

7. ASYLUM



7.1. PREFACE

Asylum seekers are persons who assert being subject to or fear persecution due to race, religion, nationality, association with a certain social group or political opinions²⁹ based on sound grounds. Asylum seekers can apply for asylum in Italy by **submitting an application for the recognition of refugee status**.

APPLICATION FOR THE
RECOGNITION
OF REFUGEE STATUS

Those who left their homes due to infringement upon their democratic freedoms, because of natural disasters or wars are **displaced persons** and are subject to **temporary protection**.

Additionally, the Italian Constitution recognizes the right of asylum to all those who can not exercise democratic freedoms granted by the Italian Constitution. However, an ordinary law has not yet implemented this rule; current provisions are inspired by the UN Geneva Convention of 1951.

APPLICATION FOR
ASYLUM BASED
ON ART. 10, PAR. 3
OF THE ITALIAN
CONSTITUTION

Before going through the procedures for the recognition of refugee status it is worth underlining that recent amendments in the legislation³⁰ have been taken into consideration while elaborating the text. However, it is necessary to remember that all practical aspects will be set forth by the forthcoming Implementing Rules.

7.2. PROCEDURES FOR ASYLUM APPLICATION

Asylum seekers can submit an application for the recognition of refugee status at the **border police office** or at a **Questura**, once they have

29 Art. no. 1. Geneva Convention, 28.7.51 on refugee status.

30 Law n. 189, 30.07.02 – Amendments to the rules on immigration and asylum.

entered the national territory.

An application for recognition of refugee status must be grounded on a well-founded fear of persecution and potential retaliation in case of return to the country of origin. Whenever possible, this must be supported by appropriate documentation.

The **border police** before allowing an asylum seeker into the Italian territory checks that there are no **reasons impeding** entry, that is:

IMPEDIMENTS
TO ENTRY



- a) If the asylum seeker is already acknowledged as a refugee in another state;
- b) If, after leaving his/her country and before entering Italy, he/she resided in a country party to the Geneva Convention on Refugee Status;
- c) If the asylum seeker has committed war crimes or crimes against humanity;
- d) If the asylum seeker was condemned in Italy for a crime for which arrest is envisaged, or is considered dangerous for State safety, or belongs to a mafia-type organization, to a terrorist organization or to an organized crime group dealing with drug-trafficking.

In any of the above mentioned cases, the asylum seeker is **refused entry** at the border. The asylum seeker cannot be refused entry if that refusal will result in him/her being sent to a country where he/she risks being persecuted.

On the contrary, the asylum seeker is invited to **choose a city to reside** in Italy and to initiate the asylum procedure at the local [Questura](#).

If the alien is already in Italy, the application must be lodged **within eight days** from entry. This time period is flexible if the asylum seeker can prove well-founded reasons for delay.

When submitting the application, the asylum seeker must **hand-over his/her passport**, if he/she possesses one.

The [Questura](#) completes:

- A form to determine the State responsible for evaluating the asylum application; this document has to be forwarded to the Dublin Unit at the Department for Civil Liberties and Immigration of the Ministry of Interior;
- **A report containing the asylum seekers statement**, including some predefined information such as:
 - The asylum seeker's personal data;
 - The date and modalities of departure from the country of origin;
 - The period of residence or transit through other countries;

- The Italian border of entry, and date of entry;
- Possible criminal records;
- Financial means for subsistence in Italy;
- Political organizations to which the asylum seeker belongs;
- Religious and social organizations to which the asylum seeker belongs;
- The **address** at which he/she would like to receive all communications;
- The reasons why the applicant left his/her country and those preventing the asylum seeker to return. This document has to be forwarded to the Territorial Commission for the Recognition of Refugee Status.

Dublin Unit

The entry into force of the Dublin Convention on 1 September 1997 made it necessary to identify, within each Member State, the Authority responsible for implementing the Convention.

In Italy, the activities linked to the implementation of the Dublin Convention of 15.6.1990, are carried out by a special administrative unit called Dublin Unit, that belongs to the Department for Civil Liberties and Immigration of the Ministry of Interior.

The new law introduced in each *Prefettura – Ufficio Territoriale del Governo* UTG, (Prefecture – Government Territorial Office), **Territorial Commissions for the Recognition of Refugee Status**. These commissions are chaired by an official of the Prefecture and formed by a State Police official, a representative of a local institutions appointed by the *State-City Conference* and a representative from UNHCR. Such Commissions may be integrated with an official of the Ministry of Foreign Affairs.

The Central Commissions for the Recognition of Refugee Status, has been transformed into the **National Commissions for the Right of Asylum**. It is chaired by a Prefect and formed by a senior official of the Prime Minister's Office, a diplomat and an official of the Prefects career from the Department for Civil Liberties and Immigration, and by a police senior officer. Meetings are also attended by a representative of the UNHCR.

