

**BEFORE THE ORDINARY TRIBUNAL OF MILAN**

**FIRST CIVIL SECTION**

**COMPLAINT N. R.G. 72954/09**

**JUDGE MR DORIGO**

**IN THE CASE OF ROBERTO ISENI**

**v.**

**MINISTRY OF THE INTERIOR**

**AD ADIUVANDUM INTERVENTION**

**OF THE OPEN SOCIETY JUSTICE INITIATIVE**

**A. INTERVENOR**

1. The Open Society Justice Initiative (“the Justice Initiative”) respectfully requests to be joined in these proceedings as intervenor *ad adiuvandum*, in order to present arguments in favor of Mr. Iseni’s request to be granted access to Italian citizenship or, in the alternative, to be declared *de jure* stateless. The Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. We foster accountability for international crimes, combat discrimination and statelessness, support criminal justice reform, address abuses related to national security and counterterrorism, expand freedom of information and expression, and stem corruption linked to the exploitation of natural resources.
2. The Justice Initiative has been involved in standard-setting on the right to nationality and statelessness at the international level, including through advocacy and dissemination of information before the United Nations Committee on the Elimination of Racial Discrimination, and through providing expert assistance to the United Nations High Commissioner for Refugees. In addition, the Justice Initiative has submitted arguments on the right to nationality and statelessness to the European Court of Human Rights in the case of *H.P. v. Denmark*; to the African Commission on Human Rights in the case of *Ali v. Kenya*; to the African Committee of Experts on the Rights and Welfare of the Child in the case of *Nubian Minors v. Kenya*; and to the Inter-American Court of Human Rights in the case of *Bueno v. Dominican Republic*. It has also made an *amicus curiae* submission to the Inter-American Court of Human Rights in the landmark case of *Yean and Bosico v. Dominican Republic*, on the prohibition of the arbitrary deprivation of citizenship.

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### **B. INTRODUCTION**

3. Roberto Iseni was born in Italy and became stateless after the breakup of the former Yugoslavia. As a stateless minor, he had an undisputed right to apply for and acquire Italian nationality at age 18. However, because of multiple deficiencies in Italy’s relevant administrative procedures, including the absence of any accommodation for his disability, he now faces criminal sanction because of his undocumented status. Mr. Iseni, who is officially recognized as hearing and speech impaired, missed a 12-month window within which he could have applied for citizenship because at the time he was living in publicly-funded facilities and supported by a social assistant for the disabled provided by the state. However, those responsible for his care failed to inform him of the deadline or to assist him in applying. Now Mr. Iseni has no way to appeal against the strict application of the administrative deadline. No mechanism exists by which he can remedy the arbitrary deprivation of his right to apply for Italian citizenship and he cannot even obtain a residence permit in the only country where he has ever lived.
4. In light of the international norms and standards guaranteeing the right to nationality and prohibiting discrimination and the creation of statelessness, the pleadings in Mr. Iseni’s case demonstrate a clear entitlement to Italian nationality. The Justice Initiative urges the Court to consider Italy’s binding international obligations in rendering its decision in the main proceedings. In order to give full effect to those obligations, in the specific circumstances of Mr. Iseni’s case, the Court is invited, first and foremost, to make a finding that a grant of Italian citizenship is appropriate as an extraordinary remedy.
5. Alternatively, the Justice Initiative supports Mr. Iseni’s request for retroactive restoration of his right to apply for Italian citizenship, exempting him from strict application of the 12-month administrative deadline.
6. If the Court determines, on the contrary, that the procedures applicable in Mr. Iseni’s case properly bar him from making an application for Italian citizenship, without prejudice to his disability and in accordance with due process, then Mr. Iseni must be declared stateless, as he is not considered a national by any state under the operation of its law.

### **C. STANDING**

7. The Open Society Institute, of which the Justice Initiative is an operational programme, is enlisted in the “Registro delle associazioni e degli enti che svolgono attività nel campo della lotta alle discriminazioni,” established with the Presidency of the Council of the Ministers by article 6, 2 of Legislative Decree No 215 of 7 July 2003.

