

COUNTRY BRIEFING
JULY 2020

Italy



INTRODUCTION

The [Statelessness Index](https://index.statelessness.eu/) (<https://index.statelessness.eu/>) is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the European Network on Statelessness (ENS),¹ a civil society alliance of over 150 organisations and individuals in 41 countries working to end statelessness and ensure that stateless people in Europe access their rights. ENS works with Consiglio Italiano per I Rifugiati (CIR) and independent consultants² to research and compile comparative information on statelessness in Italy.³ CIR is an independent, humanitarian and non-profit organisation, founded in 1990 under the patronage of UNHCR to coordinate actions in defence of refugees and asylum seekers in Italy.⁴

To be stateless is not to be considered a national by any state under the operation of its law. It is a legal anomaly that prevents more than 10 million men, women, and children around the world – and more than half a million in Europe – from accessing fundamental civil, political, economic, cultural, and social rights.

This briefing summarises the Italian legal framework and policy, its conformity with international norms, its practices on the protection of stateless people, and its approach to the prevention and reduction of statelessness. Five thematic areas are covered by the Index: International and Regional Instruments, Statelessness Determination and Status, Stateless Population Data, Detention, and Prevention and Reduction. This country briefing also proposes several recommendations to the Italian Government to better protect stateless people's human rights and dignity.

INTERNATIONAL AND REGIONAL INSTRUMENTS

Italy is state party to both the 1954 and 1961 statelessness conventions (although it maintains reservations to the 1954 Convention) as well as to several other relevant international and regional human rights instruments. However, Italy is not party to the Council of Europe conventions on statelessness ([Convention on the Avoidance of Statelessness in Relation to State Succession](#) and the [European Convention on Nationality](#)). Nonetheless, Italy has many obligations under international treaties, including protecting the right to a nationality for all, preventing and reducing statelessness, prohibiting discrimination against minorities and stateless persons, and registering the birth of every child. In the Italian legal framework, the enactment of ratification of international treaties gives automatic legal effect at national level, even without the adoption of implementing legislation. All the above international treaties are therefore considered part of national law. Consequently, several important international legal safeguards against statelessness are subject to direct application in the country.

The Italian Government should remove its reservations to the 1954 Convention and accede to the European Convention on Nationality and the European Convention on the Avoidance of Statelessness in Relation to State Succession.



STATELESS POPULATION DATA

The Italian national census form enables some data to be captured on statelessness. However, it only records those who have been granted stateless status and are residing legally in Italy. Furthermore, there are other categories in the census that may also count stateless people within them, so it does not provide a full picture. Statelessness has not been comprehensively mapped in Italy, and the Government does not routinely publish figures on stateless refugees or asylum seekers, nor on stateless people held in detention. As a result, data on the size of the stateless population in Italy is very likely to be an underestimate.

The Italian Government should collect and publish reliable, quantitative data on statelessness, including stateless refugees and

asylum seekers, and other groups disproportionately affected by statelessness in the country.



STATELESSNESS DETERMINATION AND STATUS

Italian national law does not provide a definition of a stateless person, but since Italy has ratified the 1954 Convention and this has direct effect, the definition in Article 1(1) of the Convention is applied. The Italian system provides two possibilities for determining statelessness: an administrative procedure before the Ministry of Interior and a judicial one before the civil court. There is no time limit for accessing either procedure. However, access is limited by the fact that applications must be in writing in Italian and cannot be initiated ex officio. Moreover, in the administrative procedure, the applicant must provide a birth certificate, documentation certifying residence in Italy and demonstrating statelessness, or a declaration from their state of origin or former residence certifying they are not a national. Thus, in the administrative procedure, the burden of proof lies exclusively with the applicant.

In the judicial procedure, applicants must be assisted by a lawyer who lodges the application on their behalf. The standard of proof is the same as in the asylum procedure. There are procedural protections in the judicial procedure such as (conditional) free legal aid and a hearing before the court, in which applicants may be heard; whereas in the administrative procedure there is no legal aid and no right to an interview. Protection during the procedure is also limited as the practice of granting temporary residence to applicants is inconsistent. If applicants already have a residence permit, they can benefit from a temporary residence permit pending the procedure. Negative decisions can be appealed, and those granted stateless status have a right to a residence permit, travel document, work, social security, healthcare and education, as well as a reduced residency requirement for naturalisation.

