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Country context (optional)

Please use this field to provide any relevant contextual or background information about the country's law, policy, and practice, or the stateless population, to help contextualise the information in the survey (optional question).

International and Regional Instruments

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|---------|-------------------|---|---|--|---|
| IOB.1.a | 1954 Convention | Is your country party to the 1954 Statelessness Convention? | UN Convention Relating to the Status of Stateless Persons, 1954 | Yes | United Nations, Treaty Series, vol. 360, p.117. Convention relating to the Status of Stateless Persons New York, 28 September 1954: http://www.refworld.org/docid/3ae6b3840.html |
| IOB.1.b | | If yes, when was ratification/accession? | | Signature: 20 October 1954 Ratification: 1 February 1962 | Italy's ratification of the Convention relating to the Status of Stateless Persons, adopted in New York, on 28 September 1954, Law n. 306 of 1 February 1962: http://www.gazzettaufficiale.it/eli/gu/1962/06/07/142/sg/pdf (IT) |
| IOB.1.c | | Are there reservations in place? Please list them. | Best practice is no reservations. If there are, they should have little or no impact on the rights of stateless people. | Yes, the provisions of Articles 17 & 18 on wage-earning employment and self-employment, are recognised as recommendations only. | https://treaties.un.org/doc/publication/mtdsg/volume%20i/chapter%20v/v-3.en.pdf |
| IOB.1.d | | Does the Convention have direct effect? | Best practice is that the Convention has direct effect, though this may depend on the legal regime. | Yes. Ratification of international treaties through enactment gives automatic legal effect at national level, even without the adoption of implementing legislation (in the case of the 1954 Convention, there is no comprehensive legislation implementing its provisions). | Arts. 80 & 87 of the Italian Constitution: https://www.quirinale.it/allegati_statici/costituzione/costituzione.pdf (IT) |
| IOB.2.a | 1961 Convention | Is your country party to the 1961 Statelessness Convention? | UN Convention on the Reduction of Statelessness, 1961 | Yes. | Accession to the 1961 Convention on the Reduction of Statelessness, approved in New York on August 30 th , 1961 (2802): http://www.gazzettaufficiale.it/eli/id/2015/10/12/15G00176/sg (IT) |
| IOB.2.b | | If yes, when was ratification/accession? | | Acceded on 1 Dec 2015. | United Nations, Treaty Series, vol. 989, p. 175. Convention on the Reduction of Statelessness, New York, 30 August 1961: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_n_o=V-4&chapter=5&clang=en Ratification law of 29 Sept 2015 n° 162, G.U. 12 Oct 2015: http://www.gazzettaufficiale.it/eli/id/2015/10/12/15G00176/sg (IT) |
| IOB.2.c | | Are there reservations in place? Please list them. | As above | No. | |
| IOB.2.d | | Does the Convention have direct effect? | As above | Yes. Italy ratified the 1961 Convention, which means that it has legal effect. In practice, the rules and safeguards provided in the 1961 Convention are incorporated in national legislation through the Nationality Law. | Law n. 91, New norms on nationality of 5 February 1992, as amended by Law 132/18: http://www.cir-onlus.org/wp-content/uploads/2018/12/Legge-91_92-modificata-legge-132_18.pdf (IT) |
| IOB.3.a | Other conventions | State party to European Convention on Nationality 1997? Please list any reservations. | European Convention on Nationality, 1997 | Italy has only signed the Convention [06 Nov 1997], not acceded. | European Convention on Nationality: https://www.coe.int/it/web/conventions/full-list/-/conventions/treaty/166/signatures |
| IOB.3.b | | State Party to European Convention on Human Rights 1950? Please list any relevant reservations. | European Convention on Human Rights, 1950 | Yes. Signature: 04/11/1950 Ratification: 26/10/1955 Entry into force: 26/10/1955 No reservations. | Treaty list for a specific State: Italy: https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/country/ITA?p_auth=eBKpHUjG |
| IOB.3.c | | State Party to Council of Europe Convention on the avoidance of statelessness in relation to State succession 2006? Please list any reservations. | Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006 | No. | Chart of signatures and ratifications of Treaty 200 Council of Europe Convention on the avoidance of statelessness in relation to State succession: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/200/signatures?p_auth=eBKpHUjG |
| IOB.3.d | | Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Return Directive)? Please list any relevant reservations. | Directive 2008/115/EC of the European Parliament and of the Council (EU Return Directive) | Yes. | Law 2 August 2011, n. 129 Conversione in legge, con modificazioni, del decreto-legge 23 giugno 2011, n. 89, recante disposizioni urgenti per il completamento dell'attuazione della direttiva 2004/38/CE sulla libera circolazione dei cittadini comunitari e per il recepimento della direttiva 2008/115/CE sul rimpatrio dei cittadini di Paesi terzi irregolari. Entrata in vigore del provvedimento: 06/08/2011 http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2011-08-05&atto.codiceRedazionale=011G0178&elenco30giorni=false (IT) |
| IOB.3.e | | State Party to Convention on the Rights of the Child 1989? Please list any relevant reservations. | Convention on the Rights of the Child, 1989 | Yes. No reservations. | Commissione parlamentare per l'infanzia, Legge 27 maggio 1991, n. 176, Ratifica ed esecuzione della convenzione sui diritti del fanciullo: http://www.camera.it/bicamerale/leg14/infanzia/leggi/Legge%20176%20del%201991.htm (IT) Convention on the Rights of the Child, New York, 20 November 1989: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_n_o=IV-11&chapter=4&clang=en |

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| | | | | | Declarations and Reservations: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&clang=en |
| IOB.3.f | | State Party to International Covenant on Civil and Political Rights 1966? Please list any relevant reservations. | International Covenant on Civil and Political Rights, 1966 | Yes. Italy entered reservations to Articles 15(1) and 19(3) but these do not impact on statelessness. | Declarations and Reservations: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&clang=en |
| IOB.3.g | | State Party to International Covenant on Economic, Social and Cultural Rights 1966? Please list any relevant reservations. | International Covenant on Economic, Social and Cultural Rights, 1966 | Yes. No reservations. | International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4&clang=en |
| IOB.3.h | | State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Please list any relevant reservations. | Convention on the Elimination of all Forms of Discrimination Against Women, 1979 CEDAW, Gen. Rec. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness | Yes. No reservations. | Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-8&chapter=4&clang=en |
| IOB.3.i | | State Party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984? Please list any relevant reservations. | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 | Yes. No reservations. | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-9&chapter=4&clang=en |
| IOB.3.j | | State Party to International Convention on the Elimination of All Forms of Racial Discrimination 1966? Please list any relevant reservations. | International Convention on the Elimination of All Forms of Racial Discrimination, 1965 | Yes. No reservations. | International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-2&chapter=4&clang=en |
| IOB.3.k | | State Party to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990? Please list any relevant reservations. | International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990 | No. | International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, New York, 18 December 1990: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-13&chapter=4&clang=en |
| IOB.3.l | | State Party to the Convention on the Rights of Persons with Disabilities 2006? Please list any relevant reservations. | Convention on the Rights of Persons with Disabilities, 2006 | Yes. No reservations. | Convention on the Rights of Persons with Disabilities, New York, 13 December 2006: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-15&chapter=4&clang=en |

Stateless Population Data

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|---------|--------------------------|--|---|--|---|
| POP.1.a | Availability and sources | Does the State have a 'stateless' category in its data collection systems (e.g. census)? Please list available figures for the total stateless population on the territory and describe how data is disaggregated (e.g. by sex, age, residence). | <p>CEDAW, Gen Rec. 32(2014): States parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>Council of the European Union, Conclusions on Statelessness (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>ISI, The World's Stateless (2014): States should strengthen measures to count stateless persons on their territory.</p> | Yes, there is a category for stateless people in the Government's annual censuses. The most recent data is provided by the Istituto Nazionale di Statistica (ISTAT). The statistical data from population censuses as of 1 January 2020 counts 552 stateless people. The overall number is low because the Italian Government census counts only stateless persons who are officially recognised as stateless and residing in Italy. The data is disaggregated but the annual census on stateless people shows only sex-disaggregated data for recognised stateless persons. In the Government Census, stateless persons are distinguished by Regions where they have their residence. | <p>ISTAT Data population on stateless people by type of residence permit http://dati.istat.it/# (IT)</p> <p>Istat, Gli stranieri al Censimento della popolazione, 15 dic 2020 (data on foreigners in Italy registered for the population Census): https://www.istat.it/it/files/2020/12/REPORT_CENSIPOP_2020.pdf (IT)</p> |
| POP.1.b | | Do public authorities define data categories that may overlap (e.g. unknown nationality) or where stateless people might be more highly represented (e.g. Palestinian)? Please explain and provide any available figures. | As above | Yes, there are other categories that overlap with statelessness. In the portal of the Italian census on the resident population counted per year, the definitions of "foreigner" and "stateless" are in the same check box (section), so it may overlap. See 1c. | <p>Censimento Popolazione Abitazioni 2011 ('local population distinguished by nationality'): http://dati-censimentopopolazione.istat.it/Index.aspx (IT)</p> <p>CIR, IN THE SUN, Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013: http://www.cir-onlus.org/wp-content/uploads/2018/07/In-the-sun_CIR_last-review_final.pdf</p> <p>XVI Legislatura, Senato della Repubblica, Commissione straordinaria per la tutela e la promozione dei diritti umani, Rapporto conclusivo dell'indagine sulla condizione di Rom, Sinti e Caminanti in Italia: http://www.senato.it/documenti/repositorio/commissioni/dirittiumani16/Rapporto%20conclusivo%20indagine%20rom,%20sinti%20e%20caminanti.pdf (IT)</p> <p>Presidenza del Consiglio dei Ministri, Ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza o sull'origine étnica, Strategia Nazionale d'inclusione dei Rom, dei Sinti e dei Caminanti, Attuazione Comunicazione Commissione Europea N.173/2011, pp. 14-17: https://www.lavoro.gov.it/temi-e-priorita/infanzia-e-adolescenza/focus-on/integrazione-rom-sinti-e-caminanti/Documents/Strategia%20Nazionale.pdf</p> <p>Council of Europe: Commissioner for Human Rights, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 26 to 27 May 2011, 7 September 2011, CommDH(2011)26: https://www.refworld.org/docid/4ecb8b182.html</p> <p>Council of Europe: Commissioner for Human Rights, Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe: Following his visit to Italy from 3 to 6 July 2012, 18 September 2012, CommDH(2012)26: https://www.refworld.org/docid/5058413c2.html</p> |
| POP.1.c | | What is UNHCR's estimate for the stateless/at risk of statelessness population | As above | UNHCR states on its website, "Although statistics on the exact size of the stateless population in Italy are not available; it is estimated that the majority of stateless people living in Italy are of Roma descent, | UNHCR, Italy joins top league of countries reducing statelessness: http://www.unhcr.org/ibelong/italy-joins-top-league-of-countries-reducing-statelessness/ |