### **D. FACTUAL BACKGROUND**

8. Roberto Iseni was born in Italy in 1987 and has lived in Italy for over two decades—his entire life. He does not understand any other language than Italian. He has never left Italy. He has an Italian fiancée. He has never been recognized as citizen of any state, and has no ties with either Croatia or Serbia, where his mother and father were originally from. Mr. Iseni, like his parents, is of Roma ethnicity.
9. Mr. Iseni, who is hearing and speech impaired, has lived in 5 different homes for the disabled since he was 16, all in Lombardy, paid for by the government of the municipality of Milan. As an individual living with an officially recognized disability, Mr. Iseni was supported by social assistants for the disabled, paid for by the municipality, who were responsible for ensuring that he was cared for in an appropriate institution and dealt with legal and procedural matters. Before he was 18, Mr. Iseni had a regular residence permit, due to his status as an (undocumented) minor. When he turned 18, neither the state-provided social assistants for the disabled nor the staff at the facility where he was living suggested he could apply for Italian citizenship or assisted him in such an application. Under Article 4(2) of Law 91 of 1992, he was able to apply for citizenship and a passport only within the 12-month window following his 18<sup>th</sup> birthday. When he applied to the Milan police in 2005 for a renewed residence permit, his application was refused on the basis that he did not have a passport, but the police failed to inform him that he was entitled to apply for Italian citizenship. By the time his social assistant consulted a lawyer regarding Mr. Iseni’s application for a renewed permit of stay, the deadline to apply for citizenship had passed and he could not apply.
10. Both Croatian and Serbian consulates confirmed that Mr. Iseni does not appear in the registry of population. Without a declaration that he is stateless, Mr. Iseni is left in the precarious situation of an undocumented person in Italy, liable to criminal sanction and even expulsion under Law 94 of 2009, and those who assist him are under a similar threat. If he were declared stateless, his position would slightly improve. He would have a renewable residence permit, valid for two years at a time, the right to work, a stateless travel document, the right to family reunification, access to health care and social services, and entitlement to the administrative assistance of the Italian state such as the issuance of documents usually issued by the country of nationality, resulting in a status similar, in most aspects, to that of recognized refugees. However, unlike other Italians, Mr. Iseni would not be an EU citizen, and so would not have the free movement that would allow him to leave and enter Italy, or to work in other countries. He also could not vote in European elections.
11. Moreover, while in principle a recognized stateless person can apply to become an Italian citizen after five years, in practice administrative and other obstacles bar a vulnerable individual such as Mr. Iseni from becoming a citizen. After the required residency period of five years, Mr. Iseni would have to file a complicated application for which he would need substantial legal assistance, and it is unclear whether he would be entitled to legal assistance paid for by the state. Like any other immigrant wishing to naturalize, Mr. Iseni would have to demonstrate that he had sufficient income to maintain himself for at least the three years preceding his application, a requirement which would be difficult for him to fulfill as a disabled person. The naturalization process could take well over two years, prolonging Mr. Iseni’s stateless status for more than seven years at a

minimum. In reality, it is likely that naturalization proceedings would be particularly lengthy in Mr. Iseni's case, due to the complexity of his situation and the rarity of stateless persons within Italy seeking to naturalize.

## **E. THE RIGHT TO CITIZENSHIP: INTERNATIONAL STANDARDS**

12. The character and application of Italy's nationality laws must conform to the limits defined by international law, including international human rights law.<sup>1</sup> The current impossibility of Mr. Iseni to apply for Italian citizenship is a violation of Italy's obligations under international and European law and amounts to an arbitrary deprivation of his right to acquire Italian citizenship. "Arbitrary" is a term defined in international law to include actions that are discriminatory or actions that violate the norms of due process.<sup>2</sup> The concept of arbitrary deprivation of nationality encompasses measures "that arbitrarily preclude a person from obtaining or retaining a nationality."<sup>3</sup> Denial or deprivation of citizenship in a manner that is discriminatory or that results in statelessness is *per se* arbitrary.<sup>4</sup>
13. Italy's failure to provide a mechanism by which Mr. Iseni can now assert his entitlement to Italian citizenship is arbitrary in several respects: the lack of special procedures or exceptions for the disabled is discriminatory; the lack of a mechanism for re-consideration of individuals who have missed the deadline violates international norms of due process; and he is now left stateless, even though his right to Italian nationality under international law is strong. The following paragraphs set out the international standards establishing Mr. Iseni's right to Italian nationality – a right which should not be abrogated simply by his failure to meet an administrative deadline, while still in the care of the state.

