://www.unhcr.it/sites/53a161110b80eeaac7000002/assets/544f74360b80eed420001a74/Advocacy_paper_on_Statelessness_en.pdf.

¹⁴ Article 1 paragraph 2 of Law n. 91 of 5 February 1992 “New norms on citizenship”.

and who must have been formally recognized as such through one of these routes.¹⁵ By contrast the law excludes all children born on Italian territory by stateless parents without a legal recognition.¹⁶ Italian legislation provides for two alternative modalities for the determination of the statelessness status: namely, an administrative procedure¹⁷ and a judicial one¹⁸. In practice, as underlined by stakeholders interviewed, very rarely are children registered as Italian nationals at birth because both parents have a certified stateless status.¹⁹ In fact, several challenges affect the right of stateless persons to have their status recognized. In particular, with regard to the administrative procedure, the main obstacle consists in the wide range of documentation required of these persons without giving due consideration to their situation and the effective difficulty in providing all documents. Another issue is the requirement of the residence in Italy.²⁰ These problems affect some Roma people living in Italy. As emerged in the survey carried out by CIR,²¹ the reason why many Roma people currently present on Italian territory find themselves in a situation of statelessness, which is then conferred to their children, derives from the fact that the collapse of the former Socialist Federal Republic of Yugoslavia brought about the automatic loss of Yugoslav nationality.²² When the new Balkan Republics were born, people who were living outside their country of origin were not automatically granted a “new” citizenship, for instance because they were not registered in the population registry or because they encountered difficulties in interacting with their authorities, yet they have also had difficulty having their stateless status established in Italy. Accordingly, their children could not acquire citizenship.²³

With a view to facilitate the access to the acquisition of Italian nationality and the enjoyment of this right laid down in Italian legislation for those children born in Italy to stateless parents who have been not formally recognized, it would be relevant to envisage that the procedure for the determination of the statelessness status of the parents is initiated and combined with the procedure of birth registration. In other words, municipal civil offices should indicate that the parents of the child concerned are stateless and

¹⁵In this case, at the moment of birth registration the parents have to present their stateless certificate to the population registry office, which sends all documentation to the citizenship office in charge of conferring the Italian nationality to the child. This procedure is quite fast and may take between one week and two months. Interview of 16 April 2015 with Citizenship Office of Rome Municipality; Interview of 3 April 2015 with the Citizenship Office of Turin.

¹⁶ CIR, “In the Sun” Project – Survey on the Phenomenon of Statelessness among Roma communities living in Italy”, February 2013, at p. 11-12, http://www.cir-onlus.org/images/pdf/In%20the%20sun%20CIR_last%20review_final.pdf.

¹⁷The administrative procedure for the determination of statelessness was established by Presidential Decree 572 of 12 October 1993. The Ministry of the Interior is the governmental body responsible for the certification of the status of statelessness. The applicant has to submit a specific application accompanied by the birth certificate; documents concerning the residence in Italy; any relevant document demonstrating the statelessness status, such as a declaration issued by the Consular Authority of the country of origin, or possibly of the last country of residence. For more details, CIR, In the Sun, Project – Survey on the Phenomenon of Statelessness among Roma communities living in Italy”, February 2013, at p. 11-12, available at: http://www.cir-onlus.org/images/pdf/In%20the%20sun%20CIR_last%20review_final.pdf.

¹⁸As far as the judicial procedure is concerned, even though it is generally accessible, there is no comprehensive procedural framework regulated by law. The judicial determination of statelessness status is carried out by the civil judge at ordinary courts since the issue is deemed a subjective right.

¹⁹Interviews with the Citizenship Office of the Municipality of Rome (16 April 2015); Bologna (23 March 2015); Turin (3 April 2015); Florence (10 April 2015); Naples (20 April 2015); Milan (24 April). These findings have been confirmed on 20 April 2015 by ANUSCA (National Association of officers of municipal population register Offices).

²⁰For more details, CIR, In the Sun, Project – Survey on the Phenomenon of Statelessness among Roma communities living in Italy”, February 2013, at p. 14-15, available at: http://www.cir-onlus.org/images/pdf/In%20the%20sun%20CIR_last%20review_final.pdf.

²¹Ibid, at p. 19-20.

²²This occurred on the basis of the rule of international law regarding treaties, which provides that “a/the State which succeeds the government of a territory is not bound by the agreements concluded by its predecessors”. Article 16 of the Vienna Convention on Succession of States in respect of Treaties of 1978, available at: <http://www.refworld.org/docid/3ae6b38518.html>.

²³CIR, “In the Sun” Project – Survey on the Phenomenon of Statelessness among Roma communities living in Italy”, February 2013, at p. 19-20, available at: http://www.cir-onlus.org/images/pdf/In%20the%20sun%20CIR_last%20review_final.pdf.

should refer the case to the Ministry of Interior. The latter should subsequently start the assessment to determine whether the parents are indeed stateless.

Merging/combining the procedure of determination of statelessness status and the procedure for the acquisition of Italian nationality at birth might contribute to reduce the length/delays, helping to identify situations of children that are or risk being stateless. Moreover, the responsibility to initiate the procedure for the determination of the parents statelessness and accordingly to determine whether the child acquires Italian nationality at birth under article 1(1)(b) of Law 91/92 lies, therefore, with the municipal civil registry offices instead of being left to the individual initiative/responsibility of the child's parents.

The last situation is where **children may be granted Italian nationality at birth when they “do not follow the citizenship of their parents in accordance with the laws of their country of origin”**.²⁴ In practice, this provision covers those children born in Italy to parents coming from a country where the laws do not permit them to confer nationality when the child is born abroad, for instance because of adherence to the *jus solis* criterion. As reported by the Municipalities of Rome, Bologna, Turin, Florence and Milan this is mainly the case with children whose parents come from Cuba, Chile and Paraguay. In this regard, UNHCR noticed the correct application of Art. 1(1)(b) of law 91/92 in particular with regard to children of Cuban nationals born in Italy.²⁵ Another example concerns those children whose father is unknown or do not officially recognize them and whose mother comes from a country where legislation does not entitle women to confer their nationality to their sons/daughters.²⁶

According to Regulation 572 of 12 October 1993 implementing Italian Law on Citizenship “the child born in Italy to foreign parents does not acquire the Italian citizenship at birth whenever the legislation of his/her parents country of origin provides for the transmission of nationality to the child born abroad”.²⁷ This rule also covers all cases where the legislation of the parents' country of origin additionally requests either a declaration of intent by parents or by the legal representative of the minor concerned or the fulfilment of administrative formalities to be accomplished by them.²⁸ However, Italian practice shows that there are situations in which the legislation of the parents' country of origin envisages the transmission of nationality to children born abroad, but various administrative or practical obstacles hamper this. In such cases, the minors are also unable to acquire Italian citizenship automatically at birth under Italian Law.

A specific, critical situation in this regard concerns children of persons coming from States created after the dismantlement of the Federal Republic of Yugoslavia, such as Serbia, Kosovo, Macedonia, Montenegro and Bosnia Herzegovina. A noteworthy example, which represents a common situation concerning a number of

²⁴ Article 1 paragraph 1a of Law n. 91 of 5 February 1992 “New norms on citizenship”.

²⁵ UNHCR, Recommendations on the Relevant Aspects of the Protection of Stateless Persons in Italy, October 2014, http://www.unhcr.it/sites/53a16110b80eeaac7000002/assets/544f74360b80eed420001a74/Advocacy_paper_on_Statelessness_en.pdf

²⁶ For an overview of nationality laws which do not provide for gender equality in conferring nationality to children, see UNHCR, Background note on Gender Equality, Nationality Laws and Statelessness, 6 March 2015, available at: <http://www.refworld.org/docid/54f8369b4.html>; see also: ISMU Foundation, Italian Report “Vecchio Continente... Nuovi Cittadini - Normative, dati e analisi in tema di cittadinanza”, http://www.libertaciviliimmigrazione.interno.it/dipim/export/sites/default/it/assets/pubblicazioni/analisi_comp._cittadinanza_rapporto_itaslia.pdf

²⁷ Article 2 of Presidential Decree 572 of 12 October 1993 adopting the implementing Regulation of Law 91/1992 on new norms on citizenship.

²⁸ Ibid.

Roma people, has been reported to CIR by the Citizenship Office of Rome Municipality.²⁹ The case was of a Roma woman born in the current Republic of Montenegro and possessing a Yugoslavian passport who gave birth to five children in Italy, three of them not formally recognized by their father, a citizen of Serbia.³⁰ CIR has analysed in its research “In the Sun” the reasons why **many Roma children born in Italy to nationals of new Balkan Republics do not acquire their parents’ State of origin’s citizenship**.³¹ It has emerged that often even though the parents - or at least one of them - are citizens of a State of the former Yugoslavia, their children born in Italy do not acquire their citizenship because of obstacles in the registration at the consulate of their country of origin or in gathering the required documentation such as their passports.³² In fact, some Balkan States such as the Republic of Serbia, in order to grant the nationality to children born abroad to their citizens, require parents to file an application to the competent consulate in Italy together with their passports, the certificate of birth of the minor issued by Italian authorities, and his/her registration in the population registry through the embassy.³³ In other instances parents face difficulties in obtaining a passport since some Consulates issue passports only to citizens regularly staying in the host country,³⁴ or in getting identification documents in the State of origin because of hurdles for undocumented people to cross borders.³⁵ Furthermore, some undocumented parents also do not register their children at the country of origin consulate since they fear that registration would facilitate their children’s deportation,³⁶ as well as due to their lack of information, interest and negligence. CIR has also recorded situations where consular authorities do not explicitly reject the demand to recognize as citizen a child born in Italy to its national, but rather do not provide any reply to the parents concerned.

On this point UNHCR in its Guidelines on Statelessness N. 4 recommends that “Contracting State must accept that a person is not a national of a particular State if the authorities of that State refuse to recognize that person as a national. A State can refuse to recognize a person as a national either by explicitly stating that he or she is not a national or by failing to respond to inquiries to confirm an individual as a national”.³⁷ To sum up, as reported by Italian municipalities interviewed, **in practice a child born in Italy to foreign parents may acquire Italian nationality at birth under article 1(1)(b) of Law 91/92 only if it is demonstrated through supporting documentation such as a declaration of the diplomatic authority concerned that (s)he cannot acquire his/her parents’ country of origin nationality by operation of law**.³⁸

²⁹ Interview of 16 April 2015 with Mrs. Alessandri, the responsible of the Citizen Office of the Rome Municipality.