The National Commissions tasks are to provide guidelines, coordination, training, updates territorial commissions, and collect statistical data. Additionally, the Commission is responsible for decision making, and has the authority to revoke and dismiss the granted status. The National Commission is located in Rome, in via Guidubaldo del Monte, 54.

DUBLIN UNIT

TERRITORIAL
COMMISSIONS
DETERMINING
REFUGEE STATUS

ITALY

TEMPORARY
RESIDENCE
PERMIT
(DUBLIN
CONVENTION,
15.06.90)

The **Questura** issues a **temporary residence permit**, with one-month duration, bearing the wording “**Dublin Convention of 15 June 1990**”, if the responsibility of Italy to evaluate the application has not yet been identified.

Once Italys responsibility is ascertained, the asylum seeker is provided with a temporary residence permit by the **Questura**, bearing the wording **asylum application**, unless the applicant is kept in the identification centre. The permit lasts three months and it is renewable until the decision of acceptance or dismissal is taken by the relevant Territorial Commission.

This permit allows the holder to freely circulate in the Italian territory, however he/she has to communicate any change of residence to the **Questura**. Additionally, this permit also allows the holder the right to assistance contribution, free enrolment in the National Health Service and lodging in hosting centres. **Asylum seekers cannot take up any working activities.**

IDENTIFICATION
CENTRES

The asylum seeker can be **held at the Identification Centres** for the time that is **strictly necessary** to define **residence clearance**, if it is necessary to check the grounds of the application or to establish the applicants nationality or identity.

Holding at a Temporary Reception Centre is mandatory when the asylum seeker: has been stopped for avoiding or trying to avoid border checks; has been stopped immediately after irregularly crossing the border or irregularly resided in Italy; has received an expulsion or refusal of entry order.

7.3. DECISIONS REGARDING APPLICATION

PRELIMINARY
EXAMINATION
OF APPLICATION

After the preliminary examination of the application, the latter can be forwarded to another State of the Union which is required to take responsibility of the asylum seeker.

COMPETENCE

However, the asylum seeker can **appeal** against the decision to transfer his/her application to the **Regional Administrative Tribunal (TAR)** within 60 days, with the possibility to appeal to the Council of State in case the **TAR** confirms the decision, or, alternatively, to the President of the Republic within 120 days after notification. If the appeal is admitted, the **Territorial Commission** will be responsible for examining the application.

If the asylum seeker has submitted an application for recognition to the authorities of another EU Member State and the latter ascertains Italy's responsibility, the asylum-seeker is transferred to Italy and is invited to report to the **Questura** (Local Police Headquarters) that draws up a **statement report** and issues a **temporary permit**.

APPEAL

If Italy is the responsible State, the **Questore**, after receiving the application, transmits the documentation to the responsible Territorial Commission within two days. The latter will then convene the asylum seeker for proceedings.



If the asylum seeker is held at an identification centre, there is a **streamlined procedure**, which requires shorter time to determine the recognition of refugee status. In this case, departure of the asylum seeker from the centre is interpreted as **renunciation** of the application.

STREAMLINED
PROCEDURE

The Territorial Commission, integrated by a member of the National Commission for the Right of Asylum, is responsible for **reviewing the decisions**.

The **appeal** against the decision of the Territorial Commission will have to be filed within fifteen days to the court responsible for that area (**tribunale in composizione monocratica**, one-judge); it may also be lodged from abroad through Italian diplomatic and consular authorities.

APPEALING A DENIAL

The appeal **does not suspend the order to leave** the Italian territory; the asylum-seeker can, however, ask the responsible Prefect for the authorization to remain in Italy until he/she is informed about the result of the appeal.

7.4. ASSISTANCE GRANTED BEFORE THE ACCEPTANCE OF ASYLUM APPLICATION

The temporary residence permit (Dublin Convention 15.6.1990) and the provisional residence permit for asylum request give the asylum seekers lacking means of support or hospitality in Italy the right to obtain **financial assistance** from the local governmental bodies. In addition, the Department for Civil Liberties and Immigration provides a **first support contribution** amounting to € 17.56 per day, for a maximum of 45 days, limited only to the indigence period.

ASSISTANCE

The **request** must be submitted to the police office responsible for the area of the applicant's residence. The request will then be transmitted to the **prefettura** of the same province, together with a statement verify-

ing the fulfilment of the requirements for financial assistance. In case of **refusal** of financial assistance by the [prefettura](#), the asylum seeker can **appeal** to the Ministry of Interior within 30 days from notification.

The new provisions also introduced, within the Ministry of Interior, an ad hoc National Fund for Asylum Policies and Services in order to support reception activities and services in the local authorities in favour of asylum seekers, refugees and aliens under humanitarian protection.