### **UN Convention on the Rights of the Child and Related Instruments**

14. Italy ratified the United Nations Convention on the Rights of the Child ("CRC") on 5 September 1991. Articles 7 and 8 deal with the right to a nationality for the child. Article 7 provides:
  - "1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
  2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

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<sup>1</sup> See, e.g. International Law Commission, *Report of the International Law Commission on the work of its fifty-first session 3 May-23 July 1999 (A/54/10)*, "Chapter IV: Nationality in Relation to the Succession of States,"

Commentary [3], Commentary [5] on the Preamble; European Convention on Nationality, Article 3(1).

<sup>2</sup> See, e.g., Human Rights Committee, General Comment Nos. 16 and 27 (the prohibition on arbitrary interference requires all state actions to be reasonable under the particular circumstances and respect the principle of proportionality); Art. 8(4) of the 1961 Convention on the Reduction of Statelessness (not ratified by Italy; providing for minimum due process standards, including the right to a fair hearing); Articles 5, 7(3), 12, European Convention on Nationality (signed, but not ratified by Italy; mandating non-discrimination, restriction on loss of nationality resulting in statelessness and access to review proceedings); Human Rights Council, *Report of the Secretary-General on Human rights and arbitrary deprivation of nationality*, 14 December 2009, A/HRC/13/34 at paras. 25-27, 43.

<sup>3</sup> Human Rights Council, *Report of the Secretary-General*, 14 December 2009, at para. 23.

<sup>4</sup> *Ibid.*, at para. 27 (a deprivation of nationality resulting in statelessness is generally arbitrary). Specific protection against arbitrary deprivation of nationality resulting from discrimination is dealt with in various human rights treaties, including Article 5(d)(iii), Convention on the Elimination of All Forms of Racial Discrimination, and Article 9(1) Convention on the Elimination of Discrimination against Women. Italy has ratified both treaties.

15. CRC Article 7 builds upon principles in other important international instruments. The principle of the right to a nationality is established in Article 15 of the 1948 Universal Declaration of Human Rights (“UDHR”) which states that “everyone has the right to a nationality.” This provision of the UDHR was incorporated into the United Nations International Covenant on Civil and Political Rights (“ICCPR”) which was ratified by Italy on 15 September 1978 (Law 25.10.1977, n. 881). The ICCPR affirms the right of every child to acquire a nationality in Article 24(3). Thus, under Article 24(3), Italy had an obligation to ensure that Mr. Iseni acquired a nationality *before* he reached majority; the same obligation flows from CRC Article 7.
16. CRC Article 3 also establishes the principle that
 

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”
17. The right of the child to acquire a nationality, in particular where the child would otherwise be stateless, under CRC Article 7 must be read in conjunction with the best interests of the child principle: it should be beyond doubt that it was in Mr. Iseni’s best interests to acquire Italian nationality *before* majority, and that Italy had an obligation to ensure that he did so. However, given that Italy failed to fulfill this obligation while Mr. Iseni was minor, it ought to correct this past wrong by ensuring that he acquires Italian nationality as an adult.
18. Finally, the 1961 Convention on the Reduction of Statelessness (“1961 Convention”), focusing on the reduction of statelessness particularly at birth and among children, though not signed by Italy, served as a foundation for both ICCPR Article 24(3) and CRC Articles 7 and 8, and is thus relevant. The 1961 Convention also contains several provisions specifically aimed at relaxing the application of administrative deadlines where such application would leave the individual concerned at risk of statelessness which are particularly relevant.<sup>5</sup>
19. Here, Mr. Iseni has been arbitrarily deprived of access to Italian nationality despite his vulnerable situation. The strict application of the 12-month rule for citizenship application, means that he has no other means besides the current action by which to seek to have his right to apply for and acquire Italian citizenship restored. International human rights law instruments like the CRC and the ICCPR establish obligations to protect the right of every child to acquire a nationality during childhood. This obligation is binding on Italy as a party to both instruments. Both the ICCPR and the 1961 Convention emphasize the need for procedural protections to safeguard enjoyment of human rights, including to the right to nationality. In this case, procedural requirements served only to undermine Mr. Iseni’s rights: the strict application deadline, the lack of accommodation for persons with disabilities and the failure to provide for administrative or judicial review of his situation violate binding international protections in both letter and spirit.