³⁰ Due to the complexity of the case, the intervention of Ministry of Interior was requested, where it is has since been pending for several months.

³¹ CIR, In the Sun, Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013, available at: http://www.cir-onlus.org/images/pdf/'In%20the%20sun'_CIR_last%20review_final.pdf

³² CIR observed an extreme difficulty of citizens from Serbia, Montenegro, Bosnia Herzegovina in registering their children at consulates of their country of origin. For a more in-depth analysis see: CIR, In the Sun, Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013, available at: http://www.cir-onlus.org/images/pdf/'In%20the%20sun'_CIR_last%20review_final.pdf These findings have been also reported by Elena Rozzi, lawyer of ASGI, interviewed by CIR on 8 April 2015.

³³ CIR, In the Sun, Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013, available at: http://www.cir-onlus.org/images/pdf/'In%20the%20sun'_CIR_last%20review_final.pdf

³⁴ Ibid.

³⁵ ASGI Project “Out of Limbo – Promuovere il diritto delle persone Rom prive di documenti e apolidi a uno status legale in Italia”, available at: <http://www.asgi.it/progetti/out-of-limbo-english-version/>

³⁶ Ibid.

³⁷ UNHCR, GUIDELINES ON STATELESSNESS NO. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, paragraph 19, at p. 5.

³⁸ Interview of 3 April 2015 to the Citizen Office of Turin; Interview of 16 April 2015 to Citizenship Office of Rome Municipality; Interview of 24 April 2015 to Citizenship Office of Milan Municipality. However, as reported by Citizenship office of Rome, in a very limited number of cases the Ministry of Interior has been asked to express a positive opinion with a view to granting Italian citizenship under Article 1b of Law 91/92 to children of undetermined nationality, who cannot acquire the nationality of the country of origin’s parents even though such legislation provides for the transmission of citizenship.

Determination of the non-possession of any foreign nationality and acquisition of Italian nationality at birth

The authority in charge of determining whether a child born in Italy does not possess any foreign nationality and falls under article 1(1)(b) of Law 91/92 granting Italian nationality at birth by virtue of *jus soli* principle is the Municipality, acting on behalf of the Government. In big cities such as Rome, Milan, Turin, Florence usually this function is performed by the citizenship department of the Population Register Office. The following table shows the number of cases in which citizenship was granted by the Municipality of Rome under Art. 1(1)(b) of the law:³⁹

Year	Number of cases granted nationality (and origin of parents)
2012	4 (1 Egypt; 3 Cuba)
2013	1 (Paraguay)
2014	6 (3 Paraguay; 1 Cuba; 2 stateless) <i>5 cases still pending (Former Yugoslavia)</i>

Although Italian legislation provides that a child born on Italian territory to stateless parents or who does not follow their citizenship in accordance with the laws of their State of origin is an Italian national *at birth*, the acquisition of Italian nationality under article 1(1)(b) of Law 91/92 is not automatic, but requires a procedure to be initiated by the parents of the child concerned.

During the first phase, which consists of the mere registration of the birth, parents are requested to provide a declaration of birth and an identification document – generally a permit of stay or a passport.⁴⁰ Undocumented migrants may resort to using two witnesses. At this point of the procedure the child is registered with the nationality of his/her parents on the basis of their alleged origin.⁴¹ In situations of statelessness, undetermined/uncertain nationality, or cases where parents may not transmit their citizenships due to country of origin’s legislation, parents must be proactive in filing a formal request for the acquisition of Italian nationality at birth of their children to the municipal Citizenship Office, which accordingly register the dossier. Practice shows that the parents are always required to provide a declaration by their country of origin embassy stating that the child concerned is not its national under domestic law.⁴² **Where sufficient evidence cannot be provided, the child will not be able to be recognized as an Italian national, even if he or she has not, in fact, secured another nationality in practice.**

³⁹ Information received from the Municipality of Rome, May 2015.

⁴⁰ The Population Registration Office of Rome reported to CIR in an interview of 16 April 2015 that in practice they also accept expired documents since the registration of every child at birth is compulsory by law.

⁴¹ In practice, in several Population Registration Office such as Rome, Milan, Turin, Reggio Calabria and Bologna, the child is temporarily registered at birth with an assumed nationality on the basis of that of his/her parents. In some cases where parents have no documents, stakeholders reported that population register officers record the child relying on place of birth of the parents.

⁴² Interviews with Ms. Alessandri, Director of the Citizenship Office of the Municipality of Rome (16 April 2015); the Citizenship Office of the Municipality of Bologna (23 March 2015); Turin (3 April 2015); Naples (20 April 2015); Milan (24 April 2015). These findings were confirmed on 20 April 2015 by ANUSCA (National Association of officers of municipal population register Offices).

Subsequently, the municipal Citizen Office refers the case to the Ministry of Interior demanding to carry out an evaluation of the foreign legislation and to assess whether there is the possibility to grant Italian citizenship to the child concerned under article 1(b) of Law 91/92.⁴³ During the research it has emerged that some municipalities accept only applications from citizens whose country of origin grants nationality exclusively under the jus soli criterion.⁴⁴ Whereas, other municipalities such as Rome and Milan register and forward to the Ministry of Interior for an individual assessment also applications where parents might transmit their citizenships to their children by virtue of their country of origin's legislation, but this is hampered by administrative/bureaucratic hurdles and the child concerned risks, therefore, to find himself/herself in a situation of statelessness.⁴⁵

Another major challenge concerns the lack of information provided by the authorities, in particular by the municipalities at the moment of birth registration, to parents with regard to the possibility for otherwise stateless children to be granted Italian citizenship immediately at birth under the circumstances laid down in the law.

Rosa's story

Rosa and her husband are both nationals of Cuba. They have been living in Italy for about 9 years. In 2013, they had a daughter. With their daughter's birth, they started to deal with the problems linked to the citizenship transmission. When Rosa registered her daughter to the Cuban embassy, nobody told her that her daughter had no direct right to Cuban citizenship. No one explained her that the only way to obtain Cuban citizenship would have been to stay three months on Cuban soil with her daughter. Rosa and her husband have never questioned their daughter's claim to citizenship, because they did not know all the specific details linked with the Cuban law and were therefore unaware of the fact that the transmission was not provided unless specific conditions were met. So after the birth of the child, Rosa proceeded with her registration at the Cuban embassy, then she translated the birth certificate and after that she had to update her permit of stay inserting in it her daughter's information. Although Rosa and her husband recorded their daughter's birth at the municipality in which they are resident, they never thought about the possibility that she could have been stateless since at the municipality, the little girl was recorded as having Cuban citizenship.

It was not until many months later, when Rosa wanted to visit Cuba to deal with some family issues and approached the embassy to obtain a passport for her daughter that she was told that her daughter was not considered a Cuban citizen. Moreover, the embassy also specified that their case was considered one of the few specific cases in which children born on the Italian territory could apply for Italian citizenship. The

⁴³ The Ministry of Interior examines the dossiers, contacts the concerned embassy and gives an opinion. Even though the recognition of Italian nationality at birth is an act of Municipalities, in practice they comply with the evaluation of the Ministry of Interior. Interviews with the Citizenship Office of Rome (16 April 2015); Turin (3 April 2015); Naples (20 April 2015); Milan (24 April 2015); ANUSCA - National Association of officers of municipal population register Offices (20 April 2015).

⁴⁴ Municipalities, in fact, make reference to a list of countries whose legislation do not envisage the transmission of nationality to children born abroad and consider admissible only these applications. This is for instance the case of the municipality of Turin: Interview of 3 and 20 April 2015 with the Citizen Office of Turin.

⁴⁵ Interview with the Director of the Citizenship Office of Rome (16 April 2015); Interview with the Director of the Citizenship Office of Milan (24 April 2015).

embassy also explained to Rosa that there also were cases of children who have obtained the citizenship after 15 days from the request. Once Rosa learned about the possibility of proceeding with the request for Italian citizenship, she started to gather information and went to the municipality bringing with her the text of law on citizenship (article 1 paragraph b of the law n. 91, 1992), a letter written by her and her husband in which they requested the Italian citizenship for their little girl (explaining the reasons related to the Cuban law on citizenship) and a letter of the Cuban embassy in which the lack of Cuban citizenship was certified.

At first, Rosa had to face several obstacles. Indeed, the municipal officials focused on the fact that her daughter had to wait until majority to proceed with the application for Italian citizenship. Rosa's case was the first case of Cuban citizens with a daughter who was born in Italy, which is why the officials of the town did not know how to proceed. So Rosa pointed out what was specified in the Italian legislation and showed them the certificate of the Cuban embassy in order to prove that her daughter's was a special case, according to the law. After this, the municipality forwarded the request to the Interior Ministry. Rosa says that the municipality officer who followed her case has been very professional and regularly followed up with the Ministry of the Interior until they had the positive answer. After five months, Rosa's daughter was confirmed as having Italian citizenship.

Despite the lack of initial information, fortunately they were able to obtain citizenship in a short time and since the little girl is still very young, Rosa did not have to go through other problems related to her daughter's "temporary" lack of citizenship. The only real challenge encountered had been the lack of information. Rosa explained:

"It is always the same story...the lack of information is a big problem! Not the municipality neither the embassy told me anything about the possibility of proceeding with the request for the Italian citizenship and about the fact that my daughter could not receive the Cuban citizenship. That is why I always say that in my case the lack of information has involved both sides...both the Italian part that the Cuban one [...] I did everything by myself, I tried to do my best to reach all the information that I needed to proceed with the request. At the beginning I have not found anyone able to give me a proper answer. I went to the municipality several times a week to try to better understand my situation. I have also tried to find through the internet other people with the same problems. I think that some little changes could improve these kind of situations: I would recommend to municipalities to automatically recognize the child as an Italian national at birth where his/her parents come from countries whose legislation does not provide for the transmission of citizenship, without the need of initiate this long, complex procedure"

Since she has obtained the Italian citizenship for her daughter, Rosa has been contacted by another couple who had the same situation with their son, living in Naples. Unfortunately, after 7 months, they are still awaiting a response from the Ministry.