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| | | and what is the source for this estimate? | | <p>originating from former Yugoslavia. Many have not been recognised as Italian nationals despite living in the country for generations.”</p> <p>According to estimates currently available, there may be around 3,000 stateless persons or persons at risk of statelessness in Italy. The majority of people who are stateless or at risk of statelessness belong to Roma communities from former Yugoslavia who have been living in Italy for many years.</p> <p>From the information available, it is estimated that there are approximately 1,710 stateless persons or persons at risk of statelessness belonging to these communities, living in formal or spontaneous settlements.</p> <p>It is also estimated that around 2,250 people from Roma communities of the former Yugoslavia who are stateless or at risk of statelessness are present in Italy. A factor of particular concern is the proportion of minors within this population, which, according to available information, is around 50-55%.</p> <p>The rest of the stateless population in Italy mainly originates from the former USSR, Cuba, China (Tibet), and the Occupied Palestinian Territories.</p> | <p>UNHCR publication on reducing statelessness, July 2020: https://www.unhcr.org/it/wp-content/uploads/sites/97/2020/07/Porte_Fine_all_Apolidia_IT.pdf</p> <p>Raccomandazioni del tavolo di lavoro sull'apolidia sulla protezione degli apolidi e sulla riduzione dell'apolidia in Italia, Settembre 2021: https://tavoloapolidia.org/app/uploads/2021/09/Advocacy-Paper-Tavolo-Apolidia_2021_def.pdf</p> <p>Fantasma urbani: la condizione giuridica dei cittadini rom di origine jugoslava negli insediamenti italiani, pubblicato da Associazione 21 luglio febbraio 2021 https://www.21luglio.org/2018/wp-content/uploads/2021/02/fantasma-urbani-edit.pdf</p> <p>Report “The impact of statelessness on access to human rights in Italy, Portugal and Spain”, October 2019: https://www.unhcr.it</p> <p>Dossier statistico immigrazione 2021, a cura del Centro Studi e Ricerche IDOS, pag. 480 e segg</p> |
| POP.1.d | | Have there been any surveys or mapping studies to estimate the stateless population in the country? | As above | Yes. | <p>Report “The impact of statelessness on access to human rights in Italy, Portugal and Spain”, October 2019: https://www.unhcr.it/wp-content/uploads/2019/11/UNHCR_Impact-of-Statelessness-ITPTES_def_web.pdf</p> <p>Link in Italian: https://www.unhcr.it/wp-content/uploads/2019/11/UNHCR_Impatto_apolidia_ITPTES_def_web.pdf</p> <p>UNHCR Global Trends 2018, 19 June 2019: https://www.unhcr.org/statistics/unhcrstats/5d08d7ee7/unhcr-global-trends-2018.html</p> <p>Raccomandazioni del tavolo di lavoro sull'apolidia sulla protezione degli apolidi e sulla riduzione dell'apolidia in Italia, Settembre 2021: https://tavoloapolidia.org/app/uploads/2021/09/Advocacy-Paper-Tavolo-Apolidia_2021_def.pdf</p> <p>Dossier statistico immigrazione 2021, a cura del Centro Studi e Ricerche IDOS, pag. 480 e segg</p> |
| POP.1.e | | Are there any other sources of estimates for the stateless population not covered by the above? Please list sources and figures. | As above | The IDOS Study Centre, based on data collected by MIUR (Ministry of Education, University and Research), published figures on stateless students attending Italian schools. The research shows that, in the school year 2017-2018, 354 stateless persons attended Italian schools (58 kindergarten, 179 primary school, 105 secondary school and 12 high school). | <p>Centro Studi e Ricerche IDOS, Dossier Statistico Immigrazione 2019, p. 471</p> <p>Centro Studi e Ricerche IDOS, Dossier statistico immigrazione 2021, pag. 480 e segg</p> <p>UNICEF 2019 report on ending childhood statelessness: https://www.unicef.org/eca/media/5941/file/Ending%20childhood%20statelessness%20in%20Europe%20UNICEF-UNHCR.pdf</p> |
| POP.1.f | | Are there issues with the reliability of data or indications that the stateless population may be over/under reported? If yes, please describe. | As above | Issues are mainly related to the difficulty of mapping stateless persons without a residence permit about whom very little information is available. Data on the stateless population is likely underreported and underestimated and there are many contradictions in available data. The Italian census system counts only persons recognised as stateless in a dedicated determination procedure. The actual situation is largely underreported. | Consiglio Italiano per i Rifugiati (CIR) practice |

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| POP.1.g | | Please provide any available figures for stateless refugees and/or asylum-seekers and clarify if the State also counts these groups in figures for the stateless population (i.e. to avoid under/over-reporting). | As above | There is no official data available on stateless refugees or asylum seekers. | |
| POP.2.a | Stateless in detention data | Does the State record and publish figures on stateless people held in immigration detention? If yes, please provide. | <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>CEDAW, Gen. Rec. 32 (2014): State parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>ISI, The World's Stateless (2014): States should strengthen measures to count stateless persons on their territory.</p> <p>Equal Rights Trust, Guidelines (2012): States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights.</p> <p>Council of the European Union, Conclusions on Statelessness (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> | There is no official data available on stateless people in immigration detention (pre-removal centres) in Italy. A 2020 report by the National Guarantor states that 4,387 persons transited through pre-removal detention centres in 2020 and lists the nationalities held by the detainees, none of which refers to statelessness. The most recent Guarantor report does not contain relevant data. However, there have been reports of stateless people in immigration detention (see DET1e). | Garante Nazionale dei diritti delle persone detenute o private della libertà personale, Relazione al parlamento 2020, https://www.garantenazionaleprivatiliberta.it/gnpl/it/pub_rel_par.page |
| POP.2.b | | Does the State record and publish figures on people released from immigration detention due to un-removability? If yes, please provide. | As above | There is no official data available on stateless people in administrative immigration detention (pre-removal centres) in Italy. Some general data on immigration detention in Italy is reported by the Global Detention Project. Some general data can also be found in the Report to the Parliament by the National Guarantor for the rights of persons detained or deprived of liberty. The statistics published by the National Guarantor that provide the reasons for release from pre-removal detention do not include a category of "un-removability". Persons released from detention for reasons related with un-removability, in particular stateless persons for whom a country of return could not be identified or effected, may potentially fall within the category "order of the Questore for expiration of the maximum term" (20% of the total releases from pre-removal detention centres). Other categories that may be relevant are "detention not validated by the judicial authority" (23%) and "released for other reasons" (7%). | <p>Global Detention Project, Italy Immigration Detention: https://www.globaldetentionproject.org/countries/europe/italy</p> <p>Global Detention Project, Immigration Detention in Italy: Complicit in Grave Human Rights Abuses? October 2019, https://www.globaldetentionproject.org/italy-complicit-in-grave-human-rights-abuse</p> <p>Garante Nazionale dei diritti delle persone detenute o private della libertà personale, Relazione al parlamento 2020 https://www.garantenazionaleprivatiliberta.it/gnpl/it/pub_rel_par.page (IT)</p> |

Statelessness Determination and Status

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|---------|----------------------------------|---|---|---|---|
| SDS.1.a | Definition of a stateless person | Is there a definition of a stateless person in national law? Do the definition and exclusion provisions align with the 1954 Convention? Please provide details. | 1954 Convention : Articles 1(1) & 1(2). | Italy ratified the 1954 Convention in February 1962. National law does not provide a definition of a 'stateless person' so the 1954 Convention definition applies. | LEGGE 1 febbraio 1962, n. 306, Ratifica ed esecuzione della Convenzione relativa allo status degli apolidi, adottata a New York il 28 settembre 1954: http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1962-06-07&atto.codiceRedazionale=062U0306&elenco30giorni=false (IT) |
| SDS.2.a | Training | Is there training to inform different public authorities about statelessness? If yes, please provide details (e.g. who provides training to whom/how often?) | UNHCR Executive Committee, Conclusion No. 106 (LVII) (2006) : Requests UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons. | No compulsory trainings are provided to officials competent for the administrative procedure. A draft law on the recognition of stateless status submitted in 2015 provided that public administration personnel and administrative stakeholders should receive basic training on the implementation of the regulations of the offices and services in which they perform their activity. A new Parliament was elected in 2018, but the draft law has not been resubmitted and no relevant changes occurred. UNHCR delivers ad hoc statelessness-related training to asylum decision-makers. | Consiglio Italiano per i Rifugiati (CIR) practice DISEGNO DI LEGGE COMUNICATO ALLA PRESIDENZA IL 26 NOVEMBRE 2015, Disposizioni concernenti la procedura per il riconoscimento dello status di apolidia in attuazione della Convenzione del 1954 sullo status delle persone apolidi, No. 2184, Art.14: http://www.senato.it/japp/bgt/showdoc/17/DDLPRES/0/967066/index.html?stampa=si&spart=si&toc=no (IT) DECRETO-LEGGE 17 febbraio 2017 n. 13, Art. 2: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-02-17;13 as converted into, LEGGE 13 aprile 2017 n. 46: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-04-13;46 (IT) |
| SDS.2.b | | Is there training for judges and lawyers on statelessness? If yes, please provide details (e.g. provider, frequency). | UNHCR, Good Practices Papers – Action 6 (2020) : Officials who may be in contact with stateless persons need to be trained to identify potential applicants for stateless status and refer them to appropriate channels. UNHCR, Geneva Conclusions (2010) : It is recommended that States provide specialised training on nationality laws and practices, international standards and statelessness to officials responsible for making statelessness determinations. | Since reforms to the judicial procedure in 2017, which attributed the competence to conduct SDPs to specialised sections of the Civil Court, a specific annual training is provided by the "Scuola Superiore della Magistratura" (Judicial Training Centre). Law 13/2017 states that specialised training is compulsory for judges of the specialised sections and members of territorial commission. UNHCR cooperates with the courts to deliver ad hoc statelessness trainings. Other ad hoc training courses are provided by academics, professionals, lawyers' associations, NGOs, UNHCR and other civil society associations with trainers from different professional backgrounds. These are mainly focused on immigration issues and are not exclusively concerned with statelessness but do provide some knowledge, tools and skills to address statelessness and the right to nationality. Every year, CIR participates as lecturer on statelessness issues within the training course on refugees and migrants at Sapienza University. | DECRETO-LEGGE 17 febbraio 2017, n. 13 Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-02-17;13 (IT) As converted into, LEGGE 13 aprile 2017 n. 46 (GU n.90 del 18-4-2017), Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto all'immigrazione illegale: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-04-13;46 (IT) Fondazione Formazione Forense Ordine Avvocati di Firenze, Firenze, L'apolidia secondo il diritto interno e nel diritto internazionale, Giugno 2013 Fondazione Formazione Forense Ordine Avvocati di Pistoia, Pistoia, Il diritto degli apolidi e stato della giurisprudenza in Italia. Il progetto "In the sun", Aprile 2013 Consiglio Nazionale Forense CIR – Europe Consulting, Roma – Corso sull'apolidia, Peregrini sine civitate, Novembre 2012-Marzo 2013 Convegno del 30.03.2017, Biblioteca Medicea Laurenziana, Firenze, "Perdere la propria cittadinanza è come scomparire dal mondo": http://apolidia.org/index.php/notizie-ed-eventi/139-convegno-del-30-03-2017-biblioteca-medicea-laurenziana-firenze-perdere-la-propria- |

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| | | | | | <p>cittadinanza-e-come-scomparire-dal-mondo</p> <p>Dipartimento di Scienze politiche, Università Sapienza di Roma http://www.masterdirittumanisapienza.it/corso-rifugiati-e-migranti</p> <p>Ius e Nomos, Specialist training, Session XII, 27 April 2018, Il riconoscimento della Protezione Internazionale, la Protezione Umanitaria, l'Apolidia: https://www.iusnomos.eu/</p> <p>Ius e Nomos, Specialist training, Session XVII, 11 May 2019, L'apolidia e la protezione internazionale degli apolidi: https://www.iusnomos.eu/</p> |
| SDS.3.a | Existence of a dedicated SDP | <p>Which of the following best describes the situation in your country? Choose only one and then proceed to question indicated.</p> <p>1. There is a dedicated statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure, leading to a dedicated stateless status (proceed to Question 4a).</p> <p>2. There is no dedicated SDP leading to a dedicated stateless status, but there are other procedures in which statelessness can be identified (e.g. partial SDPs with no status/rights attached, residence permit or naturalisation applications, refugee status determination, ad hoc procedures, etc.), or other routes through which stateless people could regularise their stay and/or access their rights (proceed to Question 10a).</p> <p>3. There is a dedicated stateless status but no formal procedure for determining this (proceed to Question 15a).</p> | <p>UNHCR, Handbook on Protection (2014): It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments. UNHCR, Good Practices Papers – Action 6 (2020): Establishing a statelessness determination procedure is the most efficient means for States Parties to identify beneficiaries of the Convention.</p> | #1 - The Italian legal system provides for two paths to the recognition of the status of stateless persons: an administrative procedure and a judicial one. | <p>DECRETO DEL PRESIDENTE DELLA REPUBBLICA 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17: http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg (IT)</p> <p>DECRETO-LEGGE 17 febbraio 2017, n. 13 Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-02-17;13 (IT)</p> <p>As converted into, LEGGE 13 aprile 2017 n. 46 (GU n.90 del 18-4-2017), Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto all'immigrazione illegale: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-04-13;46 (IT)</p> |
| SDS.4.a | Access to the procedure (Group 1) | <p>Is the examination of statelessness claims conducted by a dedicated, centralised body with relevant expertise? Please note the competent authority and evaluate appropriateness to national context.</p> | <p>UNHCR, Handbook on Protection (2014): States may choose between a centralised procedure or one that is conducted by local authorities. Centralised procedures are preferable as they are more likely to develop the necessary expertise. UNHCR, Good Practices Papers – Action 6 (2020): It is important that examiners develop expertise while ensuring that the procedures are accessible.</p> | In the administrative procedure, the Ministry of the Interior is responsible for the certification of statelessness - applications are processed by the Nationality Office. Since reforms in 2017 (Decree 13/17; Law 46/17), competence for the judicial procedure is now attributed to specialised sections of the Civil Court in the applicant's place of residence. Both the Ministry of Interior and the Civil Court are the appropriate authorities to process the application, however the level of expertise may vary depending on the judge or official handling the procedure. The administrative procedure is easily accessible to stateless people, as all applicants can present the application personally or send the application to the Ministry of Interior through the Prefecture of the place of residence. | <p>DECRETO DEL PRESIDENTE DELLA REPUBBLICA, 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17: http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg (IT)</p> <p>DECRETO-LEGGE 17 febbraio 2017, n. 13 Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale, Art 3(2): http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-02-17;13 (IT)</p> <p>As converted into, LEGGE 13 aprile 2017 n. 46 (GU n.90 del 18-4-2017),</p> |