#### **UN Convention on the Rights of Persons with Disabilities**

20. The United Nations Convention on the Rights of Persons with Disabilities (“CRPD”) promotes respect for those with disabilities, and explicitly prohibits states from discriminating on the basis of disability, including by providing additional accommodation to enable full enjoyment of rights.
21. The CRPD was ratified by Italy on 15 May 2009. The EU acceded to the CRPD on 23 December 2010. This accession by the EU gives CRPD provisions direct effect in all EU member states and thus in these proceedings. The preamble recognizes that “discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,” and also

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<sup>5</sup> See 1961 Convention, Articles 1(2)(a), 1(5)(a), 4(2)(a) (fixing generous minimum periods within which individuals may apply for acquisition of citizenship).

recognizes “the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices.”

22. The CRPD reflects the duty under European law to treat differently those in different situations, with a call to provide “reasonable accommodation” for those with disabilities, which includes “[N]ecessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”
23. Article 18 protects the right to freedom of movement and nationality, stating that:
  - “(1) States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:
    - (a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;
    - (b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement . . .”
24. Due to the failings of the social assistants officially responsible for his care as a recognized disabled person, Mr. Iseni was deprived of the right to apply for and acquire Italian nationality; indeed, he was deprived of the right to acquire any nationality, leaving him stateless as a matter of law. The strict application of the 12-month rule for citizenship application, and the lack of any provision or discretion to grant citizenship outside the uniform regulatory framework, fail to provide reasonable accommodation for those with disabilities, including Mr. Iseni.

### **European Convention on Human Rights and Related Instruments**

25. Italy has a duty under the European Convention to protect (i) Mr. Iseni’s right to respect for private life (Article 8), encompassing his right not to be arbitrarily denied access to nationality and his right not to be left stateless in the circumstances of this case, and (ii) his right not to suffer discrimination in the enjoyment of his private life (Article 8, in conjunction with Article 14), in accordance with which Italy is required to treat Mr. Iseni differently on account of his status as a stateless person, his disability and his membership in a vulnerable minority.

#### Article 8

26. Under the case law of the European Court of Human Rights (“ECtHR”), the arbitrary deprivation of citizenship and legal status may violate Article 8 of the European Convention, particularly in cases where the individual concerned is left vulnerable to statelessness. Mr. Iseni’s situation is such a violation, in that Italian law has operated to deny him the right to apply for and acquire Italian citizenship, to which he was indisputably entitled under international, European and Italian law as a minor and upon reaching the age of 18.

#### *Relevant law*

27. In articulating the meaning of the right to nationality as a function of an individual’s private and/or family life under Article 8, the ECtHR has often looked to other Council of Europe treaties, including the European Convention on Nationality (“ECN”) and the Council of Europe Convention on the Avoidance of Statelessness in Relation to State succession (entry into force 1 August 2010), and to recommendations of the Committee of Ministers.

28. The ECN, signed by Italy on 6 November 1997, establishes a legal obligation to avoid statelessness and the arbitrary deprivation of nationality, and requires states to create principles and rules to achieve that objective. As a signatory to the ECN, Italy is obliged to uphold its object and purpose, as set out in the preamble and the principles of the treaty described in Article 4 which include that “everyone has a right to nationality”, “statelessness shall be avoided” and that “no one shall be arbitrarily deprived of his or her nationality”. Article 5 states that there can be no practice which amounts to discrimination.
29. As a member of the Committee of Ministers of the Council of Europe, Italy has endorsed the promulgation of *Recommendation R (1999) 18 of the Committee of Ministers to Member States on the Avoidance and Reduction of Statelessness*,<sup>6</sup> which reiterates and elaborates many of the provisions of the ECN. There, the Council of Europe further emphasized the pernicious effects of statelessness and the need to avoid it. The Recommendation requires judges to interpret legislation in order to avoid statelessness. Specifically, the Recommendation requires governments to uphold the following principles:

“Access to the nationality of a State should be possible whenever a person has a genuine and effective link with that State, in particular through birth, descent or residence” (para. I.b).