A last critical aspect of the acquisition of Italian nationality at birth under article 1(b) of Law 91/92 relates to the length of the procedure. It usually takes between some weeks up to several months, depending on the complexity of the case as well as the slowness of authorities in taking a final decision on applications.⁴⁶

Acquisition of Italian nationality upon application at the age of majority

In addition to situations where nationality is granted at birth, **Italian legislation provides as safeguard another mode of acquisition of nationality based on a conditional *jus soli* criterion for otherwise stateless children who, albeit born on Italian territory do not acquire Italian citizenship at birth** since they do not fall in the legal situations enshrined in Article 1 of Law 91/92.⁴⁷ This rule applies, for instance, to the case of children born in Italy who are stateless since they have undetermined nationality or because their parents find themselves in a condition of effective stateless without, however, being formally recognized as such by Italian authorities through either the judicial or administrative procedure. In this case the acquisition of nationality is subject to an application procedure. By virtue of Article 4 paragraph 2 of Law n. 91/1992, “the foreign person born in Italy, who has been legally resident without interruption on its territory until the age of majority, becomes a national upon application, filed within one year from turning 18, where (s)he expresses the willingness to acquire Italian citizenship”. **A first condition to be fulfilled is thus a formal requirement, namely the submission of an application (“*dichiarazione di volontà*”)⁴⁸ to the competent authority by the age of 19.**

The restricted timeframe prescribed by law within which children born to foreign parents and resident in Italy until the age of majority have to file their application have represented for years an important obstacle that hindered the acquisition of Italian nationality under the *jus soli* procedure. In fact, practice showed that for several reasons,⁴⁹ such as in particular a lack of information, many children when they turned 18 years did not apply for Italian citizenship, risking as a consequence to be stateless and to be expelled in case they did not have any regular permit of stay. In order to contribute to reduce this issue, the 2013 “Decreto del Fare” amending law 91/92 has introduced a provision which specifies that “Population register officers have, during the six months preceding the age of 18, to communicate to the child the possibility to exert his/her right to acquire Italian citizenship under the procedure laid down in article 4 paragraph 2 of Law 91/1992”.⁵⁰ In the Municipality of Rome, between 20 August 2013 (entry into force of this Decree) and the end of 2014, 639 letters were sent to inform children born in Italy to foreign parents about the possibility to apply for Italian citizenship. 499 children to whom the letters were sent became Italian (2 cases were rejected and 138 persons did not present themselves at the Citizenship office in order to file their application). Furthermore, where this communication has not been notified, the mentioned

⁴⁶ Several municipalities have pointed out that cases are pending at the Ministry of Interior for months, or even more than a year, and they often have to insist in obtaining the resolution of the case submitted. Interview of 16 April 2015 with Citizenship Office of Rome Municipality; Interview of April 2015 with the Citizen Office of Turin; Interview with the Director of the Citizenship Office of Milan (24 April 2015).

⁴⁷ Article 4 paragraph 2 of the Law 91/1992. This general rule applies to all those children born in Italy of non-national parents who do not fall under the conditions provided by article 1 of Law 91/1992 for acquisition of nationality at birth and who fulfil the conditions set out in article 4 paragraph 2 of the Law 91/1992.

⁴⁸ Article 4 paragraph 2 of the Law 91/1992, read in conjunction with article 3 paragraph 4 of the implementing Regulation 572 of 12 October 1993.

⁴⁹ This information has been gathered thanks to the experience of ASGI and of CIR, which have specific knowledge of the problems of children belonging to the Roma community that have difficulty in filing the application for acquisition of Italian nationality due to both lack of information as well as reluctance in approaching institutional actors such as the police.

⁵⁰ Decree Law 69 of 21st June 2013 concerning “urgent provisions for economic recovery”, known as “Decreto del Fare”, converted by Law 98 of 9 August 2013 and entered into force on 20 August 2013; available at: <http://www.gazzettaufficiale.it/eli/id/2013/08/20/13A07086/sg>.

right may be exercised even after the age of 19 provided by the law.⁵¹ Nevertheless, it is of utmost importance that Italian law sets a deadline to receive application ending not earlier than the age of 21 in accordance with international standards (art. 1.2a of 1961 Convention) and UNHCR Guidelines n. 4. This would “ensure that individuals born in Italy who would otherwise be stateless have a window of at least three years after majority within which to lodge their application”.⁵²

Djana’s story

Djana was born in Rome in September 1994. She holds a certificate of birth issued by the population register office of the municipality of Rome. She is the fifth daughter of six children of a Roma family coming from the Former Yugoslavia at the beginning of ‘90s. Her mother is a citizen of Bosnia Herzegovina. By contrast, her father is a stateless person, born under the Republic of Yugoslavia and allegedly originating from Croatia. He was never registered in his country of origin and has never had either any identification document or a passport.

Djana was born with a mental disability, which was aggravated by physical abuse and violence carried out by her parents. She lived with her family in a settlement in Rome until the age of 12. During this time she found herself in an undocumented condition. She did not attend school, but her presence on Italian territory is backed by vaccination and medical certificates of a hospital in Rome. She was also assisted by some social workers of the NGO in charge of monitoring and providing social assistance to Roma children of the camp. In 2006, she was put under the care of a social assistant of the Rome municipality and accommodated in a children’s house (“casa famiglia”), where the caseworkers and the head of this reception structure took care of her with regard to legal, social, medical and psychological aspects and elaborated an integration path into Italian society.

In 2006 Djana obtained her first permit of stay – a special one for minors⁵³ - thanks to the commitment of the head of the children’s centre where she was hosted. Moreover, Djana was immediately enrolled in school. In 2012, before Djana turned 18, the head of the children’s home where she was accommodated, knowing that her permit of stay for minor age was expiring, asked some stakeholders - such as the social assistant of the municipality of Rome and Police personnel – for information about the best legal option for Djana to stay on Italian territory. To track down her status, the social assistant forwarded a request for information to the embassy of the countries of origin of Djana’s parents. However, the diplomatic authorities of Croatia replied issuing a formal declaration in which it was reported that Djana was not a citizen, while the embassy of Bosnia Herzegovina did not answer.

Even though Djana was supported by the head of the children home, she had no adequate legal assistance by the actors in charge of juridical issues, in particular her guardian and her social assistant – they had limited information about the procedure for accessing Italian citizenship. Moreover Djana experienced a

⁵¹ Ibid.

⁵² UNHCR, GUIDELINES ON STATELESSNESS NO. 4: Ensuring Every Child’s Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, 21 December 2012, paragraph 38-39 at. P. 9.

⁵³ Article 28(1)(a) of the Presidential Decree no. 394/1999, which implements the T.U. Immigration. Circular of the Ministry of Interior (Public Security Department) n. 300//C/2000/785/P/12.229.281/1DIV, of the 13 November 2000 on the residence permit for minor age.

degree of absence of expertise of institutional entities dealing with issues concerning migration and citizenship. In particular, once she was accompanied to the Police office to renew her document and on that occasion, she was told that she could not apply for Italian citizenship because her grave mental disability prevented her to take oath. She was told that her illness was an impediment for proceeding to request Italian nationality, accordingly she did not even file her demand between 18 and 19 years old as prescribed by Italian Citizenship Law 91/92.

Improvements that were brought into the law in 2013,⁵⁴ providing that “the Population register office has, during the six months preceding the age of 18, to communicate to the child the possibility to exert his/her right to acquire Italian citizenship under the procedure laid down in article 4 paragraph 2 of Law 91/1992”. This, unfortunately, was too late for Djana, who had already missed the deadline. At present, she has a permit of stay for humanitarian protection where it is reported that she was born in Italy, but she is a Bosnian citizen. She receives a disability allowance and continues to live in a centre for disabled persons.

In order to acquire Italian nationality **the second condition to meet, as provided by article 4 paragraph 2 of Citizenship Law 91/1992, is the legal residence (“*residenza legale*”) from birth to the age of 18, without interruptions.** The definition of “legal residence” is provided by Italian legislation, which states that “in order to acquire Italian citizenship it is considered legally resident on the territory of the State the person who has resided [on Italian territory] satisfying the conditions and obligations set out by norms regarding the entry and stay of foreigners in Italy and those relating to birth registration”.⁵⁵ Thus, according to a literal interpretation of the norm, the person concerned has to demonstrate to hold, since his/her birth on Italian territory, a regular permit of stay – included in that of his/her parents – and his/her registration certificate at the Population registry office of the municipality of residence.⁵⁶ This provision differs from the 1961 Convention, where “habitual residence” in the territory of the State may be prescribed, not exceeding five years immediately preceding the lodging of the application nor ten years in total.⁵⁷

The fulfilment of the legal residence requirement represents an obstacle in the acquisition of Italian nationality, especially until 2013. However, over the past few years some improvements have been introduced in order to overcome this shortcoming. A more flexible interpretation of the requirement of legal residence has been developed through some ministerial circulars and recent jurisprudence, and in particular through Law Decree 69 of 21 June 2013, which has partly amended the Citizenship legislation. Already in 2007, Ministry of Interior circular n. 22 emphasized the need to read the criteria for proving the legal residence in a manner which better responded to the current social context.⁵⁸ This circular specifies that late registration of the child in the civil register does not compromise the acquisition of Italian citizenship, where there exists documentation proving the effective presence of the child on national soil

⁵⁴ Decree Law 69 of 21st June 2013 concerning “urgent provisions for economic recovery”, known as “Decreto del Fare”, converted by Law 98 of 9 August 2013 and entered into force on 20 August 2013; available at: <http://www.gazzettaufficiale.it/eli/id/2013/08/20/13A07086/sg>

⁵⁵ Article 1 paragraph 2a of Presidential Decree 572 of 12 October 1993 adopting the implementing Regulation of Law 91/1992 on new norms on citizenship.

⁵⁶ Ministry of Interior, Circular N. 22/07 of 7 November 2007, at p. 2, available at: http://www.meltingpot.org/IMG/pdf/Circolare_cittadinanza.pdf

⁵⁷ Article 1 paragraph 2b of the 1961 Convention on the Reduction of Statelessness. It must be recalled, however, that at present Italy is not yet a Contracting Party of the 1961 Convention, being therefor not bound by its provisions.