7.5. ACCEPTANCE OF ASYLUM APPLICATION

ISSUANCE OF THE RESIDENCE PERMIT FOR ASYLUM

Once the Territorial Commission for the recognition of refugee status grants the relevant application, it forwards to the local [Questura](#) a certificate for the issuance of a **two year residence permit for asylum**, along with a special **travel document** valid for foreign countries, with the exception of the applicant's country of origin.

The requirements for the residence permit for asylum are similar to those of other residence permits. However, in consideration of the refugees particular situation, this residence permit can not be generally revoked and can be extended at the time of expiration, except in cases of **status cessation/termination** or **expulsion**.

According to what is provided for by the Geneva Convention, a **refugee** enjoys the **same treatment granted to Italian nationals** in:

- Religious and religious education freedom;
- Primary education;
- Access to courts and legal assistance;
- Protection of industrial, literary, artistic and scientific property;
- Health and economic assistance;
- Labour and social security; and
- Taxes.

Moreover, **refugees** enjoy a distinct treatment in

- **Military service**: not compulsory;
- **Acquisition of the Italian citizenship**: refugees can obtain citizenship five years after recognition of the status;
- **Family reunification**: the requirements normally envisaged are not required.

The National Asylum Programme (NAP - **PNA, Piano Nazionale Asilo**), promoted by the Ministry of Interior, in collaboration with UNHCR and

the National Association of Italian Municipalities (**ANCI**)³¹ represents the first attempt to create in Italy a reception-hosting network for asylum seekers, refugees and people holding a residence permit for humanitarian reasons, so as to respond in a comprehensive and integrated way to their needs.

BENEFITS OF REFUGEE STATUS

The PNA, funded by part of the taxes paid and co-funded by the European Refugee Fund, encompasses three main measures: reception, assistance and assisted voluntary return to the country of origin.³²

7.6. DENIAL OF ASYLUM APPLICATION AND RELEVANT CONSEQUENCES

The **Questura** is responsible for notifying the asylum seeker of **application dismissal for the recognition of refugee status**. The alien is requested to leave Italy within 15 days from the date of notification, and his/her passport is returned. If the denied asylum seeker does not leave the national territory within the established term, the Prefect will issue an expulsion order. If it is not possible to return the alien back to his/her origin country, since he/she could be subject to discrimination endangering his/her life or personal freedom, the **Questura** can issue a residence permit for humanitarian reasons. However, if the necessary requirements are satisfied, the denied asylum seeker can obtain a residence permit for other reasons. The dismissal of the application can be **appealed** before the responsible **judge within 60 days** from the date of notification.

DENIAL AND RELEVANT CONSEQUENCES

The asylum seeker who is recognized for refugee status can **lose** it:

LOSS OF STATUS

- If he/she asks for the **return** of his/her national passport, even if not supported by an explicit declaration ;
- If particular circumstances occur, such as:
 - a. New and voluntary enjoyment of the protection of the country of citizenship;
 - b. Voluntary re-acquisition of the citizenship of the origin country;
 - c. Acquisition of a new citizenship;
 - d. Voluntary return to the country of origin;

31 IOM is also associated to this process.

32 NAP Secretariat: AnciForm, Via dell'Arco di Travertino, 11 – 00178, Rome; tel. +39/06/76291238; e-mail: asilo@programmanazionaleasilo.it.

- e. The cessation of the reasons that led to the recognition of refugee status.

Refugee status can also be **revoked** by the Commission if the latter verifies that the asylum seeker gave false information regarding his/her identity and personal situation.

Refugees legally residing in Italy can be expelled only for reasons of **national security** or **public order**, by decree of the Minister of Interior. This expulsion can be **appealed** through the Administrative Regional Court - **T.A.R.** - of Latium.

Refugees cannot be expelled and sent to a country where there is the risk of suffering persecutions.

Legal basis and other sources:

- Italian Constitution - art. 10;
- L. no. 39/90 'Urgent rules on political asylum, entry and residence of non EU nationals and legalization of non EU nationals and stateless people already present in the territory of the State';
- Presidential Decree No. 136/90 - Implementing rules of L. no. 39/90;
- Ministerial Decree No. 237/90 on assistance to asylum seekers;
- Consolidated Law of the provisions concerning rules on immigration and on aliens status – Legislative decree no. 286, 25.07.98, as amended by Law no. 189, 30.7.02;
- Min. Decree no. 284, 24.6.98;
- Decree of the President of the Republic, no. 394, 31.8.99 - Implementing rules of the Legisl. decree no. 286/98;
- Min. Decree, 22.12.00 - reception at the borders;
- L. no. 189, 30.7.02 - amending rules on immigration and asylum;
- Geneva Convention on refugee status, Geneva, 28 July 1951, implemented in Italy by Law no. 722/54;
- Dublin Convention of 1990 on the establishment of the responsible State for the examination of an asylum application submitted in one of the European Communities Member States which was ratified in Italy by Law no. 532/92.