“In the application and interpretation of nationality legislation, account should be taken of the consequences of the relevant corresponding provisions of the legislation and of the practice of other states concerned, in order to avoid statelessness” (para. I.f) (emphasis added).

*Interference with Article 8*

30. In a consistent line of authority since the early 1970s the ECtHR has recognized that the arbitrary deprivation of citizenship might in certain circumstances implicate Article 8 of the European Convention, because of the impact on the private life of the individual concerned. Here, the arbitrary deprivation of Mr. Iseni’s ability to obtain citizenship interferes with many aspects of his Article 8 rights, and has a severe impact upon his private life.
31. The arbitrary deprivation of access to citizenship in this case leaves Mr. Iseni stateless, a situation that affects individuals severely and which is prohibited or discouraged by international agreements accepted by Italy. The Committee of Ministers of the Council of Europe recognizes “the negative impact of statelessness on individuals,” in making its recommendations to Member States to “avoid and reduce statelessness.”<sup>7</sup>
32. The ECtHR also interprets “private life” to include aspects of personal autonomy, including personal and legal identity, personal development and human dignity. Respect for private life is of “fundamental importance [for ensuring] the development of every human being’s personality”<sup>8</sup> which “extends beyond the private family circle to include a social dimension.”<sup>9</sup>

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<sup>6</sup> Council of Europe Committee of Ministers, “Recommendation R (1999) 18 on the avoidance and reduction of statelessness.” Available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=538369&SecMode=1&DocId=409946&Usage=2> (“Recommendation No. 18 of the Committee of Ministers”)

<sup>7</sup> Recommendation R (1999) 18 of the Committee of Ministers.

<sup>8</sup> *Armoniene v Lithuania*, ECtHR Judgment of 25 February 2008, at para. 39.

<sup>9</sup> *Ibid.*; see also *Pretty v United Kingdom*, ECtHR Judgment of 29 July 2002, at para. 61 (“[T]he concept of “private life” is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person [...] It can sometimes embrace aspects of an individual’s physical and social identity. ... Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees.”) (internal citations omitted).

33. Without citizenship, Mr. Iseni is left in a vulnerable situation. If he is not granted citizenship or declared stateless, he will remain an undocumented migrant liable to expulsion, detention and fines under Law 94 of 2009. Under the same law, those in his circle of friends and acquaintances who choose to help him also run the risk of criminal sanction for their charity. The ECtHR has found that a State's refusal to clarify an individual's legal identity may engage Article 8, holding that leaving someone in a state of limbo was an "unsatisfactory situation" in which such individuals were forced to "live in an intermediate zone" which was "no longer sustainable."<sup>10</sup> With the added threat of detention, expulsion and fines, and considering his disability, Mr. Iseni's situation goes beyond legal limbo – he is legally imperilled.
34. In this case the arbitrary deprivation of citizenship has a significant impact upon the private life of Mr. Iseni, which is all the greater given his disabilities and the need for the government to take specific steps on account of his hearing and speech impediments. He may not be entitled to the same social services as a citizen, the same pension rights, or other benefits. He will have to spend many years attempting to obtain citizenship. In the meantime, he is left with an unclear legal status, limiting his prospects for personal development. The deprivation of citizenship also impacts upon the social dimension of private life, in that those who care for him are threatened with legal action, and if forced to leave the community where he currently lives his social links will be broken. This has a greater impact for someone with hearing and speaking disabilities, who may be unable to make himself understood to those without experience in communicating with individuals with such disabilities. Even worse, the deprivation leaves him at risk of deportation, whereby he would be moved to a country where he has never lived, does not know the language, and would be left unable to communicate at all.