⁵⁸ Ministry of Interior, Circular N. 22/07 of 7 November 2007, at p. 2, available at: http://www.meltingpot.org/IMG/pdf/Circolare_cittadinanza.pdf

during the period preceding his/her regularization such as *inter alia* vaccination and other medical certificates.⁵⁹ It also clarifies that in order to facilitate the possibility to prove a continuous permanence on Italian territory, in case of a short interruption in holding a permit of stay, the child concerned may provide integrative documentation such as school, medical, and other certificates.⁶⁰

Some national courts have also ruled that for the purpose of the acquisition of Italian nationality based on *jus soli* criterion it is sufficient to prove the continuous *de facto* presence of the child concerned on national territory in accordance with the Italian Civil Code.⁶¹ On this point, the Reggio Emilia Civil Tribunal, in its decision of 31 January 2013, underlined that the reasoning behind the legal residence requirement as enshrined in the 91/1992 Law on citizenship is the effectiveness, namely the actual presence of the child on Italian territory until the age of 18, regardless of the existence of some period where (s)he was not registered.⁶² Similarly, the Civil Tribunal of Imperia has provided that “in order to fulfil the legal residence requirement it is sufficient to prove that the child concerned is born and has continuously lived in Italy, since the purpose of the norm is to facilitate the acquisition of citizenship by persons who are likely to be fully integrated in the Italian social, economic and cultural context”.⁶³ Accordingly, the assessment of the effective residence of the child on Italian territory between his/her birth and the age of 18 must be carried out on the basis of all elements at the child’s disposal, such as registry certificates, vaccination, medical, school certificates.⁶⁴ In addition, the Tribunal of Pordenone has pointed out that “the child has the right to stay in Italy *ex se*, that is regardless the situation of legality of his/her parents, where (s)he is born on the Italian territory and where there are no reasons of public order which justifies an expulsion”.⁶⁵

In 2013, with a view to simplify the procedure of acquisition of citizenship by children born in Italy to foreign parents and to incorporate in national legislation some key principles established during last years in the mentioned circulars and jurisprudence, a Decree amending the Italian legislation on citizenship was adopted.⁶⁶ Specifically, article 33 of this decree lays down two important principles, namely it provides that “negligence/default attributable to parents or to offices of the Public Administration shall not be imputable to the child concerned” and that “the child can demonstrate to fulfil the requirements prescribed by Italian

⁵⁹ It has been highlighted, in fact, in the circular, that a more flexible interpretation of the concept of “legal residence” as laid down in Article 4 paragraph 2 of the Law 91/1992 is needed in order to avoid that negligence or delay by the parents in registering their children (which are not attributable to the child) affects the latter. Ministry of Interior, Circular N. 22/07 of 7 November 2007, at p. 2, available at: http://www.meltingpot.org/IMG/pdf/Circolare_cittadinanza.pdf

⁶⁰ *Ibid.*

⁶¹ Article 43 of the Italian Civil Code provides that “the residence is the place where the person has his/her habitual residence”, available at: <http://www.altalex.com/index.php?idnot=34801>. See for instance: Civil Tribunal of Pordenone, decision n. 492/2012 of 13 July 2012, available at: <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2013/marzo/trib-pordenone-cittad.html>; Civil Tribunal of Florence, decision n. 2913/13 of 12 April 2013, available at: <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2013/aprile/trib-fi-cittadinanza.pdf>; Appeal Court of Naples, judgment n. 1486/12 of 26 April 2012, available at: <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2012/settembre/corte-app-na-cittad.pdf>

⁶² Reggio Emilia Civil Tribunal (First Section), decision n. 6448/2012 of 31st January 2013, available at: <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2013/marzo/trib-re-cittadinanza.pdf>; Tribunal of Milan (First Civil Section), sentence N. R.G. 80677/2012, of 29 January 2015, at p. 9, available at: http://www.piemonteimmigrazione.it/mediato/images/news_materiali/Sentenza_Tribunale_Milano_cittadinanza.pdf

⁶³ Civil Tribunal of Imperia, Decision, n. 1295/2011 of 10 September 2012, at p. 3, available at: <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2013/febbraio/trib-imperia-cittad.pdf>

⁶⁴ Civil Tribunal of Imperia, Decision, n. 1295/2011 of 10 September 2012, at p. 4, available at: <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2013/febbraio/trib-imperia-cittad.pdf>

⁶⁵ Civil Tribunal of Pordenone, decision n. 492/2012 of 13 July 2012, at p. 3, available at: <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2013/marzo/trib-pordenone-cittad.html>;

⁶⁶ Decree Law 69 of 21st June 2013 concerning “urgent provisions for economic recovery”, known as “Decreto del Fare”, converted by Law 98 of 9 August 2013 and entered into force on 20 August 2013; available at: <http://www.gazzettaufficiale.it/eli/id/2013/08/20/13A07086/sg>

citizenship legislation through every suitable documentation”.⁶⁷ On this point, a recent sentence of the Tribunal of Milan - concerning an appeal against the refusal to recognize the acquisition of Italian citizenship filed by a person born on Italian territory to foreign nationals who were in an irregular condition for a certain period of time – emphasised that “the requirement of regular stay in Italy of parents is not a condition prescribed by the law in order to acquire Italian citizenship”,⁶⁸ therefore the lack of a legal residence of parents cannot be deemed an impediment for the child concerned.⁶⁹ The Tribunal has, accordingly, recalled that “article 33 of the Decree Law 69/2013 aims at neutralizing eventual administrative deficiencies concerning the legal situation of the parents of a child born in Italy”.⁷⁰

Acquisition of Italian nationality at the age of majority in practice: improvements and remaining gaps

Prior to 2013, as reported by several Municipalities who are the authority competent for recognizing nationality for otherwise stateless children born on Italian territory, the requirement of legal residence was a considerable obstacle in recognizing Italian nationality. In fact, they had to strictly comply with the law, which imposed the fulfilment of the twofold condition: the registration of the child born on Italian territory since birth in the Population registry and a regular, uninterrupted permit of stay until the age of majority. The absence of an official registration at the local population register, despite the possession of a valid permit of stay, entailed the rejection of the citizenship demand *ex* article 4(2) of Law 91/92 because of non-fulfilment of legal residence.⁷¹ Despite the rigidity of domestic legislation, some municipalities, due to their exclusive discretion in this matter and referring to certain Ministerial circulars, were inclined to recognize Italian citizenship to children even when a short period of lack of regular permit of stay occurred. However, the registration of the child at the Population Registry Office since birth and sufficient documentation demonstrating the effective, continuous permanence of the child in Italy until the age of 18 were still required.⁷² In contrast, other Municipalities adopted restrictive interpretation of the law, refusing to grant Italian citizenship to children born and legally resident in Italy that stayed undocumented for limited periods.⁷³

After 2013, as reported by all municipalities and experts interviewed, a noteworthy improvement has been introduced with the so-called “*Decreto del Fare*”. Practice shows⁷⁴ that Municipalities apply the concept of

⁶⁷ Decree Law 69 of 21st June 2013 concerning “urgent provisions for economic recovery”, converted by Law 98 of 9 August 2013 and entered into force on 20 August 2013; available at: <http://www.gazzettaufficiale.it/eli/id/2013/08/20/13A07086/sg>

⁶⁸ Tribunal of Milan (First Civil Section), sentence N. R.G. 80677/2012, of 29 January 2015, at p. 8, available at: http://www.piemonteimmigrazione.it/mediato/images/news_materiali/Sentenza_Tribunale_Milano_cittadinanza_.pdf

⁶⁹ *Ibid*, at p. 9.

⁷⁰ *Ibid*.

⁷¹ Some municipalities, such as Milan, Naples, Rome and Turin, reported situations where the child has been granted Italian citizenship because even though (s)he was not registered at the Population Register office immediately after birth, one of his/her parents was regularly enrolled in that Registry.

⁷² Interview with the Citizenship Office of the Municipality of Rome (16 April 2015); Interview with the Citizenship Office of the Municipality of Milan (24 April 2015); Interview with the Citizenship Office of the Municipality of Bologna (23 March 2015).

⁷³ ASGI Project “Out of Limbo – Promuovere il diritto delle persone Rom prive di documenti e apolidi a uno status legale in Italia”, available at: <http://www.asgi.it/progetti/out-of-limbo-english-version/>; Interviews with the Citizenship Office of the Municipality of Turin (3 April 2015) and Florence (10 April 2015).

⁷⁴ Interviews with the Citizenship Office of the Municipality of Rome (16 April 2015); Bologna (23 March 2015); Turin (3 April 2015); Florence (10 April 2015); Milan (24 April 2015). This finding has been confirmed by Elena Rozzi, lawyer of ASGI, during her interview with CIR on 9 April 2015.

legal residence in a significantly less restrictive manner. They underlined that **since August 2013⁷⁵ the rate of positive recognition of Italian nationality of children born to foreign parents increased up to 85-95% among those filing an application when turning 18;⁷⁶ whereas the percentage of negative decisions remarkably diminished.⁷⁷**

In Rome, between February 2014 and March 2015 just three negative decisions have been registered.⁷⁸ The following table offers an overview of the number of children granted nationality by the Municipality of Rome upon reaching 18:⁷⁹

Year	Number of cases
2012	250
2013	147
2014	483

In practice, the municipalities of Naples, Rome, Turin, Florence, Bologna and Milan emphasized that in order to recognize Italian nationality to a child born in Italy to foreign parents it is sufficient that the child concerned holds a valid permit of stay and is registered at the population registry at the moment of filing the declaration of willingness to acquire Italian citizenship, and that (s)he may prove with any kind of documentation to have effectively lived in Italy.⁸⁰ In this regard, ASGI⁸¹ has reported three cases of children born in Italy to foreign parents who could obtain Italian citizenship (in Milan, Rome and Turin) even though from birth to their majority age they have neither been regularly resident on Italian soil nor enlisted in a municipal Population Registry. They just registered themselves at the Population Register Office shortly before filing the declaration to acquire Italian citizenship, when they were between 18 and 19 years old since they got either the valid permit of stay⁸² or a passport of their parents' country of origin.

⁷⁵ The 20 August 2013 is the date when the Decree Law 69 of 21st June 2013 concerning "urgent provisions for economic recovery" converted by Law 98 of 9 August 2013, entered into force.

⁷⁶ According to data provided to CIR by ANUSCA (National Association of officers of municipal population register Offices), where in 2013 the positive decisions on the recognition of Italian citizenship amounted to 137, in 2014 due to the safeguards introduced by Decree Law 69/2013 the total number increased four times, attaining the figure of 481.