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| | | | | | Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto all'immigrazione illegale: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-04-13;46 (IT) |
| SDS.4.b | Are there clear, accessible instructions on how to make a claim of statelessness? | <p>UNHCR, Handbook on Protection (2014): For procedures to be fair and efficient, access must be ensured (dissemination of info, targeted info campaigns, counselling on the procedures, etc.).</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): Information on the procedure and counselling services must be available to potential applicants in a language they understand.</p> | <p>With regard to the administrative procedure, the law states the documentation needed to lodge the application (birth certificate, documentation certifying residence in Italy and documentation demonstrating statelessness). The Ministry of Interior provides an application form to submit the claim.</p> <p>In the judicial procedure, applicants must be assisted by a lawyer who lodges the application on their behalf.</p> | <p>DECRETO DEL PRESIDENTE DELLA REPUBBLICA, 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17: http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg (IT).</p> <p>Application Form: http://www.libertaciviliimmigrazione.dici.interno.gov.it/sites/default/files/all_egati/modulo_istanza_apolidia_0.pdf</p> <p>DECRETO LEGISLATIVO 1 settembre 2011, n. 150, Disposizioni complementari al codice di procedura civile in materia di riduzione e semplificazione dei procedimenti civili di cognizione, Art. 19 bis, introduced by the Decree 13/17 as converted into Law 46/17: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2011-09-01;150lvig</p> <p>Raccomandazioni del tavolo di lavoro sull'apolidia sulla protezione degli apolidi e sulla riduzione dell'apolidia in Italia, Settembre 2021: https://tavoloapolidia.org/app/uploads/2021/09/Advocacy-Paper-Tavolo-Apolidia_2021_def.pdf</p> <p>CIR dedicated a page of its website on statelessness https://www.cir-onlus.org/tutto-quello-che-devi-sapere-sull-apolidia-in-italia/</p> <p>Giulia Perin, La tutela degli apolidi in Italia, Scheda pratica, June 2017, p. 14: https://www.asgi.it/wp-content/uploads/2017/07/2017_scheda-apolidia.pdf</p> | |
| SDS.4.c | Can submissions be made orally and/or in writing in any language? | <p>ENS, Statelessness Determination and the Protection Status of Stateless Persons (2013): Bureaucratic difficulties (e.g. complicated forms, inflexible procedures, language restrictions etc.) can impede access to SDPs.</p> | <p>There is no provision requiring that the application in the administrative procedure be submitted in any specific language. Practice shows that applicants present their applications in Italian. In the judicial procedure, the appeal must be lodged in Italian and there is no obligation to present evidence in Italian (certified translations). In practice, depending on the language, translation is required to understand the content. Most lawyers prefer to have a certified translation of the documents. In the administrative procedure applications should be made in written form, through the local Prefecture, to the Ministry of Interior. An applicant who wants to claim stateless status at the Police Headquarters, for example, can ask for information orally, but they are then invited to lodge the application with the Prefecture. All judicial procedures require a written application.</p> | <p>Consiglio Italiano per i Rifugiati (CIR) practice</p> <p>Codice di procedura civile, Libro I, Titolo VI, Art. 122: http://www.altalex.com/documents/news/2014/10/29/disposizioni-general-degli-atti-processuali (IT)</p> <p>DECRETO DEL PRESIDENTE DELLA REPUBBLICA, 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17: http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg (IT)</p> <p>CIR, IN THE SUN: Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013: http://www.cir-onlus.org/wp-content/uploads/2018/07/In-the-sun_CIR_last-review_final.pdf</p> | |
| SDS.4.d | Must a specific application form be used? Please note any difficulties with forms or other inflexible documentation requirements. | <p>ENS (2013): Bureaucratic difficulties (e.g. complicated forms, inflexible procedures, language restrictions etc.) can impede access to SDPs.</p> | <p>In the administrative procedure, the application must be submitted in a written format. The Ministry of Interior provides a model application form, but the applicant is not obliged to use it. Moreover, the applicant must provide several documents including a birth certificate, documentation certifying residence in Italy, and either documentation demonstrating statelessness or a declaration from the consulate of the state of origin or</p> | <p>Application Form: http://www.libertaciviliimmigrazione.dici.interno.gov.it/sites/default/files/all_egati/modulo_istanza_apolidia_0.pdf</p> <p>DECRETO DEL PRESIDENTE DELLA REPUBBLICA, 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17:</p> | |

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| | | | | <p>former residence certifying they are not a national. The Ministry of Interior may ask for additional documentation and will only determine statelessness based on the documentation provided, so the application may be refused without an interview if the applicant does not provide all the required documentation.</p> <p>In the judicial procedure, the application must be lodged by a lawyer on behalf of the applicant and submitted in the form provided for by the Code of Civil Procedure. The applicant does not need to provide specific documents to access the procedure, but must be assisted by a lawyer throughout the proceedings before the Civil Court. Hearings are scheduled by the Judge taking into consideration the complexity of the case.</p> | <p>http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg (IT)</p> <p>DECRETO-LEGGE 17 febbraio 2017, n. 13, Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-02-17:13 as converted into, LEGGE 13 aprile 2017 n. 46 (GU n.90 del 18-4-2017), Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto all'immigrazione illegale: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-04-13:46 (IT)</p> <p>Art. 702 bis of the Civil Procedural Law: https://www.brocardi.it/codice-di-procedura-civile/libro-quarto/titolo-i/capo-iii/sezione-v/art702bis.html (IT)</p> |
| SDS.4.e | Are competent authorities authorised to initiate SDPs <i>ex officio</i> ? | <p>UNHCR, Good Practices Papers – Action 6 (2020): It is recommended that governmental authorities be authorised to initiate procedures <i>ex officio</i>.</p> <p>UNHCR, Handbook on Protection (2014): Given that individuals are sometimes unaware of SDPs or hesitant to apply, procedures can usefully contain safeguards permitting State authorities to initiate a procedure.</p> | No. | | |
| SDS.4.f | Are there obligations in law on authorities to consider the application? | <p>UNHCR, Good Practices Papers – Action 6 (2020): Access to the SDP must be guaranteed.</p> | As there is a specific procedure in law, the authorities are obliged to consider all applications. | DECRETO DEL PRESIDENTE DELLA REPUBBLICA, 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17: http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg (IT) | |
| SDS.4.g | Is there an application fee? | <p>UNHCR, Good Practices Papers – Action 6 (2020): Access to the SDP must be guaranteed.</p> | <p>No, there is no fee for submitting an application in the administrative procedure. Applicants can be requested to pay bureaucratic expenses or taxes (e.g. stamps). In the judicial procedure free legal aid can be obtained by law if the applicant can fulfil specific income requirements (annual income of EUR 11,746 (amount is modified every year) and no assets).</p> <p>The main problems concern the availability and quality of legal aid, which vary considerably, depending on the region where an applicant resides. If the applicant does not qualify for legal aid, they must pay a fee for the judicial procedure, which is usually EUR 259 for first instance courts.</p> | <p>D.P.R., testo coordinato 30/05/2002 n. 115, Testo unico in materia di spese di giustizia, Gazzetta Ufficiale N. 139 del 15 Giugno 2002: http://www.altalex.com/documents/codici-altalex/2015/01/14/testo-unico-in-materia-di-spese-di-justizia (IT)</p> <p>ASGI, Il patrocinio a spese dello stato nei procedimenti giurisdizionali per l'accertamento della protezione internazionale e/o umanitaria, 2016: https://www.asgi.it/wp-content/uploads/2016/09/2016_DEF-Scheda-ASGI-patrocinio-a-spese-dello-Stato.pdf (IT)</p> <p>Bianchini K., Protecting Stateless Persons. The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe (Brill 2018), pp. 171-172</p> <p>Testo unico in materia di spese di giustizia (D.P.R. 115/2002, Art. 13 comma 1 lett. d) e comma 3: http://www.altalex.com/documents/codici-altalex/2015/01/14/testo-unico-in-materia-di-spese-di-justizia (IT)</p> | |
| SDS.4.h | Is there a lawful stay requirement to access the SDP? | <p>UNHCR, Good Practices Papers – Action 6 (2020): Access to the procedure needs to be open to anyone regardless of lawful stay or residence.</p> <p>ENS (2013): There is no basis in the 1954 Convention for requiring lawful stay.</p> | Yes, in practice, in the administrative procedure. The law does not require an applicant to demonstrate "lawful" residence in Italy, referring only to "residence". In practice the Ministry of Interior requires a residence permit to submit the application. There is no requirement to demonstrate lawful stay to access the judicial procedure. | DECRETO DEL PRESIDENTE DELLA REPUBBLICA, 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17: http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg (IT) | |

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| SDS.4.i | | Is there a time limit on access to the SDP? | <p>UNHCR, Good Practices Papers – Action 6 (2020): Access to the SDP must be guaranteed and not subject to time limits.</p> <p>ENS (2013): There is no basis in the 1954 Convention to set time limits for individuals to claim stateless status.</p> | No, there is no time limit to access either the administrative or judicial procedure. | <p>DECRETO DEL PRESIDENTE DELLA REPUBBLICA, 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17: http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg (IT)</p> |
| SDS.4.j | | Is there cooperation between agencies that may have contact with stateless people to refer cases for status determination? | <p>UNHCR, Good Practices Papers – Action 6 (2020): Cooperation between actors working on statelessness and the various government agencies involved in determining statelessness is good practice.</p> | The asylum determining authorities may inform stateless persons about the SDP but there is no standardised procedure for referral or cooperation. | Consiglio Italiano per i Rifugiati (CIR) practice |
| SDS.5.a | Assessment (Group 1) | Who has the burden of proof in the SDP in law and practice? | <p>UNHCR, Handbook on Protection (2014): The burden of proof is in principle shared (both applicant and examiner must cooperate to obtain evidence and establish the facts).</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): SDPs must take into consideration the difficulties inherent in proving statelessness.</p> <p>UNHCR, Geneva Conclusions (2010): In statelessness determination procedures, the burden of proof should therefore be shared between the applicant and the authorities responsible for making the determination. Individuals must cooperate to establish relevant facts. The burden should shift to the State if an individual can demonstrate they are not a national, on the basis of reasonably available evidence.</p> <p>ECtHR, Hoti v. Croatia (2018): State has responsibility to at least share the burden of proof with the applicant when establishing the fact of statelessness.</p> | <p>The burden of proof in the administrative procedure is on the applicant who must provide all required documentary evidence for the application to be processed. In the judicial procedure, caselaw has underlined that the burden of proof is shared between the applicant and the authority. The applicant should make all possible efforts to clarify their condition of statelessness and support their declarations with evidence. If the applicant does not manage to provide evidence, despite all efforts, the judge can use <i>ex officio</i> powers to assist them.</p> <p>A recent judgment of the Ordinary Court of Florence IV sez.civ. 29.11.21 reaffirmed that the burden of proof on the applicant for statelessness status is mitigated, and any gaps that emerge from their personal story, can be filled with the investigative powers of the judge, by requesting information from the public authorities of the State of origin or the State to which a significant connection is detected. This approach, endorsed by the Court of Cassation in its judgment No. 4262/2015, is also referred to in the UNHCR Handbook for the Protection of Stateless Persons.</p> | <p>DECRETO DEL PRESIDENTE DELLA REPUBBLICA, 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17: http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg (IT)</p> <p>Bianchini K., Protecting Stateless Persons. The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe (Brill 2018), p. 162</p> <p>Corte di Cassazione, sez. I Civile, sentenza n. 28153 del 24/11/2017: http://briguglio.asgi.it/immigrazione-e-asilo/2017/dicembre/sent-cass-28153-2017.pdf (IT)</p> <p>Cass. civ. Sez. I, 18/01/2018, no. 1183</p> <p>Corte di Cassazione, I sez. civile, Ordinanza n. 16114/2019: http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snciv&id=/.20190614/snciv@s10@a2019@n16114@tO.clean.pdf (IT)</p> <p>Perin G., La tutela degli apolidi in Italia, Scheda pratica, June 2017, p. 12-13 https://www.asgi.it/wp-content/uploads/2017/07/2017_scheda-apolidia.pdf (IT)</p> <p>Tribunale ordinario di Torino Ordinanza 4 giugno 2020</p> <p>Tribunale ordinario di Firenze Ordinanza 22 luglio 2020: https://www.dirittoimmigrazione.cittadinanza.it/allegati/fascicolo-n-3-2020/cittadinanza-1/635-3-tribunale-di-firenze-22-7-2020/file (IT)</p> <p>Tribunale ordinario di Brescia, ordinanza 9 maggio 2020 https://www.dirittoimmigrazione.cittadinanza.it/allegati/fascicolo-n-3-2020/cittadinanza-1/633-1-trib-brescia-9-5-2020/file (IT)</p> <p>Tribunale ordinario di Brescia, ordinanza 15 luglio 2020 https://www.dirittoimmigrazione.cittadinanza.it/allegati/fascicolo-n-3-2020/cittadinanza-1/637-5-trib-brescia-15-7-2020/file (IT)</p> <p>Tribunale ordinario di Firenze, IV sez. civile Ordinanza 6558/2021 del 29.11.2021 https://www.altalex.com/documents/news/2021/12/13/status-di-apolide-ricorso-giurisdizionale#p</p> <p>Corte Cassazione, Sentenza 4262/2015</p> <p>UNHCR, MANUALE PER LA PROTEZIONE DELLE PERSONE APOLIDI IN BASE ALLA CONVENZIONE DEL 1954</p> |

