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United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

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

- **General context:**

Italy is one of the States parties to the 1954 Convention Relating to the Status of Stateless Persons (ratified through law no. 306 of 1st February 1962), **but it has not yet acceded to the 1961 Convention on the Reduction of Statelessness¹**. Also, Italy has signed, but not yet ratified, the 1997 European Convention on Nationality. The national law regulating citizenship includes some provisions aiming at avoiding and reducing statelessness and it is generally complying with the rules of the 1961 Convention.

Although there are no reliable or official statistics on the stateless population in Italy, one can assume that the **largest group of stateless persons can be found among the Roma communities** coming from ex-Yugoslavia who have been living in Italy for many years, whereas the rest of the stateless persons come from countries or territories such as the former USSR, Palestine, Tibet, Eritrea and Ethiopia.

Italy is one of the twelve countries in the world² having established a procedure for the recognition of the stateless status. **In Italy, two alternative ways for the recognition of statelessness exist, the administrative and the judicial procedure³**. The stateless status gives access to a set of rights according to the 1954 Convention (access to work, access to social welfare, possibility to apply for Italian citizenship after five years of residence).

- **Statelessness in Roma communities:**

According to the available estimates, **around 15.000⁴ Roma descending from persons coming from ex-Yugoslavia are undocumented and at risk of statelessness**.

This number amounts to 10% of the total number of Roma living in Italy, and it represents persons who have probably been living in the country for generations, without being recognised as Italian citizens.

¹The definition of a stateless person is stated in art. 1 of the New York Convention of 28th September 1954. See also: UNHCR Guidelines on Statelessness, *The definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, 23rd April 2012.

² See the European Network on Stateless report: *"Statelessness determination and the protection status of stateless persons"*, 2013.

³Some aspects of the administrative statelessness determination procedure in the Italian system are regulated in art. 17 of the Presidential Decree no. 572 of the 12th October 1993, but an organic law regulating statelessness matters does not yet exist.

⁴Estimates by the NGO *Comunità di Sant'Egidio*. See also the report by the Extraordinary Commission for the Protection and Promotion of Human Rights of the Italian Senate: *"Rapporto conclusivo dell'indagine sulla condizione di Rom, Sinti e Caminanti in Italia, XVI Legislatura, Senato della Repubblica, Commissione straordinaria per la tutela e la promozione dei diritti umani"*, p.23.



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The issue of statelessness among those groups is also linked to the **legal status** of Roma communities in Italy and to the fact that they lack documents certifying their identity and/or nationality.

Some of the reasons why Roma, Sinti and Caminanti communities do not have access to Italian citizenship nor to the stateless status are the following: absence of birth registration (also due to the lack of information or lack of documents); loss of documents in case of ex-Yugoslav nationals; loss of one's job and, therefore, of the entitlement to a regular residence permit; problems with the failed release of the passport by the Consulate of the Country of origin, which can also be due to practical obstacles (especially in case of first issue); last but not least, the fear of being subject to expulsion.

UNHCR welcomed the establishment of an inter-ministerial working group on the legal status of Roma, Sinti and Caminanti, chaired by the Italian Ministry of interior.

The working group was created in January 2013 following indications contained in the National Inclusion Strategy of Roma, Sinti and Caminanti, implementing the European Commission Communication no. 173/2011. The mandate of the working group is to draft legislative and administrative proposals aiming at resolving the gaps with regard to the legal status of Roma who fled the conflict in former Yugoslavia and arrived in Italy in the Nineties and of their undocumented descendants.

- **Access to the procedures and integration:**

Some aspects of the **administrative statelessness determination procedure (SDP)** lack in clarity and transparency. One of the most critical issue is the fact that the administrative SDP is only available to persons already entitled to a regular permit of stay in Italy; moreover, the procedure can take very long, in some cases up to many years.

For these reasons, the recognition rate of the stateless status through the administrative procedure is, to date, very low. Since the procedure is very lengthy and because of the mandatory prerequisites for accessing the administrative SDP, many stateless persons lacking a regular permit of stay are obliged to apply for the stateless status before the Civil Court.

As said above, the judicial stateless determination procedure is open to undocumented persons: however, applicants are often denied free legal assistance since they cannot provide the authorities with the certification of their financial situation issued by the Consulate of their country of origin, as required by law. Moreover, there is uncertainty with regard to the judiciary proceeding to be applied when it comes to stateless determination cases. In this sense, the Supreme Court has stated the applicability of the ordinary (formal) civil procedure⁵, thus raising concerns with regard to some procedural

⁵ In particular, the Supreme Court stated that in statelessness matters it has to be applied the formal proceeding (judgment no, 7614 of 4th April 2011). With regard to the burden of proof for the determination of stateless status, see *UNHCR Guidelines on Statelessness no 2: Procedures for Determining whether an Individual is a Stateless Person*, Distr. General, HCR/GS/12/02, 5th April 2012.



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safeguards provided instead in the non-formal proceeding, such as a lowered standard of proof⁶.

With regard to the legal status of applicants during the SDP, **the law provides for the issuance of a specific permit of stay only for stateless status applicants who are already entitled to a regular residence permit**⁷.

Considering the length of the SDP, the extension of the right to a legal permit of stay to all stateless status applicants during the procedure would prevent them from being potentially subject to several periods of administrative detention⁸.