⁷⁷ Interviews with the Citizenship Office of the Municipality of Rome (16 April 2015); Bologna (23 March 2015); Turin (3 April 2015); Florence (10 April 2015); Naples (20 April 2015); Milan (24 April 2015). These findings have been confirmed by lawyer Elena Rozzi (ASGI) on 8 April 2015 and by ANUSCA (National Association of officers of municipal population register Offices) on 20 April 2015.

⁷⁸ Interview with Ms. Alessandri, Director of the Citizenship Office of the Municipality of Rome on 16 April 2015. The first case concerns a Roma person whose application was considered inadmissible since he could not register himself at the population registry, even shortly before submitting the declaration of willingness to acquire Italian citizenship, due to the lack of a permit of stay. The other two cases are situations of untraceable persons, whose dossier could not be assessed since even though they lodged the application they did not present themselves for interview. On the other hand some rejections have been issued since - as underlined by some municipalities (Rome, Bologna) and experts (ANUSCA) - in some cases, even though children had a legal residence as provided by law, they could not demonstrate the crucial requirement, namely the effective, extended/continuous permanence on Italian territory since their parents soon after their birth or subsequently brought them back to their country of origin for the whole schooling.

⁷⁹ Information received from the Municipality of Rome, May 2015.

⁸⁰ Interviews with the Citizenship Office of the Municipality of Rome (16 April 2015); Bologna (23 March 2015); Turin (3 April 2015); Florence (10 April 2015); Naples (20 April 2015).

⁸¹ Interview with Elena Rozzi, lawyer of ASGI, on 9 April 2015.

⁸² This is the case of one man whose parents have Serbian origins.

Notwithstanding the considerable improvements introduced by the Decree Law 69/2013, some obstacles still persist in the acquisition of Italian citizenship under *jus soli* ex. Article 4(2) of the Law 91/92. A first point of concern relates to those children born in Italy and effectively resident on Italian territory from birth until 18, who do not hold a regular permit of stay during the year prescribed by law for declaring the willingness to acquire Italian citizenship. In order to lodge an application for the acquisition of Italian citizenship at the competent Municipality, in fact, a compulsory registration at the local population register office is always required – the so-called “*iscrizione anagrafica*” - which can be carried out only in case of possession of a regular permit of stay. Accordingly, **the application of all those persons who cannot be enrolled in the population register office is declared inadmissible by the municipal Citizenship Office.**⁸³

An important means of solving the problem of holding a regular permit of stay and, accordingly, in facilitating the acquisition of Italian citizenship when reaching the age of majority, might be provided by issuing a permit of stay based on the right to respect for private and family life as enshrined in article 8 of the European Convention of Human Rights. In this regard, the European Court of Strasbourg has recalled in the case *Hamidovic v. Italy* that “decisions taken by States in the field of immigration may, in some cases, represent an interference with the right to respect for private and family life guaranteed by article 8(1) of the European Convention, especially when the persons concerned have, in the host State, personal and family ties which are sufficiently strong and which risk to be seriously compromised in case of adoption of an expulsion measure”.⁸⁴ Even though the Italian legislation does not provide for a specific norm in this regard, the Immigration Consolidated Act prescribes that the Questore (chief of police) issues a permit of stay on humanitarian reasons *in those cases where the foreign person does not fulfil the requirements for entry and stay but where such document cannot be refused or revoked because of serious humanitarian reasons or due to international or constitution obligations upon Italian State.*⁸⁵ As underlined by ASGI, safeguarding the right to private and family life laid down in article 8 of ECHR figures among the international obligations binding Italy.⁸⁶ The issue of a permit of stay under article 5(6) of Immigration Consolidated Act would, thus, considerably reduce the number of stateless persons in Italy and “would have an extremely significant impact in terms of prevention of statelessness, coherently with the approval by Italian Government of the law for the ratification of 1961 New York Convention”.⁸⁷

Another issue emphasized by stakeholders concerns those children who do not have a *stricto sensu* legal residence - that is they lack from birth until the age of majority both a regular permit of stay and the registration at the municipal population registry office – and who also find difficulties in demonstrating continuous, effective residence on Italian soil. In some situations, in fact, it is hard to gather all adequate documentation, such as school and vaccination certificates, covering the period between birth and the age

⁸³ Interviews with the Citizenship Office of the Municipality of Rome (16 April 2015); Interview with ANUSCA experts of 20 April 2015; Bologna (23 March 2015); Turin (3 April 2015); Florence (10 April 2015); Naples (20 April 2015); Milan (24 April 2015)

⁸⁴ European Court of Human Rights, Second Section, Application N. [31956/05](https://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116143#{) *Hamidovic v. Italy*, Judgment of 4 December 2012, paragraph 37, available at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116143#{"itemid":\["001-116143"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116143#{)

⁸⁵ Article 5(6) of the Immigration Consolidated Act, Legislative Decree 286 of 25/7/1998 and subsequent amendments, available at: <http://www.altalex.com/index.php?idnot=51626#titolo2>

⁸⁶ For a more in-depth analyses on this topic: ASGI (Association for Juridical Studies on Immigration), “La tutela della vita privata e familiare del cittadino straniero ai sensi dell’Article 8 CEDU come presupposto per il rilascio di un permesso di soggiorno”, May 2015, available at: www.asgi.it

⁸⁷ *Ibid.*, p. 8.

of 18.⁸⁸ In other instances, some children are not able to prove their uninterrupted permanence on Italian territory since their parents moved them to their country of origin for a number of years.⁸⁹

Finally, there are problems for those children whose application to acquire Italian citizenship under article 4(2) of Law 91/92 was lodged before the entry into force of the legislative amendment and whose application was rejected due to a lack of the requirement of legal residence, interpreted in the restricted manner as prescribed before 2013. In this regard, **the Rome municipality has adopted a good practice inviting all children whose request to obtain Italian citizenship was rejected because of not fulfilling the condition of legal residence since birth and who still did not turn 19 to file another application.** These applications were then assessed again under the new criteria introduced by Decree 69/2013.⁹⁰

With regard to the application procedure, the mayor of the municipality concerned or the Citizenship office of civil register department in big cities is the authority competent to assess whether the conditions prescribed by law for acquisition of Italian nationality are fulfilled.⁹¹ The person concerned has to file an application where (s)he manifests the willingness to acquire Italian citizenship⁹² - jointly with his/her certificate of birth and all necessary documentation related to the residence⁹³ - at the municipality where (s)he resides or intends to reside⁹⁴ the so-called "*dichiarazione di volontà*". In situations in which legal residence in the municipality from birth until the age of 18 is demonstrated, the decision is taken within a few weeks. Whereas, in case of self-certification (*autocertificazione*), the municipality has to verify all information given and all documents presented in order to assess whether the child has effectively and continuously stayed on Italian territory. In this case, the delays amount to several months, but with a maximum delay of 120 days as prescribed by law. The decree granting Italian citizenship produces its effects from the day the person concerned has taken an oath, which must be done within six months from the notification of the mentioned decree.⁹⁵

According to a consolidated jurisprudence, the competence for a judicial review concerning the acquisition of Italian citizenship ex article 4(2) of Law 91/92 lies with a civil Tribunal, and not with an administrative judge, since the acquisition of nationality by children born in Italy to foreign parents is considered to be a subjective right and not a mere legitimate interest.⁹⁶ In this regard, the Cassation Court has ruled that "controversies concerning the acquisition of nationality are under the jurisdiction of the Civil Court since they relate to the status of the person".⁹⁷

⁸⁸ Interview with Elena Rozzi. Lawyer of ASGI, of 8 April 2015; interview with the Citizenship Office of the Municipality of Turin, 3 April 2015.

⁸⁹ Interview with ANUSCA experts of 20 April 2015.

⁹⁰ Interview with the Citizenship Office of the Municipality of Rome of 16 April 2015.

⁹¹ Article 16 paragraph 1 and 2 of Implementing Regulation 572/1993.

⁹² Article 4 paragraph 2 of the Law 91/1992 read in conjunction with article 3 paragraph 4 of the implementing Regulation 572 of 12 October 1993.

⁹³ Article 3 paragraph 4 of the Presidential Decree 572 of 12 October 1993 adopting the implementing Regulation of Law 91/1992 on new norms on citizenship.

⁹⁴ Article 23 paragraph 1 of Citizenship Law 91/1992.

⁹⁵ Article 10 paragraph 1 of Law 91/1992.

⁹⁶ Administrative regional Tribunal of Lazio, application n. 3419, 19 April 2011; Tribunal of Genova (Section X), case Al.Ny. v. Ministry of Interior and others, 29 November 2012; Tribunal of Imperia, application n. 1295/2011, 11 September 2012.

⁹⁷ Cassation Court, sentence n. 7614 of 9 March 2011, available at:

<http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snciv&id=:/20110405/snciv@s10@a2011@n07614@tS.clean.pdf>

Access to Italian nationality for children born abroad

With regard to children born abroad to a parent who is an Italian national, the Italian legislation does not lay down a specific provision concerning this issue since the criterion for the transmission of nationality to be applied is the general principle of *jus sanguinis*. In other words, the Italian Law on Citizenship provides that Italian citizenship is granted at birth to any child whose father or mother is an Italian national.⁹⁸

Therefore, all children born abroad to a parent who is an Italian national acquire Italian citizenship automatically at birth, as do those children born on Italian soil to Italian nationals.

Nevertheless, some administrative procedures must be accomplished. By virtue of the Italian Civil Code, as a general rule, the filiation – i.e. the legal relationship between the parent and his/her child – “is proven through the certificate of birth registered in the Population registry”.⁹⁹ In addition to information concerning the child such as his/her place and date of birth, the personal details, nationality, this certificate in fact also indicates the residence of the child’s parents.¹⁰⁰ The birth certificate is issued by the competent Italian Population registry office after one of the parents hands over a declaration of birth together with a document elaborated by the hospital containing the personal details of the mother as well as the date, time, and sex of the child.¹⁰¹ In the case of children born abroad, the birth certificate shall be provided at the Italian embassy in the country of birth of the child, which is in charge of transmitting all documentation to the competent Population register office on Italian territory.¹⁰²

Italian legislation does not make any difference between children born inside and outside of marriage in terms of transmission of nationality. In this regard, the Italian Civil Code provides that “all children have the same legal status”¹⁰³ and specifies that “the kindred is the relation which exists among persons descending from the same ancestor, in case of both filiation of children born inside of marriage or out of the wedlock”.¹⁰⁴ Thus, children born outside of marriage have the same right to acquire Italian nationality since the transmission of citizenship hinges exclusively on the *jus sanguinis* criterion, without extra conditions to be fulfilled. However, **for children born inside marriage the Italian Law deems that the husband is the father of the child conceived or born in wedlock,¹⁰⁵ by contrast for those children born outside marriage a formal act of recognition of the child is required. In this respect, Law 91/1992 specifies that “the recognition of the filiation made during the minor age of the child determines his/her citizenship”.**¹⁰⁶ According to the Italian Civil Code, this formal recognition can be done by both mother and father, jointly

⁹⁸ Article 1 paragraph 1a of the Law 91 of 5 February 1992.