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| | | | | | SULLO STATUS DELLE PERSONE APOLIDI, GINEVRA, 2014 https://www.refworld.org/cgi-bin/telex/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=57b6bff14 |
| SDS.5.b | | What is the standard of proof? Is it the same as in refugee status determination procedures? | UNHCR, Handbook on Protection (2014) : States are advised to adopt the same standard of proof as in refugee status determination ('reasonable degree'). UNHCR, Good practices in nationality laws (2018) : The standard of proof should be in keeping with the humanitarian objectives of statelessness status determination and the inherent difficulties of proving statelessness in the likely absence of documentary evidence. ECtHR, Hoti v. Croatia (2018) : If statelessness is a relevant factor in the context of access to human rights, the standard of proof when determining the status of statelessness cannot be too high. | The standard of proof is the same as in the asylum procedure. The reduced standard of proof is the result of case law. For example, in 2017, the Cassation Court stated that formal proof of loss of nationality is not required to be granted stateless status. Statelessness can be inferred from other facts, such as the refusal to grant the person rights usually linked to nationality. | Bittoni G., Statelessness determination procedure in Italy: who bears the burden of proof? ENS Blog, 6 May 2015: https://www.statelessness.eu/blog/statelessness-determination-procedure-italy-who-bears-burden-proof Corte Cassazione, Sentenza 4262/2015 Corte di Cassazione, Sentenza n. 28153/2017: http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verbo=attach&db=snciv&id=20171124/snciv@s10@a2017@n28153@tS.clean.pdf Bianchini K., Protecting Stateless Persons. The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe (Brill 2018), p. 166 Giulia Perin, La tutela degli apolidi in Italia, Scheda pratica, June 2017, p. 12: https://www.asgi.it/wp-content/uploads/2017/07/2017_scheda-apolidia.pdf (IT) UNHCR, MANUALE PER LA PROTEZIONE DELLE PERSONE APOLIDI IN BASE ALLA CONVENZIONE DEL 1954 SULLO STATUS DELLE PERSONE APOLIDI, GINEVRA, 2014 https://www.refworld.org/cgi-bin/telex/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=57b6bff14 |
| SDS.5.c | | What measures are in place to guarantee substantive equality for women, children and other groups (e.g. disabled people, older people, LGBTQI people, etc.) at risk of discrimination in the SDP? In particular, what measures are in place to ensure respect for the best interests of the child in the procedure (burden of proof, guardianship, child-friendly procedures, etc.)? | UNHCR, Handbook on Protection (2014) : Due to discrimination, women might face additional barriers in acquiring documentation (e.g. birth certificates or other identification documents). Children and persons with disabilities may face acute challenges in communicating basic facts with respect to their nationality. States must follow the principle of pursuing the best interests of the child. Additional safeguards for child claimants include priority processing of their claims, appropriately trained professionals and a greater share of the burden of proof by the State. CEDAW, Gen. Rec. 32 (2014) : Nationality laws may discriminate directly or indirectly against women. Legislative provisions that appear gender neutral may in practice have a disproportionate and negative impact on the enjoyment of the right to nationality by women. CRC : Articles 2, 3, 7 and 8 CRPD : Article 18 | There are no such provisions. | |
| SDS.5.d | | Is there clear guidance for decision makers on how to determine statelessness (including e.g. sources of evidence and procedures for evidence gathering, etc.)? | ENS (2013) : Determining authorities can benefit from concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances. | There is no public information on this. It is possible that the Ministry of Interior has distributed internal guidance for their decision makers, but this is not publicly available. | |
| SDS.5.e | | Is there any evidence of significant errors in decision-making? | | No. | Consiglio Italiano per i Rifugiati (CIR) practice |

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| SDS.6.a | Procedural safeguards (Group 1) | Is free legal aid available during the procedure? | <p>UNHCR, Handbook on Protection (2014): Applicants should have access to legal counsel; where free legal assistance is available, it should be offered to applicants without financial means.</p> <p>ENS (2013): If state funded legal aid is available, it should be provided to stateless claimants. If there is no state funded legal aid but asylum claimants can access free legal aid free of charge, the same level of access should be provided to stateless people.</p> | It is not necessary to have the assistance of a lawyer for the administrative procedure and the law does not provide for legal aid in this matter. NGOs may assist applicants to complete the form. In the judicial procedure free legal aid can be obtained by law if the applicant can fulfil specific income requirements (annual income of EUR 11,746 (amount is modified every year) and no assets.. The main problems concern the availability and quality of legal aid, which vary considerably, depending on the region where an applicant resides.' | <p>Consiglio Italiano per i Rifugiati (CIR) practice</p> <p>Bianchini K., Protecting Stateless Persons. The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe (Brill 2018), pp. 171-172</p> <p>Corte Costituzionale, ordinanza n. 144 del 14/05/2004 https://www.cortecostituzionale.it/actionPronuncia.do</p> <p>D.P.R., testo coordinato 30/05/2002 n. 115, Testo unico in materia di spese di giustizia, Gazzetta Ufficiale N. 139 del 15 Giugno 2002: http://www.altalex.com/documents/codici-altalex/2015/01/14/testo-unico-in-materia-di-spese-di-justizia (IT)</p> |
| SDS.6.b | | Is an interview always offered (unless granting without interview)? | <p>UNHCR, Handbook on Protection (2014): The right to an individual interview [is] essential.</p> | In the administrative procedure, an individual interview is not foreseen. In the judicial procedure, the judge arranges the hearing according to the complexity of the case. | <p>Consiglio Italiano per i Rifugiati (CIR) practice</p> <p>DECRETO DEL PRESIDENTE DELLA REPUBBLICA, 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza, Art 17: http://www.gazzettaufficiale.it/eli/id/1994/01/04/093G0625/sg (IT)</p> <p>DECRETO-LEGGE 17 febbraio 2017, n. 13 Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-02-17;13 as converted into, LEGGE 13 aprile 2017 n. 46 (GU n.90 del 18-4-2017), Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto all'immigrazione illegale: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-04-13;46 (IT)</p> <p>Art. 702 bis of the Civil Procedural Law: https://www.brocardi.it/codice-di-procedura-civile/libro-quarto/titolo-i/capo-iii/sezione-v/art702bis.html (IT)</p> <p>DECRETO-LEGGE 12 settembre 2014, n. 132, Misure urgenti di degiurisdizionalizzazione ed altri interventi per la definizione dell'arretrato in materia di processo civile, (14G00147) (GU Serie Generale n.212 del 12-09-2014): http://www.gazzettaufficiale.it/eli/id/2014/09/12/14G00147/sg (IT)</p> |
| SDS.6.c | | Is free interpreting offered for statelessness determination interviews? | <p>UNHCR, Handbook on Protection (2014): The right to assistance with interpretation/translation [is] essential.</p> <p>ENS (2013): Assistance should be available for translation and interpretation.</p> | No, in the administrative procedure there is no individual interview. In the judicial procedure, claimants can be heard, but interpreters are usually not provided in practice. | Bianchini K., Protecting Stateless Persons. The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe (Brill 2018), p. 175. |
| SDS.6.d | | Are there quality assurance audits of the SDP? | <p>UNHCR, Good Practices Papers – Action 6 (2020): Quality assurance audits of SDPs are considered good practice.</p> | No. | |
| SDS.6.e | | What role does UNHCR play in the proceedings (e.g. access to files, monitoring, training)? | <p>UNHCR, Handbook on Protection (2014): States are encouraged to guarantee access to UNHCR as a safeguard in the procedure.</p> | UNHCR does not participate in the proceedings. Nevertheless, UNHCR is the main actor in providing (non-compulsory) training and guidelines. | Consiglio Italiano per i Rifugiati (CIR) practice |

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| SDS.6.f | | Are decisions (refusals and grants) given in writing with reasons? | UNHCR, Handbook on Protection (2014) : States are encouraged to incorporate the safeguard that decisions are made in writing with reasons. | Administrative decisions are notified to the persons concerned in writing with reasons, but these are usually very brief. The recognition provided by the Civil Court in the judicial procedure gives the reasons on which the judgment is based. | Bianchini K., Protecting Stateless Persons, International Refugee Law Series, V. II, 2018, pp. 170-171 Codice di procedura civile, Libro I, Titolo VI, Art. 132 & 133: http://www.altalex.com/documents/news/2014/10/29/disposizioni-generalidegli-atti-processuali (IT) |
| SDS.6.g | | Is there a timeframe for the SDP set in law or policy and is it complied with in practice? | UNHCR, Handbook on Protection (2014) : It is undesirable for a first instance decision to be issued more than six months from submission of an application. In exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months. | A maximum timeframe of 350 days - or 895 days in case the opinion of a foreign authority or Ministry of Foreign Affairs is requested - is set for the administrative procedure, but it is seldom respected in practice. Some clients assisted by CIR have waited for five years for a decision in the administrative procedure and in one case, the person concerned waited approximately 13 years. | Decreto Ministeriale 18 aprile 2000 n.142, p.46: http://www.sanzioniamministrative.it/collegamenti/RicercaGiuridica/altra_Normativa/Leggi/Semplif_proc_amministrativo/DM_18Aprile2000-142_Tab-A.pdf (IT) Bianchini K., The Implementation of the Convention Relating to the Status of Stateless Persons: Procedures and Practice in Selected EU States, Phd thesis, University of York, 2015, p. 100: http://etheses.whiterose.ac.uk/11243/1/PhD%20thesis%20-%20Katia%20Bianchini.pdf Consiglio Italiano per i Rifugiati (CIR) practice |
| SDS.6.h | | Is there a referral mechanism from refugee status determination procedures to the statelessness procedure (e.g. if refused asylum)? | UNHCR, Good Practices Papers – Action 6 (2020) : Efficient referral mechanisms should be established and officials who may be in contact with stateless persons trained to identify and refer potential applicants. ENS (2013) : Cross-referral systems should exist in cases where the two determination procedures (refugee and stateless) are not conducted in a joint framework. | No. However, in a recent judgment the Court of Florence recognised the statelessness status of an asylum seeker who had been denied refugee status. The lawyer lodged an appeal against the denial of international protection and asked the judge for a preliminary assessment of the applicant's statelessness status. The Court, considering the connection between the statelessness status and asylum requests, decided to handle them in the same procedure, recognising the statelessness status. | Consiglio Italiano per i Rifugiati (CIR) practice Tribunale ordinario di Firenze, IV sez. civile Ordinanza 6558/2021 del 29.11.2021 https://www.altalex.com/documents/news/2021/12/13/status-di-apolide-ricorso-giurisdizionale#p3 |
| SDS.7.a | Protection during SDP (Group 1) | Does the applicant have automatic legal admission while their claim for stateless status is assessed or is there a risk of expulsion? | UNHCR, Handbook on Protection (2014) : An individual awaiting a decision is entitled, at a minimum, to all rights based on presence and being 'lawfully in' the territory (including identity documents, the right to self-employment, freedom of movement, protection against expulsion). It is recommended that applicants for stateless status receive the same treatment as asylum-seekers. ENS (2013) : States should refrain from expelling or removing an individual pending the outcome of the determination process. | People who apply for recognition of stateless status to the Ministry of the Interior or Civil Court may apply and are generally granted temporary permission to stay, renewable while their application is being processed. However, practice shows that the issuance of a residence permit pending the judicial procedure is discretionary to the judge who decides the case and to the Police. It is possible that pending the judicial procedure applicants may be stopped by the police and asked about their status. If the applicant is already in possession of a residence permit (e.g. for study) when applying for stateless status, a specific temporary residence permit is issued pending the SDP. Article 31 of the 1954 Convention provides that a stateless person cannot be expelled except in cases of well-documented reasons related to national security and public order. In 2019, the Court of Cassation held that this rule shall also apply to people at risk of statelessness and/or pending the SDP, when the statelessness situation of the person emerges clearly from the information or documentation of the competent public authorities of the Italian State, of the State of origin or of the State with which it is established the person has a significant link. | CIR, IN THE SUN, Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013: http://www.cir-onlus.org/wp-content/uploads/2018/07/In-the-sun_CIR_last-review_final.pdf ASGI Project, Out of Limbo: Promoting the right of undocumented and stateless Roma migrants to a legal status in Italy, May 2015: http://www.asgi.it/progetti/out-of-limbo-english-version/ D.P.R. n. 394/1999, Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, Art. 11, comma, 1 lett c): https://www.normattiva.it Court of Cassation, n. 16489, 19/06/2019: http://www.italgiure.giustizia.it/xway/application/nif/clean/hc.dll?verb=attach&db=snciv&id=../20190619/snciv@s10@a2019@n16489@tS.clean.pdf |
| SDS.7.b | | Do applicants for stateless status have permission to work and access to assistance to meet their basic needs? | UNHCR, Handbook on Protection (2014) : Allowing individuals to engage in wage-earning employment can reduce pressure on State resources and contributes to dignity and self-sufficiency. The status of those awaiting statelessness determination must reflect applicable human rights such as, assistance to meet basic needs. | The law does not specify the right to work pending the procedure. In practice, different sources report different and inconsistent practice in relation to the temporary permit and the right to work. The law does not specify the right to assistance for applicants to meet their basic needs. The temporary residence permit issued to applicants that were already in possession of another residence permit allows the right to work. In practice, it is quite unusual for a person to hold a residence permit before applying for stateless status. | Bianchini K., Protecting Stateless Persons: The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe (Brill 2018), pp. 166-167 Consiglio Italiano per i Rifugiati (CIR) practice D.P.R. n. 394/1999, Regolamento recante norme di attuazione del testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero, Art. 11, comma, 1 lett c): |

