



# Italian Laws about Refugees and Asylum Seekers

A Short Summary

**Erasmus+**



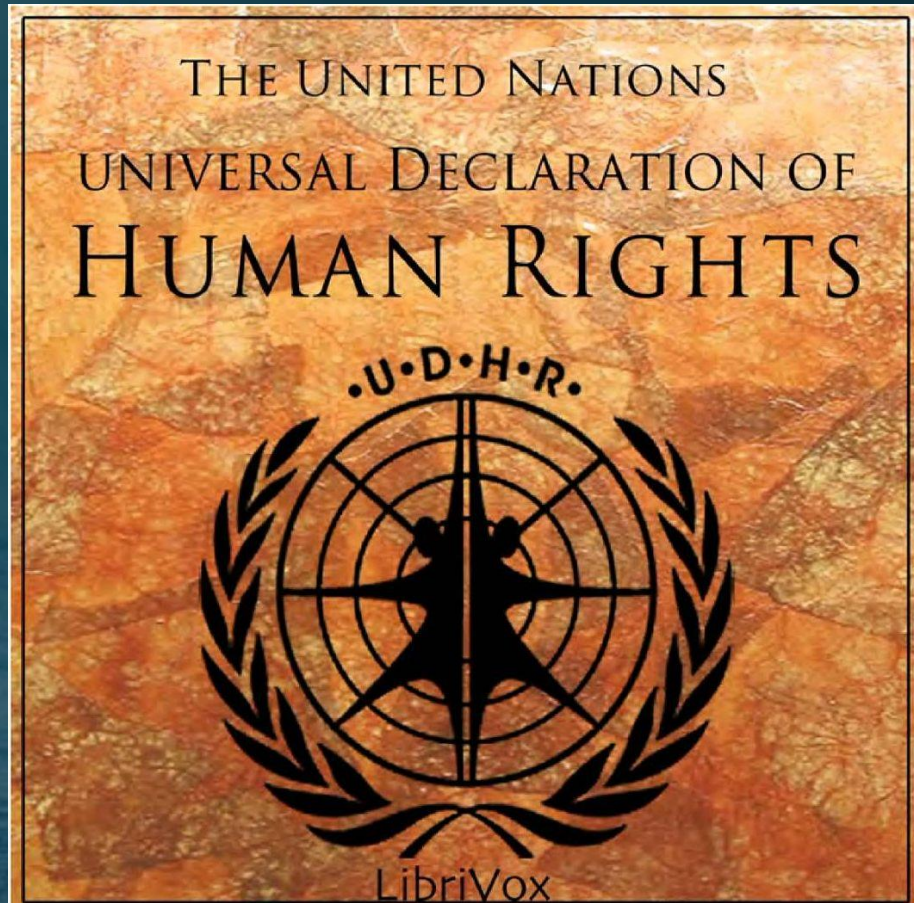
progetto erasmus+ ka2  
refugees and migrants seeking for their future  
in the united europe  
(past-present-future)

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# international conventions and european common policy



Italy has adhered to the **Universal Declaration of Human Rights** of 1948, whose article 14 provides that “everyone has the right to seek and to enjoy in other countries asylum from persecution.”

Italy is also a signatory to **the International Covenant on Civil and Political Rights** of 1966 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

Both of these instruments contain provisions on asylum.

In 1954 Italy ratified the **UN Convention Relating to the Status of Refugees** of 1951. The obligation set forth in this Convention is the principle of nonrefoulement—the prohibition against “expel[ling] or return[ing] a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

As we know, since 2007, the **European Union Treaty** has provided for a European common policy on asylum.

# italian constitution

## La Costituzione

art. 10, comma 2:

*“La condizione giuridica dello straniero è regolata dalla legge in conformità delle norme e dei trattati internazionali”.*

art. 10, comma 3:

*“Lo straniero, al quale sia impedito nel suo paese l'effettivo esercizio delle libertà democratiche garantite dalla Costituzione italiana, ha diritto d'asilo nel territorio della Repubblica secondo le condizioni stabilite dalla legge. “*

Italy is among the few European countries to proclaim **a right to asylum** in their Constitution.

The Italian Constitution provides that «[a] foreigner who, in his home country, is denied **the actual exercise of the democratic freedoms** guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law».