⁹⁹ Article 236 paragraph 1 of the Italian Civil Code, as amended by Legislative Decree n. 154 of 28 December 2013, available at: <http://www.altalex.com/index.php?idnot=34812>

¹⁰⁰ Article 29 paragraph 2 of the Presidential Decree 396 of 3 November 2000 containing the Regulation for the revision and simplification of the Civil Register legislation, available at: http://www.esteri.it/mae/doc/dpr396_2000.pdf

¹⁰¹ Article 29 and 30 of the Presidential Decree 396 of 3 November 2000 containing the Regulation for the revision and simplification of the Civil Register legislation, available at: http://www.esteri.it/mae/doc/dpr396_2000.pdf

¹⁰² Article 15 and 17 of the Presidential Decree 396 of 3 November 2000 containing the Regulation for the revision and simplification of the Civil Register legislation, available at: http://www.esteri.it/mae/doc/dpr396_2000.pdf

¹⁰³ Article 315 of the Italian Civil Code, available at: <http://www.altalex.com/index.php?idnot=34826>

¹⁰⁴ Article 74 of the Civil Code as modified by Law n. 219 of 10 December 2012, available at: <http://www.altalex.com/index.php?idnot=34804>

¹⁰⁵ Article 231 of the Italian Civil Code, available at: <http://www.altalex.com/index.php?idnot=34826>

¹⁰⁶ Article 2 paragraph 1 of Italian Law on citizenship 91/1992.

or separately.¹⁰⁷ It can be either inserted in the birth certificate or done through a declaration handed over to the Population register office after birth or at the conception of the child concerned.¹⁰⁸

3. Preventing statelessness among children in other contexts

Foundlings

According to article 1 of Law n. 91 of 5 February 1992 on New Provisions on Citizenship, “*It is an Italian national at birth: (...) who is born on the territory of the Republic if both parents are unknown or stateless, or if the child does not follow the citizenship of his/her parents in accordance with the laws of their State of origin*”.¹⁰⁹ With regard to the first part of this provision, Italian nationality is granted at birth to the child whose parents are both unknown and who is found on Italian territory. However, a further requirement must be fulfilled: the law, in fact, prescribes that “*it has not be proven [that the person concerned] possesses any other citizenship*”.¹¹⁰ Nevertheless, this criterion is a mere passive requirement since it is interpreted in the sense that **the child acquires Italian nationality unless there is proof that (s)he has acquired another one. Generally speaking, this condition does not represent in practice an obstacle to the acquisition by foundlings of Italian citizenship automatically at birth.** In fact, municipalities grant nationality considering the factual situation of the child, without an assessment procedure.¹¹¹

In addition, it is worth underlining that the Ministry of Interior emphasized that parents have to be deemed unknown even in those cases where they are not as such from a biological point of view, but whenever they are considered unknown under a legal point of view, namely in all situations where they do not recognize their filiation.¹¹² In practice, all municipalities interviewed pointed out that **when a child is abandoned either in a hospital, clinic, another structure since parents do not recognize him/her or anywhere on Italian territory, (s)he is automatically granted Italian citizenship at the moment of the registration at the Population Register Office concerned.** The civil officer who receives the communication of abandonment from an entity/structure who found the child or where the child is hosted (hospital, police, social assistant of the municipality or reception centre where the child is temporarily accommodated) drafts a report, gives a name and surname to the child, immediately informs the Juvenile Court and the Guardianship Judge, and registers the child in the Population Registry as an Italian national.¹¹³

¹⁰⁷ Italian Civil Code, article 250 paragraph 1, available at : <http://www.altalex.com/index.php?idnot=34812>. More specific rules concerning this issue are laid down in the Presidential Decree 396 of 3 November 2000 containing the Regulation for the revision and simplification of the Civil Register legislation, namely relevant provisions are from article 28 to article 45.

¹⁰⁸ Italian Civil Code, article 254, available at : <http://www.altalex.com/index.php?idnot=34812>

¹⁰⁹ Article 1 paragraph 1b of Law n. 91 of 5 February 1992 “*New norms on citizenship*”.

¹¹⁰ Article 1 paragraph 2 of Law n. 91 of 5 February 1992 “*New norms on citizenship*”.

¹¹¹ Interviews with the Citizenship Office of the Municipality of Rome (16 April 2015); Bologna (23 March 2015); Turin (3 April 2015); Florence (10 April 2015); Naples (20 April 2015); Milan (24 April 2015); Interview with ANUSCA experts of 20 April 2015.

¹¹² Ministry of Interior (Direzione Centrale Per I Diritti Civili, La Cittadinanza e Le Minoranze Cittadinanza), “*La Cittadinanza Italiana - La Normativa, Le Procedure, Le Circolari*” (Italian Citizenship – Legislation, Procedures, Circulars), at p. 18, available at: <http://www.stranieriinitalia.it/briguglio/immigrazione-e-asilo/2003/marzo/doss-interno-cittadinanza.html>

¹¹³ Interviews with the Citizenship Office of the Municipality of Rome (16 April 2015); Bologna (23 March 2015); Turin (3 April 2015); Florence (10 April 2015); Naples (20 April 2015); Milan (24 April 2015); Interview with ANUSCA experts of 20 April 2015.

Adoption

The Italian legislation on citizenship provides that a foreign child adopted by an Italian national acquires the Italian citizenship.¹¹⁴ The minor concerned acquires Italian nationality from the moment of registration of the adoption act in the Population Registry.¹¹⁵ **As a general rule, whenever the adoption measure is revoked by the competent judge due to a serious action imputable to the adoptee, the minor loses his/her nationality.**¹¹⁶ **Nevertheless, Italian law lays down a relevant exception to the mentioned rule since it specifies that the child concerned does not lose Italian citizenship when (s)he does not possess another nationality or if (s)he cannot reacquire it.**¹¹⁷ Therefore, in this regard Italian law provides for a guarantee to prevent a situation of statelessness. On the other hand, in all situations that do not fall under the previous case, the adopted child keeps the Italian citizenship.¹¹⁸

Surrogacy

According to Italian legislation surrogacy is illegal in Italy. The law provides that “anyone, in any form, creates, organizes or advertises the sale of surrogacy is punished with imprisonment from three months to two years and with a fine ranging from 600,000 to one million Euros”.¹¹⁹ Some recent jurisprudence has confirmed this tendency/position.¹²⁰ There is no information on how nationality issues are dealt with in the context of surrogacy arrangements involving Italian parents.

Facilitated naturalization

The Italian Law on Citizenship provides for facilitated naturalization in some specific cases, by foreseeing less onerous/burdensome requirements to be fulfilled compared to the “ordinary” naturalization criteria. Nevertheless, this naturalization procedure still considerably differs from the process for the acquisition of citizenship at birth *ex* article 4(2) of Law 91/92 and, due to some reasons that will be analysed in this paragraph, could affect the right of children born in Italy to obtain Italian citizenship.

The two procedures diverge in terms of nature of implementing authorities, length of the procedure, and especially with regard to the burden of the conditions required and to the discretion of the determining body in accepting or refusing the application. In fact, while the latter procedure consists of a mere

¹¹⁴ Article 3, paragraph 1 of the Law n.91 of 5 February 1992.

¹¹⁵ Article 34, paragraph 3 of the Law n. 184 of 4 May 1983 related to the right of the child to have a family, as amended by Law n. 476 of 31 December 1998.

¹¹⁶ Italian legislation provides that the revocation of adoption is pronounced by the competent judge at the request of the adopter when the adoptee – who is older than fourteen – has made an attempt on the life of the adopter, of his/her spouse, his/her descendants or ascendants, or if the adoptee has committed against the adopter an offense punishable with three years of detention. Article 51 paragraph 1 of the Law 184 of 4 May 1983.

¹¹⁷ Article 3, paragraph 3 of Law n.91/1992.

¹¹⁸ Article 3, paragraph 4 of Law n.91/1992.

¹¹⁹ Law n.40/2004, article 12 paragraph 6

¹²⁰ Cass. 11 November 2014 n. 24001, available at http://www.cortedicassazione.it/cassazione-resources/resources/cms/documents/24001_11_14.pdf

assessment of the fulfilment of conditions prescribed by law since the acquisition of Italian citizenship is considered a subjective rights, the naturalization under the first procedure is considered a legitimate interest, thus Italian authorities have a wider margin of discretion.¹²¹

A first situation of facilitated naturalization relates to children born in Italy to foreign parents legally residing without interruption on the national territory until the age of majority, who may acquire Italian nationality, as described above, upon application to the competent Municipality. In fact, in case these children have not applied, for several reasons, for Italian citizenship by the time they turn 19, Law 91/1992 provides that **“the Italian citizenship is granted [under the facilitated naturalization procedure] to the foreign person who is born on the territory of the Republic and who has legally resided for at least 3 years”**.¹²² The three years of legal residence to be demonstrated are those immediately before filing the application.¹²³ Stateless children born who were born abroad and moved to Italy during their childhood are not eligible under this provision, regardless of the age at which they arrived in the country. Instead, they must rely on the other rules relating to naturalisation – with the possibility of facilitated naturalisation if they are recognised as stateless, as set out below.¹²⁴

Italian citizenship is granted under facilitated conditions to the stateless persons whose status has been formally determined and who have legally resided on Italian soil for at least five years,¹²⁵ compared to the ten years of legal residence that is required to all foreign persons.¹²⁶

In the context of naturalisation, in order to be granted Italian citizenship the person concerned has to fulfil a number of requirements, such as *inter alia* the requirement of legal residence for an amount of time established by law which varies, as mentioned above, depending on the situation of the applicant¹²⁷ as well as a certain economic income. The definition of “legal residence” is provided by Italian legislation, which states that “in order to acquire Italian citizenship it is considered legally resident on the territory of the State the person who has resided [on Italian territory] satisfying the conditions and obligations set out by norms regarding the entry and stay of foreigners in Italy and those relating to birth registration”.¹²⁸ The research shows that in practice Italian authorities adopt a literal interpretation of the norm. The person concerned has to demonstrate to hold a regular permit of stay and his/her registration certificate at the Population registry office of the municipality of residence covering the period of time prescribed by law. Nevertheless, Italian jurisprudence ruled that in case of a temporary interruption of the inscription in the Population Registry cannot represent a reason to deny Italian citizenship, whenever suitable/adequate

¹²¹ Interview of 7 May 2015 with Paolo Colasante, lawyer and research at the ISSIRFA, Immigration and children: the problem of acquisition of citizenship by children born in Italy to foreign parents, December 214, available at: <http://www.issirfa.cnr.it/7633,908.html>

¹²² Article 9 paragraph 1a of the Law 91/1992.