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| SDS.7.c | | Do applicants for stateless status face a risk of detention? | UNHCR, Handbook on Protection (2014) : Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary. Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient to safeguard the lawful governmental objective pursued by detention. | In the administrative procedure applicants are issued with a temporary residence permit, so they are not detained. In the judicial procedure, if applicants are not in possession of a residence permit, there is a risk of detention. | CIR, IN THE SUN, Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013, pp.16-17: http://www.cir-onlus.org/wp-content/uploads/2018/07/In-the-sun_CIR_last-review_final.pdf Bianchini K., Protecting Stateless Persons: The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe (Brill 2018), p. 168 Tavolo apolidia (coalition of civil society organisations in Italy working together to protect stateless people): https://tavoloapolidia.org/apolidia-italia/diritti/ (IT) |
| SDS.8.a | Appeals (Group 1) | Is there an automatic right of appeal? | UNHCR, Handbook on Protection (2014) : An effective right to appeal against a negative first instance decision is an essential safeguard in an SDP. | In the case of a negative outcome in the administrative procedure it is possible to undertake the judicial procedure before the Civil Court. In the judicial procedure it is possible to appeal before the Court of Appeal and then before the Court of Cassation. | DECRETO-LEGGE 17 febbraio 2017, n. 13 Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto dell'immigrazione illegale: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2017-02-17;13 (IT) As converted into, LEGGE 13 aprile 2017 n. 46 (GU n.90 del 18-4-2017), Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto all'immigrazione illegale: http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-04-13;46 (IT) |
| SDS.8.b | | Is legal aid available for appeals? | UNHCR, Handbook on Protection (2014) : The applicant should have access to legal counsel and, where free legal assistance is available, it should be offered to applicants without financial means. ENS (2013) : Applicants should have access to legal counsel both at first instance and on appeal. | In a court procedure free legal aid can be obtained if the applicant can fulfil specific income requirements (annual income of EUR 11,746 (amount is modified every year) and no assets. The main problems concern the availability and quality of legal aid, which vary considerably, depending on the region where an applicant resides.' | Bianchini K., Protecting Stateless Persons. The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe (Brill 2018), pp. 171-172 D.P.R., testo coordinato 30/05/2002 n. 115, Testo unico in materia di spese di giustizia, Gazzetta Ufficiale N. 139 del 15 Giugno 2002: http://www.altalex.com/documents/codici-altalex/2015/01/14/testo-unico-in-materia-di-spese-di-justizia (IT) |
| SDS.8.c | | Is there a fee for the appeal application? | UNHCR, Handbook on Protection (2014) : An effective right to appeal against a negative first instance decision is an essential safeguard. | If free legal aid is provided there is no fee to lodge the appeal. If the applicant does not qualify for legal aid, they should pay a fee for the judicial procedure, which is usually EUR 259 for first instance courts. If the first instance claim is rejected by the Judge, the applicant may lodge a further appeal. Legal aid is available for eligible applicants, otherwise the fee for proceedings before the Appeal Court is usually EUR 388.50. | D.P.R., testo coordinato 30/05/2002 n. 115, Testo unico in materia di spese di giustizia, Gazzetta Ufficiale N. 139 del 15 Giugno 2002: http://www.altalex.com/documents/codici-altalex/2015/01/14/testo-unico-in-materia-di-spese-di-justizia (IT) Giulia Perin, La tutela degli apolidi in Italia, Scheda pratica, June 2017: https://www.asgi.it/wp-content/uploads/2017/07/2017_scheda-apolidia.pdf (IT) |
| SDS.9.a | Stateless status (Group 1) | Does recognition of statelessness result immediately in automatic permission to stay/legal status? If not, please describe any additional requirements, admissibility criteria, grounds for refusal or other steps required to access protection. | UNHCR, Handbook on Protection (2014) : The status granted to a stateless person in a State Party must reflect international standards. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. | Recognition of statelessness by the Ministry of the Interior or a civil court allows the person to immediately apply for a residence permit. As there is no law or decree providing detailed rules on this matter, the issuing of the residence permit is based on the 1954 Convention. Once recognised as stateless, there are no additional requirements. The duration of the residence permit depends on each police office, due to lack of regulation on the matter. | Bianchini K., Protecting Stateless Persons. The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe (Brill 2018), p. 241 Tavolo Apolidia Settembre 2021 https://tavoloapolidia.org/app/uploads/2021/09/Advocacy-Paper-Tavolo-Apolidia_2021_def.pdf Consiglio Italiano per i Rifugiati (CIR) practice |
| SDS.9.b | | How long is initial status granted for and is it renewable? | UNHCR, Handbook on Protection (2014) : It is recommended that States grant recognised stateless people a residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability. Permits should be renewable. | Legally recognised stateless persons are normally granted a permit to stay that is valid for two years and is renewable. However, in practice, the duration of the residence permit is at the discretion of the Police, so there is huge variation. As there is no law or decree providing detailed rules on this matter, the issuing of the residence permit is based on the 1954 Convention. | Consiglio Italiano per i Rifugiati (CIR) practice Giulia Perin, La tutela degli apolidi in Italia, Scheda pratica, June 2017: https://www.asgi.it/wp-content/uploads/2017/07/2017_scheda-apolidia.pdf (IT) |

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| SDS.9.c | Is a travel document issued to people recognised as stateless? | 1954 Convention : Article 28. | Individuals recognised as stateless may apply for a 1954 Convention travel document for stateless persons. | Convention relating to the Status of Stateless Persons. New York, 28 September 1954 Art. 18 - Travel Documents: https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf DECRETO 7 maggio 2015, Caratteristiche di sicurezza ed elementi biometrici dei documenti di viaggio di apolidi, rifugiati e stranieri. (15A03553) (GU Serie Generale n.111 del 15-05-2015): http://www.gazzettaufficiale.it/eli/id/2015/05/15/15A03553/sg (IT) Paolo Farci, "Apolidia" Il diritto di famiglia e delle persone, Giuffrè editore, pag 324 e segg. |
| SDS.9.d | Do people recognised as stateless have a right to family reunification? | UNHCR, Handbook on Protection (2014) : Although the 1954 Convention does not address family unity, States parties are nevertheless encouraged to facilitate the reunification of those with recognised stateless status in their territory with their spouses and dependents. | There are no specific family reunion provisions for stateless people, so the same family reunion rules for lawfully resident non-EU nationals apply. | Decreto Legislativo 25 Luglio 1998, N. 286, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero, Art. 29: https://www.normattiva.it/atto/carica/DettaglioAtto?atto.dataPubblicazioneGazzetta=1998-08-18&atto.codiceRedazionale=098G0348&atto.articolo.numero=0&qld=&tabID=0.19486159481372678&title=lbl.dettaglioAtto (IT) |
| SDS.9.e | On what grounds (if any) may residence status granted to stateless people be revoked? | UNHCR, Handbook on Protection (2014) : If an individual recognised as stateless subsequently acquires or reacquires the nationality of another State, they will cease to be stateless under the 1954 Convention. This may justify the cancellation of a residence permit on the basis of statelessness, although proportionality considerations under international human rights law, such as the right to a private and family life should be taken into account. | Although reference to the withdrawal of residence status is not explicitly provided for stateless persons, by analogy, the same provisions as are in place for refugees apply. | Decreto legislativo 19 novembre 2007, n. 251 come modificato dal Decreto legislativo 21 febbraio 2014, n. 18, Attuazione della direttiva 2004/83/CE recante norme minime sull'attribuzione, a cittadini di Paesi terzi o apolidi, della qualifica del rifugiato o di persona altrimenti bisognosa di protezione internazionale, nonché norme minime sul contenuto della protezione riconosciuta testo in vigore dal: 19-1-2008: https://www.normattiva.it/atto/carica/DettaglioAtto?atto.dataPubblicazioneGazzetta=2008-01-04&atto.codiceRedazionale=007G0259&atto.articolo.numero=0&qld=&tabID=0.8111905677267223&title=lbl.dettaglioAtto (IT) |
| SDS.9.f | Do people granted stateless status have permission to work? | 1954 Convention : Article 17 UNHCR, Handbook on Protection (2014) : The right to work must accompany a residence permit. | Persons with recognised stateless status are granted permission to stay, which allows employment and self-employment on the basis of the relevant provisions in the 1954 Convention. | Perin G., La Tutela degli apolidi in Italia, Scheda Pratica, June 2017: https://www.asgi.it/wp-content/uploads/2017/07/2017_scheda-apolidia.pdf (IT) Tavolo apolidia (coalition of civil society organisations in Italy working together to protect stateless people): https://tavoloapolidia.org/apolidia-italia/diritti/ (IT) |
| SDS.9.g | Do people granted stateless status have access to primary, secondary, and higher education? | 1954 Convention : Article 22 | Yes, in line with other lawful residents. | Decreto Legislativo 25 Luglio 1998, N. 286, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero: https://www.normattiva.it/atto/carica/DettaglioAtto?atto.dataPubblicazioneGazzetta=1998-08-18&atto.codiceRedazionale=098G0348&atto.articolo.numero=0&qld=&tabID=0.9017785551523968&title=lbl.dettaglioAtto (IT) The Constitution of the Italian Republic, Art. 34: http://www.quirinale.it/page/costituzione (ENG available) 1954 Convention |

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| SDS.9.h | | Do people granted stateless status have access to social security and healthcare? | 1954 Convention : Articles 23 & 24 UNHCR, Handbook on Protection (2014) : The right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit. | Yes, in line with other lawfully resident foreigners. Practice shows that access to the social pension is more complex for stateless persons, mainly due to the lack of information available to officers in relation to the situation of stateless people. In May 2020, UNHCR warned of the impact of COVID-19 on stateless populations. | Consiglio Italiano per i Rifugiati (CIR) practice Decreto Legislativo 25 Luglio 1998, N. 286, Testo Unico delle Disposizioni concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero: https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1998-08-18&atto.codiceRedazionale=098G0348&atto.articolo.numero=0&qId=&tabID=0.9017785551523968&title=lbl.dettaglioAtto (IT) Bianchini K., Protecting Stateless Persons: The Implementation of the Convention Relating to the Status of Stateless Persons Across Europe (Brill 2018), pp. 166-167 UNHCR (2020) The impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices, https://www.refworld.org/docid/5eb2a72f4.html |
| SDS.9.i | | Are stateless people allowed to vote in local and/or national elections? If yes, are there any additional requirements for stateless people to vote (e.g. permanent residence, identification documents, etc.)? [Section complete, proceed to DET] | 1954 Convention : Article 7, States shall accord to stateless persons at least the same treatment as is accorded to foreign nationals. | Stateless people and non-EU nationals cannot vote in national elections in Italy. | DECRETO DEL PRESIDENTE DELLA REPUBBLICA 17 agosto 2005 Annullamento straordinario a tutela dell'unita' dell'ordinamento, a norma dell'articolo 2, comma 3, lettera p), della legge 23 agosto 1988, n. 400, della deliberazione del consiglio comunale di Genova n. 105 del 27 luglio 2004, in materia di elettorato attivo e passivo per gli immigrati. (GU n. 205 del 3-9-2005): http://www.osservatorioantigone.it/news/cosa-facciamo/la-rivista/76-archivio/220-dpr-17-agosto-2005-gannullamento-straordinario-a-tutela-dellunita-dellordinamento-a-norma-dellarticolo-2-comma-3-lettera-p-della-legge-23-agosto-1988-n-400-della-deliberazione-del-consiglio-comunale-di-genova-n-105-del-27-luglio-2004-in-materia-di-elettor (IT) |