## definition of 'refugee'



Italian law defines **“refugee”** as “a foreign citizen who, on the basis of a well-founded fear of being **persecuted by reason of race, religion, citizenship, belonging to a particular social group [or holding a particular] political opinion**, is found outside of the territory of his/her country of citizenship and cannot or, on the basis of such fear, is unwilling to avail him/herself of the protection of his/her country.

# persons eligible for 'subsidiary protection'



Persons eligible for **“subsidiary protection”** are foreign citizens who do not qualify to be recognized as refugees but with respect to whom there are **reasonable grounds** to consider that, if they return to their country of origin they would face **a serious risk of suffering serious harm.**

# claim for international protection

A “claim for international protection” is one aimed at obtaining the **status of refugee** or the **status of person eligible for subsidiary protection**.



# humanitarian protection

“Humanitarian protection is the protection granted to citizens of a third country who are found in

**objective and serious personal conditions that do not allow their removal from Italy**

and whose request for international protection is denied.





# unaccompanied minors

“Unaccompanied minors” are those foreigners **younger than eighteen years of age** who are found, for whatever reasons, in the national territory, **deprived of assistance or legal representation.**



# unaccompanied minors: Zampa law



Recently (may 2017), a new law, known as Zampa law, has introduced a series of measures to protect refugee and migrant children:

- Unaccompanied children **are not subjected to “refoulement”** or returns that may cause them harm;
- Reduce the time these children spend in first-line reception centres;
- Promote **guardianship for children** by using trained volunteers from the regional child and youth agency and promote foster care and host families for children;
- Establish **a national reception system**, with minimum standards in all reception facilities;

Afshan Khan, **UNICEF** Regional Director and Special Coordinator for the Refugee and Migrant Crisis in Europe, has said:

“This new law serves not only to give refugee and migrant children a sense of predictability in their uncertain lives after risking so much to get to Europe - it serves as **a model for other European countries** could put in place a legislative framework that supports protection.”



# Zampa law: extra budget

The new law includes additional budgetary provisions on top of €600 million which the Government of Italy had already allocated in 2016 to municipalities, groups and caregivers to help them cope with the large influx of refugees and migrants in reception centres.