*Proportionality of the Interference*

35. The arbitrary deprivation of the opportunity to acquire citizenship is a disproportionate interference with Mr. Iseni's Article 8 rights, since the violation of numerous international standards cannot be justified by the need to control immigration. The interference in question (i) leaves Mr. Iseni stateless, (ii) fails to take account of his situation as a disabled person in need of special protection, (iii) fails to facilitate the determination of his uncertain legal status, (iv) fails to take proper account of his longtime habitual residence in Italy, (v) fails to take account of the fact that he has no other country to turn to, (vi) fails to consider the effects of disenfranchisement, and (vii) fails to consider the fact that he is left with the criminal status of an undocumented migrant.
36. Mr. Iseni has lived in Italy for his entire life, developing there the network of relationships that are essential to any individual's core identity. He has learned to understand Italian in spite of his disability and speaks no other language. To deprive Mr. Iseni of the right to apply for and acquire citizenship based solely on a lapsed administrative deadline does profound injustice to the object and purpose of the ECN to avoid statelessness, and runs contrary to the ECtHR's Article 8 case law. The strict and final application of the 12-month deadline cannot be justified on any reasonable ground where such important individual interests are at stake.

Article 14

37. The deprivation of Mr. Iseni's right to acquire Italian citizenship is also discriminatory, because the authorities failed to treat Mr. Iseni differently on account of his disability and his vulnerable status as both a member of the Roma minority population in Italy and a stateless person.
38. The European Convention requires states to take positive measures to account for such individual differences, as "[t]he Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly

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<sup>10</sup> *Goodwin v United Kingdom*, ECtHR Judgment of 11 July 2002, at para. 90.

different.”<sup>11</sup> Failure to protect the most vulnerable members of society undermines one of the founding principles of the European Convention, that is, the recognition of “the inherent dignity and worth, and the equal and inalienable rights of all members of the human family.” The Italian Constitution, providing, in Art. 3.2 that “It is the duty of the Republic to remove those obstacles of an economic and social nature which, really limiting the freedom and equality of citizens, impede the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country” is in line with this jurisprudence of the European Court.

39. *Disability.* As discussed above, the CRPD makes clear that there is a duty to treat differently those with impairments, specifically when it comes to the right to acquire a nationality (Article 18(1)(a)). Italy’s obligation to provide Mr. Iseni with “reasonable accommodation” for his disability, as required by the CRPD, is reflected in the general principles of the European Convention. The failure to protect the most vulnerable groups, including disabled persons, threatens to unravel the democratic principles that inform the Convention’s concept of European public order.
40. *Minority status.* The ECtHR has also recognized a particular obligation to treat Roma differently, in an attempt to improve their situation, due to the fact that “as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority... As the Court has noted in previous cases, they therefore require special protection.”<sup>12</sup>
41. *Statelessness.* Finally, in the case of stateless persons, “[I]t is not enough for the host State to refrain from deporting the person concerned; it must also, by means of positive measures if necessary, afford him or her the opportunity to exercise the rights in question without interference.”<sup>13</sup>
42. Here, the authorities should have treated Mr. Iseni differently due to his disability, his membership of a vulnerable ethnic group, and his stateless status. Instead, Italy has imposed an inflexible deadline of 12 months from his 18<sup>th</sup> birthday, outside of which Mr. Iseni could not even apply for Italian citizenship other than by seeking stateless status and naturalization. This result undermines Italy’s obligations to make reasonable accommodation for his disability and to undertake positive measures to assist members of vulnerable groups such as Roma and stateless persons.

#### Conclusion

43. In light of the above, the Court in this case should interpret Italian laws to conform to the international standards and principles that safeguard the right to nationality. The Court should accordingly issue an order granting Mr. Iseni confirmation of Italian nationality upon the evidence presented in the application being considered.

#### **F. STATELESSNESS STATUS DETERMINATION: INTERNATIONAL STANDARDS**

44. If Mr. Iseni is not granted Italian nationality, Italy is obliged to formally recognize him as a stateless person. In that case, he should also be given a right to retroactively apply for Italian nationality under Article 4(1)(c) of Act No. 91 of 5 February 1992 on Italian nationality.

#### **UN Convention relating to the Status of Stateless Persons (1954)**

45. The definition of a stateless person comes from the 1954 Convention relating to the Status of Stateless Persons (the “Statelessness Status Convention”), which Italy ratified on December 3,

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<sup>11</sup> *Thlimmenos v Greece*, ECtHR [GC] Judgment of 6 April 2000, at para. 44.

<sup>12</sup> *D.H. and Others v the Czech Republic*, ECtHR [GC] Judgment of 13 November 2007.

<sup>13</sup> *Sisojeva and Others v Latvia*, ECtHR [GC] Judgment of 16 June 2005, at para. 104.