Detention

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| DET.1.a | Immigration detention | Please provide a brief overview of whether immigration detention powers are provided for in law and applied in practice, and whether alternatives to detention are considered. Please provide the legal source(s) and, if available, refer to other publications and sources of information about the law, policy, and practice on immigration detention. | <p>ICCPR: Article 9 ECHR: Article 5 EU Return Directive: Article 15 UNHCR, Handbook on Protection (2014): Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient. UN General Assembly (2009): Calls upon all States to adopt alternative measures to detention. HRC, Report of the Special Rapporteur (2012): The obligation to always consider alternatives before resorting to detention should be established by law. International Detention Coalition (2015): Immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case.</p> | <p>Immigration detention is provided for in the Consolidated Immigration Act, which, although amended several times, constitutes the main legislation relevant to immigration detention. The last reforms were in Law 46/2017, Law 132/2018, and Law 173/2020.</p> <p>Additionally, there are provisions for detention of asylum seekers in Decree 142/2015. Law 132/2018 introduced an additional article for the detention of asylum seekers for the sole purpose of identification and verification of nationality.</p> <p>In practice there are some violations of ECHR highlighted by caselaw (not necessarily referring to stateless people) related to widespread practice of detaining migrants and asylum seekers in "hotspots". It is also highly disputable whether de facto detention of migrants aboard "quarantine boats" represents an instance of unlawful deprivation of liberty.</p> <p>The principle of the state being obliged to consider all less coercive measures prior to issuing a decision to detain for removal purposes is not laid down in law, neither for asylum seekers nor for other migrants. Alternative measures can be considered, but nowhere does the law foresee a hierarchy among them and detention; in other words, the law does not foresee that administrative detention is a measure of last resort.</p> <p>Alternatives to detention are set in law for foreigners who are the object of a removal order.</p> <p>A foreigner who received an expulsion order may ask the Prefecture for the possibility to benefit from voluntary departure if:</p> <ol style="list-style-type: none"> 1. No expulsion order for state security and public order grounds has been issued against them; 2. There is no risk of absconding; 3. The request of permit to stay has not been rejected as manifestly unfounded or fraudulent. <p>If the prefecture authorises voluntary departure, the Chief of Police Headquarters applies one or more of the following measures:</p> <ol style="list-style-type: none"> a) handing over a valid national passport or an equivalent document; b) residing at a specific domicile; c) reporting to the police. <p>The timeline for voluntary departure is from 7 to 30 days, which can be prolonged in specific circumstances and on a case by case basis (e.g. family related-needs). Note that the measure a) handling over a valid national passport also inhibits the possibility for stateless people to be granted this alternative.</p> <p>Similarly, when forcible removal has been ordered, the Police can apply one or more of the above measures instead of detention. However, this in practice occurs very rarely and nowhere in the law is it foreseen that detention is a measure of last resort.</p> <p>There are reports confirming that in practice immigration detention is used prior to alternatives to detention.</p> | <p>DECRETO LEGISLATIVO 25 Luglio 1998, n. 286, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero. (IT)</p> <p>DECRETO LEGISLATIVO n. 142, of 18 August 2015, Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale, Art. 6.8. and 7.3-bis (IT)</p> <p>LEGGE 13 aprile 2017 n. 46 (GU n.90 del 18-4-2017), Disposizioni urgenti per l'accelerazione dei procedimenti in materia di protezione internazionale, nonché per il contrasto all'immigrazione illegale. (IT)</p> <p>LEGGE 18 dicembre 2020 n. 173, Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 2020, n. 130. (IT)</p> <p>Global detention project, "Italy Detention Data Profile", 2020</p> <p>ECHR, Grand Chamber Judgment "Khlaifia and Others v. Italy", 15 December 2016</p> <p>European Court of Human Rights, "Migrants in detention", April 2018.</p> <p>Global Detention Project and Access Info Europe, "THE UNCOUNTED: The Detention of Migrants and Asylum Seekers in Europe," December 2015.</p> <p>Senato della Repubblica, Commissione Straordinaria per la Tutela e la Promozione dei Diritti Umani, "Rapporto Sui Centri di Identificazione ed Espulsione in Italia", January 2017. (IT)</p> <p>ECRE in collaboration with CIR and others, "Strengthening NGO involvement and capacities around EU 'hotspots': Update on the implementation of the hotspots in Greece and Italy", 2017.</p> <p>ECRE in collaboration with CIR and others, "The implementation of the hotspots in Italy and Greece: A study" December 2016</p> <p>AIDA, "ITALY, Country Report" 2017, p. 103.</p> <p>ASGI, "Ombre in Frontiera - Politiche informali di detenzione e selezione dei cittadini stranieri", 2020 (IT)</p> <p>ASGI, "Illegali e discriminatori i trasferimenti coercitivi sulle 'navi quarantena'", 9 October 2020 (IT)</p> <p>DECRETO LEGISLATIVO n. 286, of 25 July 1998, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero, art. 14.1-bis (IT)</p> |

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| | | | | | <p>DECRETO LEGISLATIVO n. 142, of 18 August 2015, Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale, Art. 6.8. (IT)</p> <p>DECRETO LEGISLATIVO n. 286, of 25 July 1998, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero, art. 13.5 and 14.1-bis (IT)</p> <p>ASGI, ECRE, "Country Report: Italy", Asylum Information Database (AIDA), 2019.</p> <p>Associazione per gli Studi Giuridici sull'Immigrazione (ASGI) practice</p> <p>Senato della Repubblica, Commissione Straordinaria per la Tutela e la Promozione dei Diritti Umani, "Rapporto Sui Centri di Identificazione ed Espulsione in Italia", January 2017. (IT)</p> <p>Global detention project, "Italy Detention Data Profile", 2020</p> <p>ASGI, ECRE, Asylum Information Database (AIDA), Country report Italy 2020 https://asylumineurope.org/wp-content/uploads/2021/06/AIDA-IT_2020update.pdf</p> <p>CILD, La detenzione senza reato nei Centri di Permanenza per i Rimpatri (CPR) CILD REPORT 2021 (IT)</p> |
| DET.1.b | | Does a proposed country of removal need to be identified before a person is detained for removal? Please describe the situation in law and in practice. | <p>ICCPR: Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment (Article 7). ECtHR, Auad v. Bulgaria (2011): In cases detention with a view to deportation, lack of clarity as to the destination country could hamper effective control of the authorities' diligence in handling the deportation. EU Return Directive: Any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence.</p> | <p>There is no explicit requirement in the law to identify the country of removal before a person is detained for the purpose of removal. Nationality information can be provided initially by the detainee. Identification or confirmation of country of removal is not a condition to authorise detention. It is possible to be detained in order to be identified.</p> <p>Administrative immigration detention is subject to judicial review 60 days (asylum seekers) or 30 days (all other foreigners) from the first judicial validation of detention. If it is necessary to ascertain the person's identity, nationality or to acquire travel documents, detention can be extended for further 30 days. The District Police Chief can ask the judge for an extension of detention up to 90 days if it is likely that the person can be identified or if preparation for removal requires more time. If the country of removal has stipulated a repatriation agreement with Italy, detention can be extended for an additional 30 days.</p> | <p>DECRETO LEGISLATIVO n. 286, of 25 July 1998, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero Art. 14. (IT)</p> <p>LEGGE 1 dicembre 2018, n. 132, Conversione in legge, con modificazioni, del decreto-legge 4 ottobre 2018, n. 113, recante disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica [...] (IT)</p> <p>LEGGE 18 dicembre 2020 n. 173, Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 2020, n. 130. (IT)</p> |
| DET.1.c | | Is there a clear obligation on authorities to release a person when there is no reasonable prospect of removal? | <p>EU Return Directive: When it appears that a reasonable prospect of removal no longer exists, detention ceases to be justified and the person concerned shall be released immediately. UN Working Group on Arbitrary Detention (2018): When the obstacle for identifying or removal of persons in an irregular situation from the territory is not attributable to them, the detainee must be released to avoid potentially indefinite detention from occurring, which would be arbitrary. ECtHR, Auad v. Bulgaria (2011)</p> | <p>In the current Italian legal framework on administrative detention of migrants, there is no automatic obligation to release the person if there is no reasonable possibility for removal. In the Italian legal framework, administrative detention is seen by the legislator as a containment of the condition of irregularity rather than as a possibility of effective return. However, the Italian courts in 2020 ruled on the validation, extension, or termination (upon review) of the detention of three foreign asylum-seekers.</p> | <p>Tribunal of Trieste, decision number 980, 18 march 2020</p> <p>Tribunal of Rome decision number 16573 of 27 March 2020</p> <p>Tribunal of Rome decision number 15892 of 18 March 2020</p> |

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| | | | ECtHR, Mikolenko v. Estonia (2009) | | |
| DET.2.a | Identification of statelessness | Is statelessness juridically relevant in decisions to detain? Please describe how (risk of) statelessness is identified and whether referral to an SDP is possible from detention. | <p>ECtHR, Auad v. Bulgaria (2011) ECtHR, Mikolenko v. Estonia (2009): Detention may only be justified as long as deportation proceedings are being conducted with due diligence. UNHCR, Handbook on Protection (2014): Routine of individuals seeking protection on the grounds of statelessness is arbitrary. Equal Rights Trust, Guidelines (2012): States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights. ICJ, Migration and International Human Rights Law (2014): The detention of stateless persons can never be justified when there is no active or realistic progress towards transfer to another State.</p> | <p>Yes, statelessness is relevant in administrative immigration detention decisions because it affects the prospects of removability.</p> <p>Administrative detention cannot be applied to a recognised stateless person who is legally resident on Italian territory.</p> <p>If lacking documents and/or a residence permit, the situation of a person at risk of statelessness is similar to that of an irregularly staying migrant. Authorities must verify the nationality of foreign nationals on arrival, during detention, and in the course of each periodic review of the lawfulness of detention. Referral to an SDP is theoretically possible from detention but there is no specific information provided or referral mechanism in place. Importantly, in June 2019, the Court of Cassation issued a judgment affirming that detention of "de facto stateless" people needs to follow the same rules as that of people whose statelessness has been determined, i.e. they cannot be expelled unless they pose a threat to security and public order). The Court found that "Article 31 of the New York Convention, which provides that a stateless person may not be expelled except in cases of documented existence of reasons of national security and public order, extends by analogy to situations of de facto statelessness and/or pending the procedure to ascertain statelessness, when the situation of the person emerges clearly from the information or documentation provided by the competent public authorities of the Italian State, the State of origin or of the State to which a significant connection with the person concerned may be established". The case concerned a "de facto stateless person" who had been previously detained on several occasions, but always released due to the impossibility of retrieving documentation needed to remove him to a third State. The ruling had an important impact to counter the repeated detention of Romani people who are stateless or at risk of statelessness in Italy.</p> | <p>DECRETO LEGISLATIVO n. 286, of 25 July 1998, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero (IT)</p> <p>CIR, "In the Sun - Survey on the phenomenon of statelessness among Roma communities living in Italy", February 2013, p. 52 (footnote 73)</p> <p>Consiglio Italiano per i Rifugiati (CIR) practice</p> <p>Corte di Cassazione, sez. I Civile, judgment n. 16489/19 of 19 June 2019 (IT)</p> <p>Melting Pot Europa, "Non è espellibile l'apolide di fatto", 4 July 2019 (IT)</p> <p>Guida alla persona detenuta straniera ASGI APS 2021</p> |
| DET.2.b | | Is there a definition of vulnerability in law? If yes, does it explicitly include statelessness? If not, please note whether statelessness is considered to be a factor increasing vulnerability. | <p>PICUM, Preventing and Addressing Vulnerabilities in Immigration Enforcement Policies (2021): Statelessness should be explicitly included in the definition of vulnerability. Vulnerability should always be determined and assessed on an individual basis.</p> | <p>In the Italian legal system there isn't any law, legal instruments with a specific legal definition of vulnerability in the legal status of the foreigner that takes into account the condition of statelessness or potential statelessness. The definition of vulnerability is not clear-cut and precise in the Law 173 of 2020 regulation that modified international protection and aliens act. The unified sections of the Court of Cassation defined vulnerability as liquid, which must be assessed on a case-by-case basis. The condition of statelessness in itself is not expressly reported as a condition of vulnerability, but certainly in the balance between the condition in the country of asylum-protection and those of the country of origin - stable residence, the lack of citizenship, the risk of statelessness, both in case law and in the case, history of requests for residence permits and international protection, all are taken into account in the Italian system as indicated by the unified sections of the Court of Cassation decision n. 24413/2021.</p> | <p>LEGGE 18 dicembre 2020 n. 173, Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 2020, n. 130. (IT)</p> <p>Court of Cassation decision n. 24413/2021</p> |