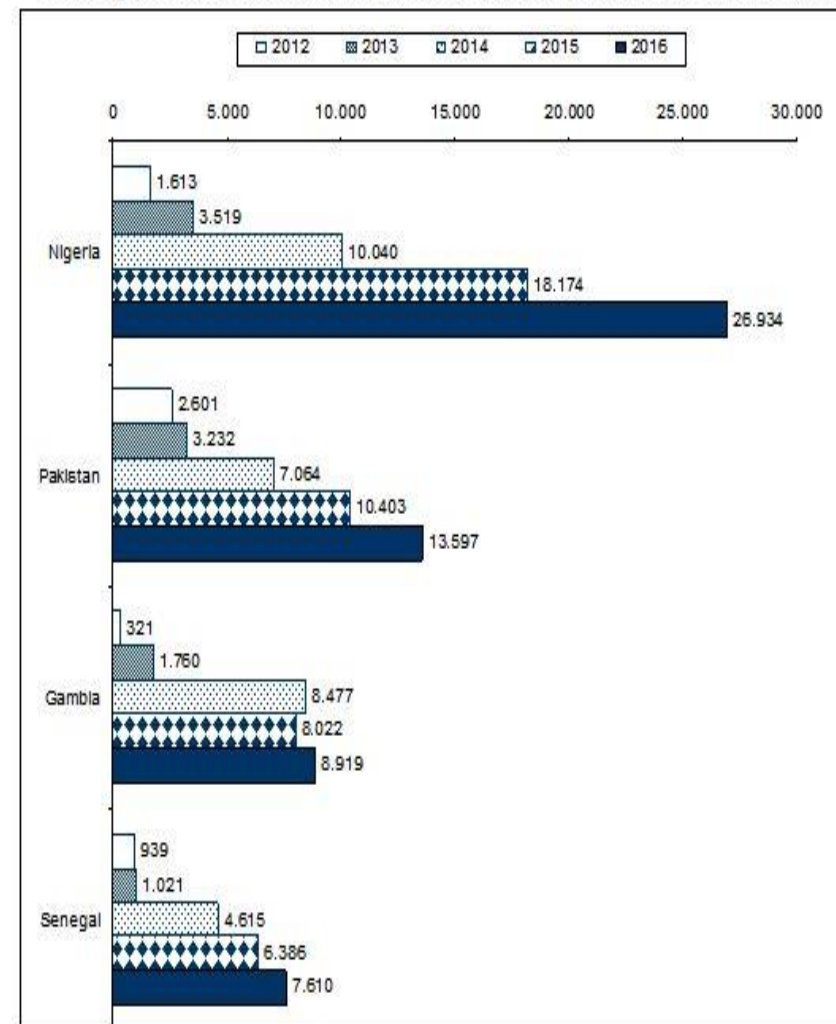
# submission of asylum requests

**Asylum requests** must be submitted to the border police or to the office of the respective head of the provincial police with jurisdiction according to the requester's residence.

Requesters must reveal all pertinent facts to the authorities and must produce all necessary documentation.

When unaccompanied minors are involved, these authorities must immediately inform the System for the Protection of Asylum Seekers and Refugees (**SPRAR**) and the respective tribunal of minors for the adoption of appropriate measures.

Principali nazionalità dei richiedenti asilo in Italia. Anni 2012-2016



Fonte: Elaborazioni ISMU su dati Ministero dell'Interno

# temporary residence permit

The competent questore of the territory issues a **temporary residence permit** valid until the conclusion of the recognition procedure. The Ministry of the Interior may legally grant to persons who have obtained refugee status **a basic subsistence stipend** for a period not to exceed forty-five days. Refugees who lack their own means of subsistence or accommodations in Italy may receive assistance as well.



# national commission and territorial commissions

The law creates the **National Commission** for the Right of Asylum and the **Territorial Commissions** for the Recognition of International Protection. The National Commission's role is to guide and coordinate the Territorial Commissions, update their composition, and gather statistical information.

A delegate of the United Nations High Commissioner for Refugees (**UNHCR**) in Italy has a right to participate in the National Commission's meetings.

The Territorial Commissions' role is to grant recognition of refugee status to a requester. They are administratively placed within the respective police prefecture and operate in coordination with the Department for Civil Liberties and Immigration of the **Ministry of Interior**. They are composed of representatives of the national police and local authorities, and a **UNHCR** representative.

# procedural steps

Within two days after receiving the requester's documentation, the questore transfers it to the respective Territorial Commission, which must schedule a hearing to take place within thirty days.

A Territorial Commission may forgo setting up a hearing if there are sufficient grounds to accept the request for the recognition of refugee status.

If the request is declared admissible for review, the respective Territorial Commission must make a decision recognizing refugee status or affording the requester the status of subsidiary protection. To make a decision, the Territorial Commission must consider the eventual consequences of repatriation in relation to Italy's international treaty obligations, including those under the European Union Treaty on Human Rights. The respective Territorial Commission must make a decision whether to grant recognition of refugee status within three days. The Territorial Commission's written decision is communicated to the requester jointly with information about his/her right to appeal the decision.



# exclusions

The law prohibits the entry into the national territory of foreigners when the border police have determined that the requester:

- has already been recognized as a refugee in another country;
- comes from a state other than his/her own that has adhered to the Refugee Convention, and in which he/she has resided for a period of time
- is suspected of committing a crime against peace, a war crime, or a crime against humanity;
- has committed a serious nonpolitical crime outside Italy prior to his/her admission to Italy as a refugee;
- has been convicted in Italy for a crime established in the Code of Criminal Procedure;
- is considered as dangerous for the security of the state;
- or belongs to a mafia organization, an organization dedicated to narcotics trafficking, or to a terrorist organization.

Refugee status is also denied on the basis of an individual evaluation when the legal grounds to claim such status are not met.

# detention of asylum requesters

Asylum requesters may not be detained solely because their asylum request is being reviewed. However, these persons may be detained **exclusively for the time necessary to make a decision on their asylum application** to verify or determine their nationality or identity when they are not in possession of travel or identity documents

Detained persons are kept in identification centers (**CARA**) in accordance with domestic, UN, and European legislation.