1962. Article 1 reads: "...the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law."<sup>14</sup>

46. As a State Party to the Statelessness Status Convention, Italy has an obligation to grant Mr. Iseni statelessness status should it fail to consider him a national. In the process of doing so, Italy should confirm that he is not an Italian national and also acknowledge the official statements from the states of Croatia and Serbia, respectively, that Mr. Iseni is not considered as a national of either state.
47. The United Nations High Commissioner for Refugees ("UNHCR") has recently issued two authoritative interpretations of the 1954 Convention relating to the Status of Stateless Persons, based on extensive consultations with legal experts. The first concerns the definition of statelessness, and the second deals with statelessness status determination. The latter is of particular importance in this case and Italy should observe and implement these recommendations to ensure compliance with its obligations under the Convention.
48. The Summary Conclusions from the Expert Meeting on Statelessness Determination Procedures and the Status of Stateless Persons (the "Conclusions on Statelessness Determination") state:

"The 1954 Convention relating to the Status of Stateless Persons establishes a standard of treatment which can only be applied by a State party if it knows who the recipients of this treatment should be. As such, it is implicit in the 1954 Convention that States parties identify who qualifies as a stateless person under Article 1 of the Convention for the purpose of affording them the standard of treatment set forth in the Convention."<sup>15</sup>
49. And further:

"When States recognize individuals as being stateless, they should provide such persons with a lawful immigration status from which the standard of treatment envisaged by the 1954 Convention flows."<sup>16</sup>
50. In Mr Iseni's case, given that he was born in Italy and lacks effective links with any other state, appropriate standard of treatment includes access to Italian citizenship by application. This should be provided retroactively in accordance with Article 4(1)(c) of Act No. 91 of 5 February 1992 on Italian nationality. This is also in line with Italy's obligations under Article 32 of the 1954 Convention relating to the Status of Stateless Persons.<sup>17</sup>
51. Given Mr. Iseni's formal status in Italy as a disabled person, he should also be provided with immediate access to social security, as prescribed by Article 24 of the 1954 Convention relating to the Status of Stateless Persons.<sup>18</sup> In accordance with Articles 27 and 28 of the Convention, Italy shall also issue Mr. Iseni with identity papers and travel documents.
52. In sum, if Mr. Iseni is not granted Italian nationality immediately, he must be formally recognized as a stateless person in accordance with international law. He must also be provided with an

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<sup>14</sup> The International Law Commission, in its 2006 *Report of the International Law Commission on the work of its fifty-eighth session* (A/65/10, p. 49) recognizes the definition as a standard under customary international law.

<sup>15</sup> See UNHCR, *Expert Meeting: Statelessness Determination Procedures and the Status of Stateless Persons, Summary Conclusions*, Geneva, Switzerland, December 6-7, 2010, at 2, para. 1.

<sup>16</sup> *Ibid*, at 6, para 25

<sup>17</sup> Article 32 reads: "The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings."

<sup>18</sup> Article 24 reads: "The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters: ... b) Social security (legal provisions in respect of...disability...)

expedited path to Italian nationality, ideally through retroactive application of Article 4(1)(c) of the Italian nationality act.

## **G. REMEDIES**

53. Under international human rights law, Italy must provide an effective remedy for violations of applicable rights. Here, the only remedy that does not violate international legal standards accepted by Italy would be for Mr. Iseni to be declared an Italian citizen. There is no justification for the strict application of the 12-month rule to a disabled person from a vulnerable minority group, and the rules should be applied and interpreted differently so as to take account of the particular circumstances of Mr. Iseni's case and to be in conformity with international human rights law. The only remedy that is capable of resolving the human rights violation against Mr. Iseni is to grant him Italian citizenship.
54. Alternatively, the Court should permit Mr. Iseni the right to apply for Italian citizenship outside the 12-month deadline. To facilitate such application and avoid prolonging the state of legal limbo in which Mr. Iseni now finds himself, the Court must simultaneously grant Mr. Iseni protection as a stateless person until he gains Italian citizenship by application;
55. Unless the Court determines – as it should – that an immediate grant of citizenship is appropriate in this case, Mr. Iseni must be declared stateless, as he is not considered a national by any state under the operation of its law.