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| DET.2.c | | <p>Are individual vulnerability assessments carried out before a decision to detain (or soon after)?</p> | <p>ENS, Protecting Stateless Persons From Arbitrary Detention (2015): Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed. EU Return Directive: Article 16(3) EU Return Handbook (2017): Attention should be paid to the specific situation of stateless persons. Council of the European Union, Guidelines to promote and protect the enjoyment of all human rights by LGBTI persons (2013): European entities should assess the situation of LGBTI persons in detention. PICUM, Preventing and Addressing Vulnerabilities in Immigration Enforcement Policies (2021): There should be a clear legal obligation to screen and assess individuals' vulnerability before a decision to detain is taken and before individuals are placed into situations of deprivation or restriction of liberty.</p> | <p>According to the Reception Decree (DECRETO LEGISLATIVO n. 142/2015) vulnerable asylum seekers cannot be detained in pre-removal centres (CPR). Art. 7.5 of the Decree defines as vulnerable: minors, unaccompanied minors, pregnant women, single parents with minor children, victims of trafficking, disabled, elderly people, persons affected by serious illness or mental disorders, persons for whom it has been proved they have experienced torture, rape or other serious forms of psychological, physical or sexual violence or violence due to their sexual orientation/gender identity, and victims of genital mutilation. Statelessness is not considered as a vulnerability factor per se. In practice, the experience of CIR is that the only vulnerabilities considered in practice are victims of human trafficking, drug addiction, and mental ill-health. Foreigners or stateless people who are not asylum seekers can be detained in pre-removal centres even if they are vulnerable.</p> | <p>DECRETO LEGISLATIVO n. 142, of 18 August 2015, Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale, Art. 7.5. (IT)</p> <p>ASGI, ECRE, "Country Report: Italy", Asylum Information Database (AIDA), 2019.</p> <p>Senato della Repubblica, Commissione Straordinaria per la Tutela e la Promozione dei Diritti Umani, "Rapporto Sui Centri di Identificazione ed Espulsione in Italia", Jan 2017. (IT)</p> <p>Ministero dell'Interno, "Regolamento recante criteri per l'organizzazione e la gestione dei CIE", Note of 20 October 2014 (IT)</p> |
| DET.2.d | | <p>Are stateless people detained in practice?</p> | | <p>Yes, people at risk of statelessness can be detained in practice as a direct consequence of their lack of documents and their irregular status in Italy. Although no official data is published on the detention of stateless people, the Human Rights Committee of the Italian Senate in 2017 noted the detention of a number of people at risk of statelessness, many from Roma communities living in Italy for many years. There is also a 2015 judgment concerning a woman with five children detained in a pre-removal centre despite it being clear that repatriation was impossible because of the impossibility to identify a 'country of origin'. The judge ruled in favour of the family, reasoning that in the absence of the actual possibility to be removed, detention in pre-removal centres is illegal. There are reports stating that stateless people have been detained in recent years, in particular members of the Roma community who have been repeatedly detained. A 2019 judgment by the Court of Cassation (see above, under DET.1.e) stated that detention of "de facto stateless" people needs to follow the same rules as that of people whose statelessness has been determined, i.e., they cannot be expelled unless they pose a threat to security and public order.</p> | <p>DECRETO LEGISLATIVO n. 286, of 25 July 1998, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero, art. 14. (IT)</p> <p>Senato della Repubblica, Commissione Straordinaria per la Tutela e la Promozione dei Diritti Umani, "Rapporto Sui Centri di Identificazione ed Espulsione in Italia", Jan 2017. (IT)</p> <p>ASGI, "Cassazione: se mancano le prospettive di rimpatrio, il trattenimento nel CIE è illegittimo" (Cass.civ.sez. VI, ord. 7.7.2015, n. 19201). (IT)</p> <p>ASGI, "Out of limbo: Verso uno status legale per le persone rom prive di documenti, apolidi o a rischio di apolidia", May 2015 (IT)</p> <p>Annalisa Camilli, "Chi sono le donne rinchieste nel centro di espulsione di Roma", Internazionale, 11 February 2019 (IT)</p> |
| DET.3.a | Procedural safeguards | <p>Are there adequate procedural safeguards in place for individuals in immigration detention (e.g. maximum period of detention, decisions in writing, regular periodic reviews, judicial oversight, legal aid, etc.)?</p> | <p>ICCPR: Article 9(4) ECHR: Article 5(4) EU Return Directive: Articles 12, 13 and 15(5) HRC, Report of the Working Group on Arbitrary Detention (2010): A maximum period of detention must be established by law and upon expiry the detainee must be automatically released. UNHCR, Detention Guidelines (2012): To guard against arbitrariness, maximum periods of detention should be set in national law. UNHCR, Handbook on Protection (2014): Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means. UNGA, Body of Principles (1988): Anyone who is arrested shall be informed at the time of the reason for his arrest. Equal Rights Trust, Guidelines (2012): Stateless detainees shall receive their order of detention in writing and in a language they understand. To avoid arbitrariness, detention should be subject to automatic, regular and periodic review throughout the period of detention, before a judicial body</p> | <p>For non-asylum seekers, detention can be imposed initially for 30 days and can be subsequently extended for additional 30 days periods. Law 173/2020 introduced shortened maximum time periods in the Consolidated Immigration Act, which is now 90 days or 120 days for nationals of a country with which Italy has concluded repatriation agreement. For asylum seekers detained in pre-removal centres, detention can be imposed for 60 days and subsequently extended for additional 60 days periods. The maximum time limit is 12 months. Assistance by a lawyer is compulsory in all hearings, and if the detainee does not have one, an ex officio lawyer is appointed.</p> <p>Under the Consolidated Immigration Act, the expulsion must contain the reasons for detention and remedies. The order is delivered in writing in a language the person understands or French, English or Spanish.</p> <p>Regular periodic reviews are provided for in the Consolidated Immigration Act (for non-asylum seekers) and in Decree Law 142/2015 (for asylum seekers). Detention is always ordered by the District Police Chief and needs to be validated by a judge (Tribunal, for asylum seekers; Justice of Peace for all others), located in the same District as the pre-removal centre, within 96 hours of issuing</p> | <p>DECRETO LEGISLATIVO 25 Luglio 1998, n. 286, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero. Art. 14.5 (IT)</p> <p>DECRETO LEGISLATIVO n. 142, of 18 August 2015, Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale, Art. 6.8 (IT)</p> <p>LEGGE 18 dicembre 2020 n. 173, Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 2020, n. 130. (IT).</p> <p>DECRETO LEGISLATIVO 25 Luglio 1998, n. 286, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero. Art. 13.6. (IT)</p> <p>DECRETO LEGISLATIVO 25 Luglio 1998, n. 286, Testo Unico delle Disposizioni</p> |

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| | | | <p>independent of the detaining authorities. Detention should always be for the shortest time possible. ECtHR, Kim v. Russia (2014): The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure.</p> | <p>the detention order. For asylum seekers, detention can be imposed for 60 days and subsequently extended for additional 60 days periods. The maximum time limit is 12 months. For non-asylum seekers, detention can be imposed initially for 30 days and can be subsequently extended for additional 30 days periods. The maximum length is 90 days, or 120 days for nationals of a country with which Italy has concluded repatriation agreement.</p> <p>Judicial control by Justices of Peace is mostly formal and often consists in rubber-stamping detention requests by the Police Chief. This is confirmed by the Sub-Committee on the Prevention of Torture (SPT), which, after a visit to Italy in 2016, reported the perception among migrants that judicial hearings regarding detention and expulsion "were a pro forma exercise and did not take the individual circumstances of migrants adequately into account".</p> <p>Detainees can only appeal to the Court of Cassation against the initial validation and subsequent extensions of detention. The remedy can only challenge violations of law (not the merits of the claim) and the appeal does not have suspensive effect (i.e., the person remains in detention). The remedy is mostly ineffective as it ordinarily takes the Court of Cassation approximately one year to issue a decision, often long after the detainee has been repatriated or released for reaching the maximum detention timeframe. The detainee can at any time apply for a re-examination of the previous detention order (validation or extension) where circumstances have arisen warranting release.</p> <p>The right to free legal aid is provided by law for all foreigners subjected to a removal procedure, regardless of income. In principle, organisations running the centres provide legal assistance, but legal operators are few, generally inexperienced and often have part-time contracts. In practice, it is often difficult for lawyers to contact clients in detention. All pre-removal centres have adopted a practice of confiscating mobile phones from detainees upon their admission, which makes it extremely difficult to maintain a communication channel with their clients. Public telephones are available, and detainees receive scratch cards to place phone calls. It is very difficult for anyone (including lawyers) to call a detainee from outside. Also, due to the Covid-19 pandemic, heavy restrictions are placed on access to pre-removal centres, including for lawyers. After the renewal of bilateral repatriation agreements with Tunisia in summer 2020, Tunisian nationals are repatriated in particularly fast procedures and due to the mentioned restrictions, there were instances of Tunisian detainees who were never able to meet their lawyers prior to removal.</p> | <p>Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero. Art. 14.5 (IT)</p> <p>DECRETO LEGISLATIVO n. 142, of 18 August 2015, Attuazione della direttiva 2013/33/UE recante norme relative all'accoglienza dei richiedenti protezione internazionale, nonché della direttiva 2013/32/UE, recante procedure comuni ai fini del riconoscimento e della revoca dello status di protezione internazionale, Art. 6.8 (IT)</p> <p>LEGGE 18 dicembre 2020 n. 173, Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 2020, n. 130. (IT)</p> <p>Sub-committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Italy," 23 September 2016, CAT/OP/ITA/1.</p> <p>Associazione per gli Studi Giuridici sull'Immigrazione (ASGI) practice</p> <p>DECRETO LEGISLATIVO 25 Luglio 1998, n. 286, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero. Art. 14.6 (IT)</p> <p>Global Detention Project, "Italy Immigration Detention Profile", 2020</p> <p>Global Detention Project, "Immigration Detention in Italy: Complicit in Grave Human Rights Abuses?" October 2019.</p> <p>ASGI, ECRE, "Country Report: Italy", Asylum Information Database (AIDA), 2019.</p> <p>Associazione per gli Studi Giuridici sull'Immigrazione (ASGI) practice</p> <p>DECRETO LEGISLATIVO 25 Luglio 1998, n. 286, Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero. Art. 14.4 (IT)</p> <p>Consiglio Italiano per i Rifugiati (CIR) practice</p> <p>Associazione per gli Studi Giuridici sull'Immigrazione (ASGI) practice</p> <p>ASGI, ECRE, "Country Report: Italy", Asylum Information Database (AIDA), 2019.</p> |
| DET.3.b | | <p>Are detainees provided with information on their rights, contact details of legal advice and support providers, and guidance on how to access an SDP?</p> | <p>Equal Rights Trust, Guidelines (2012): Detaining authorities are urged to provide stateless detainees with a handbook in a language and terms they understand, containing information on all their rights and entitlements, contact details of organisations which are mandated to protect them, NGOs and visiting groups and advice on how to challenge the legality of their detention and their treatment as detainees.</p> | <p>There is no specific SDP referral mechanism or information for detainees. The pre-removal centres regulation provides for an obligation to inform all detainees of their rights and duties in an understandable language, and a list of lawyers.</p> | <p>Ministero dell'Interno, "Criteri per l'organizzazione e la gestione dei Centri di identificazione ed Espulsione di cui all'art 14 del TU 286/98 e successive modificazioni", 20 October 2014, Art. 2 (IT)</p> |
| DET.3.c | | <p>Are there guidelines in place governing the process of re-</p> | <p>Equal Rights Trust, Guidelines (2012): The inability of a stateless person to cooperate with removal proceedings</p> | <p>Not to our knowledge.</p> | <p>Consiglio Italiano per i Rifugiati (CIR) practice</p> |