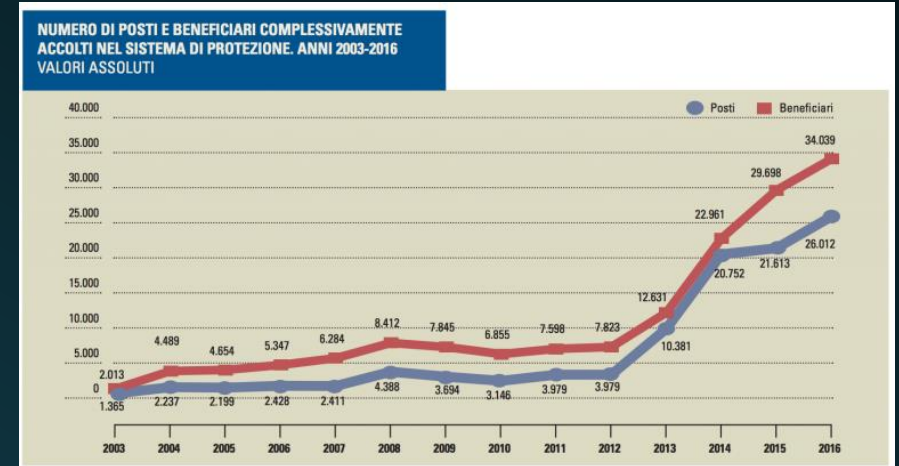
*Centro Accoglienza Richiedenti Asilo*

*Mineo (Catania, Sicily)*

# right of appeal

Decisions of the National Commission and the Territorial Commissions concerning the admissibility of requests for refugee status **are subject to judicial appeals**. A decision rejecting the recognition of refugee status, ordering the expulsion of the requester, or rejecting or revoking a residence permit is subject to appeal before the respective **regional administrative tribunal**.

The same right of appeal is granted to requesters who have petitioned for the recognition of refugee status and are granted only subsidiary protection instead.



# cessation of refugee status

Refugee status ceases under Italian law when refugees voluntarily:

- avail themselves again of the protection of their country of citizenship;
- have lost their citizenship and voluntarily reacquire it;
- **acquire Italian citizenship** or another citizenship and enjoy the protection of their new country;
- voluntarily reestablish themselves in the country that they left or to which they had not returned for fear of persecution.

# Revocation of refugee status

- Refugee status is subject to revocation by the Italian authorities **when legal grounds to deny the status arise**, facts have been presented erroneously or omitted by the requester, or false documentation has been produced.
- Refugees or foreigners admitted to subsidiary protection are subject to expulsion, or to the public order or security **when they are considered a danger to state security** after being convicted of a crime punishable by incarceration for four to ten years.
- Requesters who have obtained refugee status or subsidiary protection may expressly renounce their status. The law also provides for a program for the voluntary repatriation of persons receiving international protection benefits.

# handling of refugees at the border

Border police are empowered to reject the entry of foreigners who appear at border crossings without complying with the requirements established in the law for their lawful entry into Italian territory.

The questore is authorized to reject refugee requests and order that requesters be escorted to the border when they have entered the national territory by evading border controls and were stopped at the border or immediately after.



# assistance provided to refugees

**Italian law protects the family unity** of those receiving refugee status and the status of subsidiary protection.

Family members who are not entitled to the status of international protection enjoy the same rights afforded to their family member who enjoys such status.

Family members of persons who are granted international protection status who are present in the national territory and are not individually entitled to that right may obtain a residence permit on the basis of “family reasons”.

Family members who are or would be excluded from refugee status or subject to subsidiary protection status are not eligible to receive these benefits.



# treatment of refugees

Refugees and persons receiving subsidiary protection have the right to **the same treatment** established for **Italian citizens**.

Refugees and persons receiving subsidiary protection also have access to the Italian general **educational system and professional training**.

Refugees and protected persons have the right to the same treatment afforded to Italian citizens in matters of **social and health assistance**, including psychological treatment for previous torture and suffering experienced by them.





# monitoring of refugees within italy

The law sets up a **protection system for asylum requesters and refugees** that pivots around local entities dedicated to the assistance of these persons. The Ministry of the Interior appropriates funds annually to this effect.

To expedite the protection system for asylum requesters, refugees, and foreigners with humanitarian permits, and to facilitate the coordination of this protection system at the national level, the Ministry of the Interior was empowered to create SPRAR for the purpose of providing information to, promoting, consulting with, monitoring, and providing technical support to local entities that provide assistance to asylum requesters, refugees, and foreigners with humanitarian permits. SPRAR is under the direct supervision of the National Association of Italian Municipalities (ANCI).



# SOURCES

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# *Thank you!*

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