In June 2019, the Court of Cassation ruled that, pending the statelessness determination procedure, applicants cannot be expelled when the statelessness situation of the person emerges clearly from the information or documentation of the competent public authorities.

The Italian Government should improve the statelessness determination procedure by amending the law to incorporate the rights enshrined in the 1954 Convention and international human rights law; to ensure that the procedure follows the procedural safeguards outlined in UNHCR's Handbook on Protection of Stateless Persons, including guaranteed access to the procedure regardless of status in the country, protection during the procedure, issuance of a temporary residence permit, a shared burden of proof; and ensuring rights and protection in line with the Convention are granted to all those recognised as stateless under the procedure.



DETENTION

There are gaps in Italian law with regard to safeguards against the arbitrary detention of stateless people. There is no requirement for a country of removal to be identified prior to detention and people at risk of statelessness, or whose statelessness has not been formally recognised in law, may be subject to detention and considered to have irregular residence status. In practice, detention is used prior to the implementation of alternatives and there is no

formal mechanism of referral from detention to a procedure to determine statelessness. One of the three alternatives to immigration detention set forth in law requires the possession of a passport or equivalent documentation, restricting access to this alternative for stateless people in Italy. There are relatively strong procedural safeguards including time limits, information provided for detainees, remedies, and periodic judicial reviews, although the effectiveness of implementing some of these safeguards in practice has been criticised. Protections on release for those without residence status are minimal, with only very basic rights and no guarantee against re-detention.

The Italian Government should take further steps to protect stateless people from arbitrary detention by introducing a clear referral mechanism to the statelessness determination procedure from return procedures; embedding consideration of statelessness as a juridically relevant fact in all decisions to detain; introducing a requirement in law to identify a country of removal prior to detention; considering and implementing alternatives to detention before deciding to detain; and providing documentation and temporary residence status to protect people from re-detention.



PREVENTION AND REDUCTION

Italian law provides that a child born in Italy to parents who are stateless or cannot confer their nationality, acquires Italian nationality at birth. However, in practice, the implementation of the provision is often not automatic and they must provide relevant supporting documentation to have the child's Italian nationality recognised. Foundlings acquire Italian nationality but may need to prove they do not possess another. There is no risk of statelessness during adoption procedures: children adopted by Italian nationals are considered Italian by birth. Children born to Italian nationals abroad are Italian by law, but registration is required in practice. If born to unmarried parents, paternity must be declared.

In Italy, birth registration is assured in law and practice for every child born on the territory, though late registration may require a court procedure. Following registration at the Registry Office, all children are issued with birth certificates. The birth certificate does not record the nationality of the child, only that of the parents. The child's nationality is recorded at the time of registration in the Municipal Population Registry and is automatically recorded on the basis of the parents' nationality. If this is unclear, the tendency is to record a presumed nationality, such as that of the parents' country of origin.

Reports have highlighted the disproportionate impact of risk of statelessness in Italy on Romani communities. Exact information is hard to come by, but it has been estimated that between 3,000 and 15,000 people may be affected. Many are from countries of former Yugoslavia and their descendants but have lived in Italy for many years (the largest populations of people at risk of statelessness have been recorded in Rome, Turin and Naples). Estimates include people who were born in Italy but have been unable to acquire Italian or another nationality. Some work has been done to address the risk of statelessness among Romani populations in Italy, including a national strategy for the inclusion of Roma, Sinti and Caminanti communities (2012-2020)⁵, and a working group involving civil society, but it is unclear what concrete action has been taken by the Government to address statelessness and risk of statelessness among Romani communities.

Legislation introduced in 2018 on national security and immigration grants the Italian Government the power to strip individuals found guilty of specific criminal offences of their Italian nationality.⁶ The legislation has been criticised as discriminating between Italian nationals by birth and by naturalisation, and risks creating new cases of statelessness.