¹²³ Interview with the Prefecture of Rome on 23 April 2015.

¹²⁴ Article 9 paragraph 1f of the Law 91/1992.

¹²⁵ Article 9 paragraph 1e of the Law 91/1992.

¹²⁶ Article 9 paragraph 1f of the Law 91/1992.

¹²⁷ By virtue of article 9(1) in order to require Italian citizenship, the foreign person born on Italian territory have to legally reside for three, consecutive years before filing the application. In case of a stateless person, the legal residence required is five years. By contrast, all other foreign persons must be regularly resident on Italian territory for at least 10 years.

¹²⁸ Article 1 paragraph 2a of Presidential Decree 572 of 12 October 1993 adopting the implementing Regulation of Law 91/1992 on new norms on citizenship.

documentation prove that the person concerned has “beyond any reasonable doubt” resided in Italy during that time.¹²⁹

Under the procedure of naturalization, Italian citizenship is granted through a Decree of the President of the Republic, after hearing the Council of State, upon proposal of the Ministry of Interior. The application must be filed to the competent Prefect (“*Prefetto*”) of the place of residence¹³⁰ who, if the application is supported by the required documentation, forwards it together with a report of its observations on the case to the Ministry of Interior within 30 days.¹³¹ Where the application is not complete, the Prefect requests the person to add all needed documentation, explaining adequately what is missing. Then, if the application is still not complete, the Prefect declares it as inadmissible through a motivated decision.¹³² According to the law, where the application does not require additional documentation to be collected, the procedure for the acquisition of Italian nationality has to be concluded within 730 days from the date of the application submission.¹³³ The application for the acquisition of Italian nationality may be rejected by the Ministry of Interior through a motivated decree,¹³⁴ however a wide margin of discretion is reserved to this authority.

Two challenges must be noted. Firstly, **the absurd length of the procedure for the recognition of the Italian citizenship, which considerably exceeds the timeframe set out in the legislation and amounting to three, four, five years.** On this point, a parliamentary initiative of September 2014 has drawn the attention of the Government on the consequences of this issue, recommending it to rapidly adopt adequate measures in order to reduce the delays.¹³⁵ **The second problem concerns the wide margin of discretion of the Ministry of Interior in assessing the fulfilment of criteria prescribed by law and in refusing or granting the citizenship.** This significant discretion of Italian authorities determines a number of applications rejected which is considerably higher compared to the negative decisions taken by municipalities under the procedure of acquisition of Italian nationality ex article 4(2) of Law 91/02, especially after the improvements introduced in 2013.

It is worth noting that by law **children whose one of their parents is granted Italian citizenship while they are still a minor acquire automatically the Italian nationality where it is proven that they live together.**¹³⁶ However, it must be demonstrated that the child concerned lives in a manner which is stable, effective and

¹²⁹ Regional Administrative Tribunal of Lombardia, Judgment of 24 April 2012, n. 1208; Regional Administrative Tribunal of Trentino-Alto Adige, Judgment of 12 March 2009, n. 82/2009.

¹³⁰ Article 1 paragraph 1 of the Implementing Regulation 362/1994.

¹³¹ Article 2 paragraph 1 of the Implementing Regulation 362/1994.

¹³² Article 2 paragraph 3 of the Implementing Regulation 362/1994.

¹³³ Article 3 of the Implementing Regulation 362/1994, read in conjunction with Article 2 and 4 of Law n. 241 of 7 August 1990.

¹³⁴ Article 5 paragraph 1 of the Implementing Regulation 572 of 12 October 1993.

¹³⁵ Intervention of the Ministry l'[intervento dell'Ministro dell'interno alla Camera dei deputati del 24 settembre 2014](#)

Iniziativa in merito alla durata del procedimento per l'acquisto della cittadinanza italiana – n. [3-01043](#)

<http://www.camera.it/leg17/410?idSeduta=0297&tipo=stenografico#sed0297.stenografico.tit00100.sub00030.int00040>

¹³⁶ Article 14 of the Law 91/1992.

supported with adequate documentation,¹³⁷ and it is not considered sufficient in this regard that the civil registration of the child is included in the family certificate.¹³⁸

4. Birth registration and statelessness

Italian legislation ensures birth registration for every child born on national territory, regardless of the nationality and the legal status of his/her parents, as well as to every child born abroad to an Italian citizen. According to Presidential Decree 396 of 2000, every Municipality has a Population Register Office, where all acts/documents related to citizenship, birth, marriage and death are registered for all residents.¹³⁹ Every mayor or his/her delegate has the function of civil register officer on behalf of the Government.¹⁴⁰ Accordingly (s)he is in charge of recording, archiving, storing and updating all documents pertaining to the residing population.¹⁴¹

In order to register a child in the Population Register Office, a declaration of birth (*"dichiarazione di nascita"*), by either one of the parents, the doctor or the obstetrician, or any person who was present during the child's birth,¹⁴² must be lodged at that office, together with an official document (*"attestazione di avvenuta nascita"*) issued by the hospital, clinic or another structure concerned that contains the personal details of the mother as well as the place, date, time of birth and the sex of the child.¹⁴³ Whenever there is a lack of the so-called *attestazione di avvenuta nascita* since the birth has happened without the support of medical personnel, the person who fills in the birth declaration can present to the competent Population Register Office a substitute statement.¹⁴⁴

With regard to the deadline, Italian law prescribes that the declaration of birth may be presented either to the municipal Population Office within 10 days from the child's birth or to the hospital management within three days.¹⁴⁵ If the declaration is filed after the mentioned deadline, the person has to indicate the reason for the delay. In such cases, the population register officer begins to elaborate the birth certificate and notifies the public prosecutor¹⁴⁶, who assesses whether the causes of the delay are well-founded or if there

¹³⁷ Article 12 paragraph 2 of the Presidential Decree 572 of 12 October 1993 adopting the implementing Regulation of Law 91/1992 on new norms on citizenship.

¹³⁸ It must be considered, however, that this mode of acquisition of Italian nationality for minors is quite problematic in its implementation. In fact, considering that the deadline for the decision on the granting of citizenship through the Presidential decree is rarely respected and assuming an average period of four years, then it means that a child may acquire nationality if the parents submit the application for naturalization before he/she is 13-14 years of age. This, in turn, implies that the parent is at that date legally in Italy for at least ten years. ISMU Foundation, Italian Report "Vecchio Continente... Nuovi Cittadini - Normative, dati e analisi in tema di cittadinanza", http://www.libertaciviliimmigrazione.interno.it/dipim/export/sites/default/it/assets/pubblicazioni/analisi_comp._cittadinanza_rapporto_itaslia.pdf

¹³⁹ Article 1 paragraph 2 of the Presidential Decree 396 of 3 November 2000.

¹⁴⁰ Ibid, Article 1 and 10 paragraph 1.

¹⁴¹ Ibid, Article 5 paragraph 1.

¹⁴² The provision specifies that in case the declaration of birth is not hand over by the mother of the child, then it must be respected her willingness to not insert her name in such document. Article 30 paragraph 1 of the Presidential Decree 396 of 3 November 2000 containing the Regulation for the revision and simplification of the Civil Register legislation, available at: http://www.esteri.it/mae/doc/dpr396_2000.pdf; Article 2 of Law n. 127 of 15 May 1997 related to "urgent measures for the simplifying administrative function and procedures of decision and control".

¹⁴³ Article 30 paragraph 2 of the Presidential Decree 396 of 3 November 2000 containing the Regulation for the revision and simplification of the Civil Register legislation, available at: http://www.esteri.it/mae/doc/dpr396_2000.pdf

¹⁴⁴ Ibid, Article 30 paragraph 3.

¹⁴⁵ Ibid, Article 30 paragraph 4.

¹⁴⁶ Ibid, Article 31 paragraph 1.

exist elements to deem them false or unreliable. If the declaration is not supported by the document issued by the hospital reporting the child's birth or if it does not encompass any justification for being lodged after the initial 10 days provided by law, then the declaration of birth may be registered only after an order adopted by a judge which ascertains through adequate investigation the validity/legality of the birth declaration and authorizes the registration in the Population Registry. Therefore, by law the civil register office has the duty to immediately inform the public prosecutor with a view to submit the case before a judge.¹⁴⁷

With regard to children whose parents are irregular migrants, they are not prevented by law to be registered at birth. In this regard, ministerial circular n. 19/2009 provides that "in order to file a declaration of birth or a document concerning the recognition of filiation for the registration in the municipal Population registry it is not required to exhibit a permit of stay since the mentioned declarations is made with the purpose of protecting the minor concerned as well as in the public interest of the certainty of factual situations".¹⁴⁸ **Nevertheless, in practice many undocumented migrants still do not register their children due to their fear of being reported to the national authorities and to lack of adequate information on their rights.** On this point, UN Committee on the Rights of the Child recommended Italy to undertake an awareness campaign on the right of all children to be registered at birth, regardless of the legal status of their parents; however Italian authority have been unable to fulfil this commitment.¹⁴⁹ This research shows that municipalities interviewed register children born in Italy, regardless of whether or not their parents hold a permit of stay or any other identification document¹⁵⁰. In Italy, in order to guarantee the best interests of the child, it is possible to complete birth registration without any personal identity documents. In case of a lack of documents, parents may register their children at the Population Register Office with the support of two witnesses.¹⁵¹

A specific concern in Italian context relates to children born outside hospitals or public/private health structures since in those cases their parents do not always provide for their birth registration. This phenomenon is not easily estimated, but it certainly highlights the precarious condition of children of irregular migrants who are considered as "invisibly born".¹⁵²

¹⁴⁷ Ibid, Article 31 paragraph 2.