The person who is recognised as stateless is not always entitled to a permit of stay based on his/her stateless status, since in Italy there are many different types of residence permits: in those cases, it can happen that a stateless person is not in the position to enjoy some of the rights set by the law, such as the possibility of obtaining a long-term residence permit and the possibility to apply for Italian citizenship after five years of residence,⁹ can be denied.

- **Statelessness at birth and citizenship:**

Art. 1 of law no. 91/92 regulating citizenship **guarantees citizenship by birth to the child born in the national territory either where both parents are stateless or unknown, or where the child does not acquire the citizenship of one of his/her parents.**

Such provision is in line both with the principle of the reduction of statelessness as set out in the 1961 Convention and with the right to acquire a nationality. However, many of the stateless children born in Italy who are entitled to acquire Italian citizenship at birth by operation of law face several obstacles in being registered as Italian nationals.

With regard to the first circumstance described in Art. 1, such obstacles lie in the fact that both of the parents have to have their stateless status certified in order to have their child registered as Italian.

⁶ See judgment no.138/09 by the Court of Appeal of Florence.

⁷ Art. 11, paragraph 1, letter c) of the Presidential Decree no. 394 of 31st August 1999 states that, during the SDP, applicants are issued a permit of stay lasting until the finalization of the recognition procedure. However, in order to be granted the right of regular stay, this person has to be entitled already to another type of permit of stay.

⁸ Such permit would avoid the protracted and often repeated administrative detention of people applying for stateless status. The applicants are exposed to the risk of being detained because they are not entitled to regular stay in the territory. For the protection standards in administrative detention, see UNHCR 2012 Detention Guidelines: <http://www.unhcr.org/505b10ee9.html>.

⁹Art. 1, paragraphs 1 and 3 of the Unified Code on Immigration, approved by Legislative Decree no. 286/1998, indicate stateless people as beneficiaries of the laws regulating the juridical condition of the foreigner. Therefore, the stateless person should receive the same treatment as any other non EU national, unless a different or better treatment is foreseen by laws or international conventions.



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Besides, concerning the second circumstance, Italian authorities often find it difficult to have access to information on laws regulating citizenship in the country of origin of the parents as well as to the correct interpretation of such laws¹⁰.

UNHCR, however, reports the correct application of Art. 1, par. 1 letter b) of law 91/92 **regulating the acquisition of Italian citizenship** granted to children born in Italy where the child does not acquire the citizenship of one of his/her parents, in particular with regard to children of Cuban nationals born in Italy.

- **Statelessness and access to information:**

Many stateless people are entitled to a residence permit on different grounds other than statelessness, and they are often not aware of the existing procedure for the recognition of the stateless status. Even though those people may have a regular permit of stay, they face difficulties due to their lack of nationality at the moment they have to enjoy some specific rights, such as the right to marry. For those people, as well as for the organizations they get in touch with (NGOs, hospitals, National Registrar, etc.), many problems could be solved through **campaigns spreading information on statelessness and on how to access the SDPs.**

- **Statelessness, refugee status and subsidiary protection:**

Stateless people could also find themselves in need of applying for refugee status or a form of subsidiary protection. Even in case they are recognised as having right to refugee status or subsidiary protection, they can however be prevented in fully enjoying the exercise of their rights because of their lack of nationality. Moreover, many of the people entitled to refugee status or a form of subsidiary protection, albeit being stateless, are not aware of the procedure for accessing the SDPs.

¹⁰ See also the conclusions of the seminar organised in Prato on the 27th and 28th May 2010 by UNHCR, gathering experts on statelessness: <http://www.unhcr.org/4cb2fe326.pdf>.



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• **UNHCR Recommendations:**

1. **UNHCR encourages the Italian Government to accede to the 1961 Convention on the Reduction of Statelessness. By doing so, the Italian Government would join the growing number of States who engaged themselves at a global level in enforcing the 1961 Convention. Moreover, a possible accession to the Convention would be facilitated by the fact that the current Italian Law on citizenship is already generally compliant to the Convention's rulings;**
2. **UNHCR encourages the Italian Government to engage in drafting an organic Law regulating every aspect of statelessness, in order to identify a univocal legislative framework and to remove the administrative obstacles along the stateless persons' integration path;**
3. **UNHCR underlines the necessity of protecting undocumented stateless persons, in line with the provisions of the international legal framework on international protection, by preventing them from the risk of being subject to expulsion or unfair administrative detention, and from the risk of not having access to information on the SDP, in line with the provisions on international protection;**
4. **UNHCR recommends the adoption of measures aiming at preventing statelessness and guarantee the correct application of the law regulating the acquisition of Italian citizenship at birth to otherwise stateless children, in order to guarantee the right to acquire a nationality as set in international instruments;**
5. **UNHCR encourages the most relevant actors at a national level, namely the Ministry of Interior, the Parliament, academic experts, NGOs and jurists to promote the improvement of the current administrative SDP in terms of organisation, rationalisation, increased efficiency and transparency;**
6. **UNHCR invites the Italian Ministry of Interior, in collaboration with UNHCR and NGOs, to draft a practical information handbook aiming at explaining the definition of a stateless person, the statelessness determination procedure and the granted rights during the procedure, as well as the rights granted after the recognition of stateless status.**

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