The Italian Government should prevent statelessness at birth in line with the 1961 Convention and issue administrative guidance for decision-makers to protect every child's right to a nationality by ensuring that existing provisions in the Citizenship Law providing for automatic acquisition of Italian nationality at birth by children born on the territory to stateless or unknown parents, or parents who cannot pass on their nationality, are correctly and flexibly implemented in practice.

The Italian Government should implement concrete measures to regularise the legal status of Romani people at risk of statelessness in Italy and guarantee the child's right to a nationality and legal identity, including through legal outreach and engagement initiatives and proactive information campaigns in consultation with community representatives.

The Italian Government should amend Law 132/2018 to provide for new measures to revoke nationality, eradicating discrimination between nationals by birth and naturalisation, prohibiting the arbitrary deprivation of nationality and avoiding revocation if the person would become stateless.

SUMMARY OF RECOMMENDATIONS

The Italian Government should:

- Remove reservations to the 1954 Convention and accede to the European Convention on Nationality and the European Convention on the Avoidance of Statelessness in Relation to the State Succession;
- Collect and publish reliable, quantitative data on statelessness, including stateless refugees and asylum seekers, and other groups disproportionately affected by statelessness in the country;
- Improve the statelessness determination procedure by amending the law to incorporate the rights enshrined in the 1954 Convention and international human rights law; and to ensure that the procedure follows the procedural safeguards outlined in UNHCR's Handbook on Protection of Stateless Persons, including guaranteed access to the procedure regardless of status in the country, protection during the procedure, the issuance of a temporary residence permit, a shared burden of proof and ensuring rights and protection in line with the Convention are granted to all those recognised as stateless under the procedure;
- Take further steps to protect stateless people from arbitrary detention by introducing a clear referral mechanism to the statelessness determination procedure from return procedures; embedding consideration of statelessness as a juridically relevant fact in all decisions to detain; introducing a requirement in law to identify a country of removal prior to detention; considering and implementing alternatives to detention before deciding to detain; and providing documentation and temporary residence status to protect people from re-detention;
- Prevent statelessness at birth in line with the 1961 Convention and issue administrative guidance for decision-makers to protect every child's right to a nationality by ensuring that existing provisions in the Citizenship Law providing for automatic acquisition of Italian nationality at birth by children born on the territory to stateless or unknown parents, or parents who cannot pass on their nationality, are correctly and flexibly implemented in practice;
- Implement concrete measures to regularise the legal status of Romani people at risk of statelessness in Italy and guarantee the child's right to a nationality and legal identity, including through legal outreach and engagement initiatives and proactive information campaigns in consultation with community representatives;
- Amend Law 132/2018 providing for new measures to revoke nationality, to eradicate discrimination between nationals by birth and naturalisation, prohibit the arbitrary deprivation of nationality, and avoid revocation if the person would become stateless.
- Build the capacity of decision-makers and municipality officers to improve their knowledge of statelessness and facilitate accurate identification and recording of nationality status.

ENDNOTES

¹ <https://www.statelessness.eu/>

² Agnese Zucca in 2019 and Claudia Pretto in 2020

³ <https://index.statelessness.eu/country/italy>

⁴ CIR activities include direct legal assistance, social and psychological counselling to refugees, stateless people and asylum seekers. CIR supports particularly vulnerable groups such as survivors of torture, sexual and gender-based violence, women and unaccompanied minors.

⁵ National Strategy for the Inclusion of Roma, Sinti and Caminata Communities – European Commission Communication No. 173/2011 https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ITA/INT_CCPR_ADR_ITA_22194_E.pdf

⁶ Law n. 91 of 5 February 1992, New norms on nationality, as amended by Law 132/18 (IT): http://www.cir-onlus.org/wp-content/uploads/2018/12/Legge-91_92-modificata-legge-132_18.pdf

CONTACT

Daniela Di Rado

Head of Legal Department, Consiglio Italiano per I Rifugiati (CIR)

dirado@cir-onlus.org

Nina Murray

Head of Policy & Research, European Network on Statelessness

nina.murray@statelessness.eu



European
Network on
Statelessness