¹⁴⁸ Ministry of Interior, Circular 19 of 7 August 2009, at p. 4, available at: http://servizidemografici.interno.it/sites/default/files/news-files/circ_19.pdf

¹⁴⁹ UN Committee on the Rights of the Child, 58th Final Session, 19 September - 7 October 2011, available at <http://www.unicef.it/Allegati/OsservazioniConclusive2011.pdf>.

¹⁵⁰ Interviews with the Citizenship Office of the Municipality of Rome (16 April 2015); Bologna (23 March 2015); Turin (3 April 2015); Florence (10 April 2015); Naples (20 April 2015); Milan (24 April 2015). These findings have been confirmed by ANUSCA (National Association of officers of municipal population register Offices) on 20 April 2015.

¹⁵¹ Interviews with the Citizenship Office of the Municipality of Rome (16 April 2015); Bologna (23 March 2015); Turin (3 April 2015); Florence (10 April 2015); Naples (20 April 2015); Milan (24 April 2015). These findings have been confirmed by ANUSCA (National Association of officers of municipal population register Offices) on 20 April 2015.

¹⁵² Canetta, T., Pruneddu, P., "Neonati 'clandestini' invisibili per lo Stato", Linkiesta, 20 december 2013, available at <http://www.linkiesta.it/immigrati-figli-anagrafe>

In case of children born abroad to Italian nationals, the birth certificate shall be provided to the Italian embassy in the country of birth of the child, which is in charge of transmitting all documentation to the competent Population register office on Italian territory.¹⁵³

Conclusions and recommendations

This report demonstrates that, although Italy has not yet ratified the 1961 Convention, Italian legislation on citizenship provides for a number of guarantees safeguarding the right to nationality of children born in Italy. Different routes are set out in order to reduce and to prevent that children born on Italian territory are left stateless.

Article 1 of Law 91/92 provides for the transmission of Italian nationality based on *jus soli*, as an exception in the frame of a legislative system based on the *jus sanguinis* rule, where a child is born on Italian soil and both parents are unknown or stateless, or the child does not follow the citizenship of his/her parents in accordance with the laws of their country of origin. This safeguard fulfils the requirements of article 1 of the 1961 Convention on the Reduction of Statelessness – although Italy has yet to become a state party. Moreover, Italian legislation introduces another mode of acquisition of nationality based on a conditional *jus soli* criterion for otherwise stateless children who, albeit born on Italian territory do not acquire Italian citizenship at birth since they do not fall in the legal situations enshrined in Article 1 of Law 91/92. This route for acquiring Italian citizenship is subject to an application procedure and to the fulfilment of the requirement of legal residence without interruption on Italian soil until the age of majority. In this regard, the adoption of Decree Law n. 69 in June 2013 marks, undoubtedly, a significant improvement facilitating the acquisition of Italian nationality under the latter procedure by introducing an obligation for the authorities to provide information on the procedure to persons who would qualify. With regards to birth registration, Italy has in place an effective and inclusive system, guaranteeing that all children born on its territory are registered, regardless of their parents' legal situation/status. In addition, Italian legislation does not make any difference in the acquisition of citizenship with regard to children born out of wedlock.

Nevertheless, this report uncovered some legislative gaps and administrative/bureaucratic hurdles as well as problems related to a restrictive interpretation and implementation in practice of requirements set out in the norms. All these factors contribute to hamper access to Italian nationality or a formally recognized stateless status and make the risk of statelessness real for a number of children born in Italy. Indeed, regarding the statelessness procedure, which can have an impact on the status of the children born in the territory, it should be pointed out that although Italy is one of the few countries in the world to have established an administrative and a judicial procedure for the statelessness status determination, both procedures are in practice difficult to navigate for several reasons.

¹⁵³ Article 15 and 17 of the Presidential Decree 396 of 3 November 2000 containing the Regulation for the revision and simplification of the Civil Register legislation, available at: http://www.esteri.it/mae/doc/dpr396_2000.pdf

In light of the challenges uncovered, CIR urges the Italian authorities to consider the following recommendations to strengthen the prevention of statelessness of children born in Italy:

- Although some safeguards, in line with the 1961 Convention, are already provided by law to ensure Italian nationality to otherwise stateless children born on Italian territory, and acknowledging that significant steps in terms of legislative amendments have been taken in order to facilitate the acquisition of citizenship, it is recommended to **ratify the 1961 Convention as soon as possible as well as to adopt a comprehensive reform of the Italian citizenship legislation to integrate greater elements of *jus soli*.**
- Substantial difficulties are encountered by persons to access both the administrative procedure for stateless status determination due to the rigidity of the requirements, and the judicial procedure because of lack of economic resources or the necessary assistance of a lawyer. Accordingly, a considerable number of persons are prevented to be recognized as stateless, affecting as a consequence their children born on Italian territory who are entitled by law to benefit from an automatic acquisition of Italian nationality at birth. In this light, Italian authorities should **recognise that statelessness status determination is a tool for the protection of stateless people, and not a condition to be fulfilled for the application of safeguards to prevent statelessness at birth.**
- The study highlights situations where the transmission of nationality *jus sanguinis* in accordance with the laws of country of origin of parents are particularly burdensome since a number of administrative formalities have to be accomplished. In some cases, in fact, these administrative duties/procedures are extremely arduous to be fulfilled because of an effective impossibility to establish relations with authorities of the country of origin, obstacles in the registration of children at the consulate or due to difficulties in gathering the required documentation such as a passport or an Italian permit of stay, which are compulsory for the conferral of parents' nationality. Accordingly, these children are confronted by a serious risk of becoming stateless. **A broader and more flexible interpretation of article 1(1)(b) of Law 91/92 should be adopted, with a view to granting nationality automatically at birth also to those children born on Italian soil where, although their parents' country of origin legislation officially provides for the transmission of nationality *jus sanguinis*, however they face a substantial impossibility to fulfil the administrative formalities required.**
- Despite noteworthy improvement introduced with the 2013 Decree Law n. 69 to article 4(2) of Law 91/92, concerns persist for those children born in Italy and effectively resided on Italian territory from birth until 18, who do not hold a regular permit of stay during the year prescribed by law for declaring the application to acquire Italian citizenship. In order to lodge an application for the acquisition of Italian citizenship at the competent Municipality, in fact, registration at the local population register office is always required, which can be carried out only in case of possession of a regular permit of stay. Accordingly, the application of all those persons who cannot be enrolled in the population register office is declared inadmissible by the municipal Citizenship Office. **In order to solve the problem of holding a regular permit of stay and, accordingly, to facilitate the**

acquisition of Italian citizenship when reaching the age of majority, a permit of stay based on the right to respect for private and family life as enshrined in article 8 of the European Convention of Human Rights should be issued.

- The research shows that a lack of information concerning the acquisition of Italian nationality for otherwise stateless children born on Italian territory presents a major challenge. In fact, even though legal safeguards would ensure Italian nationality at birth or at the age of majority for children at risk of statelessness born on national territory, since the initiation of an application procedure relies on the individual responsibility of the child' parents and since there is a noteworthy lack of information and awareness, these children are prevented from enjoying their right to a nationality and all related human rights. Accordingly, **municipal civil offices, when registering the birth of children in situations of statelessness, undetermined/uncertain nationality, or cases where parents may not transmit their citizenships due to their country of origin's legislation, should inform parents about the safeguards provided by Italian legislation to prevent statelessness.**

- The research has emphasized that a significant lack of reliable data concerning stateless persons. **With a view to identifying the full dimension of the phenomenon of statelessness in Italy, the typologies of persons affected, the challenges to deal with and the consequent adequate solutions to adopt, it is recommended that cases are consistently tracked by relevant stakeholders in order to collect information and detailed statistics.**

Annex 1: Key international provisions granting nationality to otherwise stateless children born in the territory

1961 Convention on the Reduction of Statelessness

Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless.
Such nationality shall be granted:
 - a. at birth, by operation of law, or
 - b. upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.A Contracting State which provides for the grant of its nationality in accordance with sub-paragraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.
2. A Contracting State may make the grant of its nationality in accordance with sub-paragraph (b) of paragraph 1 of this Article subject to one or more of the following conditions:
 - a. that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;
 - b. that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;
 - c. that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;
 - d. that the person concerned has always been stateless.

[...]

1997 European Convention on Nationality

Article 6 – Acquisition of nationality

[...]

2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:
 - a. at birth *ex lege*; or
 - b. subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.

Annex 2: List of stakeholders interviewed and/or input received as part of this research¹⁵⁴

- Municipality of Rome
- Municipality of Bologna
- Municipality of Turin
- Municipality of Florence
- Municipality of Naples
- Municipality of Milan
- ANUSCA - National Association of officers of municipal population register offices
- UNHCR
- ASGI - Association for Immigration and Juridical Studies
- Paolo Colasante, Lawyer and Researcher at the ISSiRFA - Institute for the Study of Regionalism, Federalism and Self-Government
- Paolo Farci, Independent Lawyer

¹⁵⁴ Full details on file with the author.

No child chooses to be stateless. It is a fundamental truth that every child belongs – to this world, to a place and to a community – and this should be recognised through the enjoyment of a nationality. Yet statelessness continues to arise because European states are failing to ensure that all children born within Europe’s borders or to European citizen parents acquire a nationality. The European Network on Statelessness (ENS) advocates as one of its central tenets that none of Europe’s children should have to live without a nationality.

This working paper is one of a series that has been drafted in support of the ENS campaign, launched in November 2014, ‘**None of Europe’s children should be stateless**’. It examines the presence or absence, content and implementation of legislative safeguards for the prevention of childhood statelessness at the national level. Working papers have also been prepared by ENS members in Albania, Estonia, Latvia, Macedonia, Poland, Romania and Slovenia– each as part of a coordinated approach and employing a common research methodology.

The studies each provide: a detailed legal analysis, including of relevant lower-level circulars/policy guidelines; the identification and analysis of relevant jurisprudence; and data from interviews with implementing authorities, lawyers and other service providers about their knowledge and experience of relevant safeguards, as well as with relevant organisations with regard to advocacy around this issue. Each paper also includes a number of case studies to highlight particular issues identified.