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| | | documentation and ascertaining entitlement to nationality for the purpose of removal? | should not be treated as non-cooperation. ENS, Protecting Stateless Persons From Arbitrary Detention (2015) : The detaining state should have rules in place that govern the process of re-documentation and/ or ascertaining entitlement to nationality. | | Associazione per gli Studi Giuridici sull'Immigrazione (ASGI) practice |
| DET.4.a | Protections on release | Are people released from detention issued with identification documents (including confirmation of their stateless status) and protected from re-detention? | 1954 Convention : Article 27 UNHCR, Handbook on Protection (2014) : Being undocumented cannot be used as a general justification for detention. ENS, Protecting Stateless Persons From Arbitrary Detention (2015) : State parties to the 1954 Convention have an obligation to provide stay rights to stateless people who have been released from detention. Equal Rights Trust, Guidelines (2012) : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation. | People who are released from detention without any identification or confirmation of their statelessness do not have any guarantee against re-detention and are not routinely issued with documentation. | Consiglio Italiano per i Rifugiati (CIR) practice Associazione per gli Studi Giuridici sull'Immigrazione (ASGI) practice |
| DET.4.b | | If the purpose of detention cannot be fulfilled and the person is released, what legal status and rights are provided to them in law? | CJEU, Kadzoev, C-357/09 PPU (2009) : After the maximum period of detention has expired, the person must be released immediately. A lack of valid documentation or inability to support themselves should not be a deterrent to release. Equal Rights Trust, Guidelines (2012) : Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation. | Generally, the person is released with an order to voluntarily leave Italian territory within 7 days. In the absence of residence status, they have only basic rights including access to emergency medical care. | DECRETO LEGISLATIVO 25 Luglio 1998, n. 286 , Testo Unico delle Disposizioni Concernenti la Disciplina dell'immigrazione e Norme sulla Condizione dello Straniero. Art. 13 and 14. (IT) |
| DET.5.a | Return and readmission agreements | Is statelessness considered a juridically relevant fact in any bilateral readmission and/or return agreements? | UNHCR, Handbook on Protection (2014) : Efforts to secure admission or readmission may be justified but these need to take place subsequent to a determination of statelessness. | Scarce information is available on the content of bilateral return or readmission agreements. However, there are examples of agreements stipulating the readmission of stateless individuals, such as the 2014 agreement with Kosovo. In this agreement, statelessness is not considered from a protection perspective and Art. 13 stipulates the possibility of returning stateless people from Italy to Kosovo (under certain conditions). | Consiglio Italiano per i Rifugiati (CIR) practice Accordo fra il Governo della Repubblica Italiana e il Governo della Repubblica del Kosovo sulla riammissione delle persone che soggiornano senza autorizzazione, Roma, 15 Aprile 2014. Available in law review "Diritto, Immigrazione e Cittadinanza", 2016. |
| DET.5.b | | Are you aware of cases of cases of stateless people being returned under such agreements? | | Not to our knowledge. | Consiglio Italiano per i Rifugiati (CIR) practice |

Prevention and Reduction

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| PRS.1.a | Naturalisation | In what timeframe do stateless people who are residing on the territory acquire the right to apply for naturalisation, and how does this compare to others with a foreign nationality? | 1954 Convention : Article 32 UNHCR, Good Practices Papers – Action 6 (2020) : It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons. CoE Committee of Ministers, Recommendation No. R (99) 18 (1999) : Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory. ENS (2013) : The main benchmark is if there is any preferential treatment for stateless people compared to the general rules applied to those with a foreign nationality. | Persons with stateless status may apply for naturalisation after five years (reduced from 10 years for other non-EU nationals) of uninterrupted lawful residence if other requirements are also met (i.e. income, good character, etc.) | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, Legge 132/18, Art. 9(1)(e): https://www.normattiva.it/atto/carica/DettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) |
| PRS.1.b | | Are there requirements relating to ‘good character’ or previous criminal convictions that could prevent some stateless people from naturalising? If yes, please describe. | CoE Committee of Ministers, Recommendation No. R (99) 18 (1999) : States should ensure that offences, when relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a state. | Yes, criminal records are grounds for exclusion from obtaining Italian nationality. However, caselaw issued by the Council of State in 2014 established that nationality cannot be denied only because the applicant has committed a crime. The new Nationality Law introduces the possibility for revocation of nationality in the event of a final sentence for the following crimes: terroristic acts; subversion of the constitutional order; subversive association; constitution, promotion or participation to armed groups; assistance and training of members of armed groups; assistance of members of subversive associations and of terroristic associations; misappropriation of properties and funds seized in order to prevent from financially supporting terroristic activities. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, art 10 bis come modificato dalla Legge 132/18 https://www.normattiva.it/atto/carica/DettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) Sentenza n. 5544 del 11 novembre 2014 Consiglio di Stato: http://briguglio.asgi.it/immigrazione-e-asilo/2014/dicembre/sent-cds-5544-2014.pdf (IT) Cons. Stato, sez. III, sent. n. 5262 del 06.11.2018 and Cons. Stato, sez. III, Sent. n. 3121 del 14.05.2019: https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p_p_id=GaSearch_INSTANCE_2NDgCF3zWBwk&p_p_state=normal&p_p_mode=view&GaSearch_INSTANCE_2NDgCF3zWBwk_javax.portlet.action=searchProvvedimenti&p_auth=HiNY4LNR&p_lifecycle=0 (IT) |
| PRS.1.c | | Are there exemptions for stateless people from any nationality or integration test, language, income or fee requirements for naturalisation? Please describe the requirements and cost of the procedure for stateless adults and children. | 1954 Convention : Article 32 UNHCR, Good Practices Papers – Action 6 (2020) : It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons. CoE Committee of Ministers, Recommendation No. R (99) 18 (1999) : Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory. | No, there are no exemptions for stateless people. All applicants who have not adhered to the integration contract as provided by the Immigration Law, and are not beneficiaries of a long-term EU residence permit, must demonstrate a B1 level of Italian language. In addition, applicants must demonstrate an annual income of approximately EUR 8,263 (plus approximately EUR 516 for each child or family dependants). The cost to initiate the procedure is EUR 250, and additional bureaucratic expenses may have to be paid (e.g., stamps). | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, Legge 132/18, Art. 9.1, come modificato dalla L. 132/2018: https://www.normattiva.it/atto/carica/DettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, Legge 132/18, Art. 9bis(2), come modificato dall'art. 14 della L. 132/2018 : https://www.normattiva.it/atto/carica/DettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) Cittadinanza italiana, il portale informativo sulla cittadinanza italiana https://www.cittadinanza.biz/reddito-minimo-per-cittadinanza-italiana/ |
| PRS.2.a | Stateless born on territory | Is there a provision in law for stateless children born on the territory to acquire nationality? [If yes, continue to PRS2b. If no, proceed to PRS2i] | 1961 Convention : Article 1 ECN : Article 2 CRC : Article 7 Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : States should strengthen measures to grant nationality to children born in their | In the Italian system, nationality is regulated by Law 91/1992 and implementing decrees 572/1993 and 362/1994. Generally, the acquisition of nationality is based on the jus sanguinis principle. The criterion of jus soli is applied exclusively in a residual manner. An Italian national at birth is anyone “(...) who is born on the territory of the Republic if both | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Arts. 1(1)(b) & (2): https://www.normattiva.it/atto/carica/DettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID |

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| | | | territory in situations where they would otherwise be stateless. HRC, CCPR General comment No. 17 (1989) : States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. European Parliament resolution (2018) : The EU and its MS should ensure that childhood statelessness is adequately addressed in national laws in full compliance with Article 7 CRC. | parents are unknown or stateless, or if the child does not follow the nationality of his/her parents in accordance with the laws of their State of origin". In practice, children born in Italy to stateless parents acquire nationality: 1. When both parents are unknown or recognised as stateless by law; 2. When under the law of the parents' country of origin, children born abroad do not acquire their parents' nationality (e.g. because ius soli is applied). Italian Nationality is also recognised at birth to a child found on the Italian territory, whose parents are both unknown. However, a further requirement must be fulfilled in that "it has not been proven [that the person concerned] possesses any other nationality". | =0.22518485625575413&title=lbl.dettaglioAtto (IT) DECRETO DEL PRESIDENTE DELLA REPUBBLICA 12 ottobre 1993, n. 572 Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza. (GU Serie Generale n.2 del 04-01-1994): https://www.refworld.org/docid/46b84a1f2.html (IT) Decreto del Presidente della Repubblica di 18 aprile 1994, n. 362, Regolamento recante disciplina dei procedimenti di acquisto della cittadinanza italiana, G.U. No. 136, June 13, 1994, https://perma.cc/ZF3K-U6XM (IT) Ministry of the Interior, Circular K.60.1 of 5 Jan 2007; Circular N.22/07 of 7 Nov 2007; Circular N.9 of 7 Aug 2009. CIR-ENS, Ending Childhood Statelessness: A study on Italy, Working paper 07/15, June 2015: https://www.statelessness.eu/resources/ending-childhood-statelessness-study-italy |
| PRS.2.b | Is the provision for otherwise stateless children to acquire nationality automatic or non-automatic (i.e. by application)? | UNHCR, Guidelines on Statelessness No. 4 (2012) : The 1961 Convention provides Contracting States with two alternatives for granting nationality to otherwise stateless children born in their territory: either automatic acquisition upon birth or upon application. ENS, No Child Should Be Stateless (2015) : The 1961 Convention and the European Convention on Nationality oblige the conferral of nationality to otherwise stateless children born on the territory. The optimal method is to grant nationality automatically at birth. | It is automatic by law, but non-automatic in practice. Italian law states that children born in Italy obtain Italian nationality at birth by operation of the law when born to stateless parents or to parents who cannot transmit their nationality according to the law of their country of origin. However, in practice, parents must provide relevant supporting documents to the municipal Nationality Office for their children to obtain Italian nationality (e.g. in the case of a child born in Italy to Cuban parents (where jus soli applies), parents are often requested to provide a declaration from the Cuban Embassy to confirm this). | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Art. 1(1)(b): https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) CIR-ENS, Ending Childhood Statelessness: A study on Italy, Working paper 07/15, June 2015: https://www.statelessness.eu/resources/ending-childhood-statelessness-study-italy | |
| PRS.2.c | Are parents provided with information about their child's nationality rights and relevant procedures, including where the child would otherwise be stateless or has undetermined nationality? | UNHCR, Guidelines on Statelessness No. 4 (2012) : Contracting States are obliged to provide detailed information to parents of children who would otherwise be stateless or of undetermined nationality about the possibility of acquiring the nationality, how to apply and about the conditions which must be fulfilled. If the child concerned can acquire the nationality of a parent immediately after birth, States that opt to not grant nationality to children in these circumstances must assist parents in initiating the relevant procedure with the authorities of their State or States of nationality. | No, there is no specific procedure for this. | | |
| PRS.2.d | Is it a requirement that the parents are also stateless for the otherwise stateless child to acquire nationality? | UNHCR, Guidelines on Statelessness No. 4 (2012) : The test is not an inquiry into whether a child's parents are stateless. ENS, No Child Should Be Stateless (2015) : Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the parents hold a nationality but are unable to pass this on. | No. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Art. 1(1)(b): https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) | |
| PRS.2.e | Are stateless children required to prove they cannot access another nationality to acquire the nationality of the country of birth? If yes, please describe how this is determined in practice. | UNHCR, Guidelines on Statelessness No. 4 (2012) : A Contracting State cannot avoid the obligations to grant its nationality to a person who would otherwise be stateless based on its own interpretation of another State's nationality laws. The burden of proof must be shared between the claimant and the authorities, but in the case of | The provision is automatic in law, but in practice parents must provide relevant supporting document. At the registration of birth, parents are required to provide a declaration of birth and an identification document (e.g. a permit to stay or a passport). Documentation can be substituted by two witnesses in the case of undocumented migrants. In this situation, the | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Art. 1(1)(b): https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID | |

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| | | | children the State assumes a greater share of the burden of proof. Decision-makers must consider Articles 3 & 7 CRC and adopt an appropriate standard of proof. Special procedural considerations to address the acute challenges faced by children in communicating basic facts about their nationality should be respected. | child is registered with the nationality of their parents based on their alleged origin. In the case of statelessness, undetermined or uncertain nationality (e.g. Roma people facing problems acquiring evidence from their 'country of origin'), or parents who cannot transmit their nationality due to the law in their country of nationality, they must be proactive in filing a request and supporting it with relevant documentation for the acquisition of Italian nationality at birth to the municipal Nationality Office. Practice shows for example that parents are required to provide a declaration by their country of origin stating that the child is not a national under domestic law. When the evidence is seemed insufficient, the child will not be granted Italian nationality, even if they don't acquire another nationality. | =0.7809808931921656&title=lbl.dettaglioAtto (IT) CIR-ENS, Ending Childhood Statelessness: A study on Italy, Working paper 07/15, .June 2015: https://www.statelessness.eu/resources/ending-childhood-statelessness-study-italy |
| PRS.2.f | | Is a stateless child born on the territory required to fulfil a period of residence to be granted nationality? If yes, please specify length and if this must be legal residence. | 1961 Convention : Article 1(2) UNHCR, Guidelines on Statelessness No. 4 (2012) : States may stipulate that an otherwise stateless individual born in its territory fulfils a period of 'habitual residence' (understood as stable, factual residence, not legal or formal residence) not exceeding five years preceding an application nor ten years in all. CRC : Articles 3 & 7 Committee on the Rights of the Child, Concluding observations on the Netherlands (2015) : Recommends the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to nationality without any conditions. ECN : Article 6(2)(b) | No, but there is a further safeguard in law based on residence without interruption until the age of majority for otherwise stateless children who, albeit born on Italian territory, do not obtain Italian nationality at birth under Art. 1 Law 91/92. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Art. 1(1)(b): https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) DECRETO DEL PRESIDENTE DELLA REPUBBLICA 12 ottobre 1993, n. 572 Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza. (GU Serie Generale n.2 del 04-01-1994): https://www.refworld.org/docid/46b84a1f2.html (IT) Art. 33 Testo del decreto-legge 21 giugno 2013, n. 69 (in S.O. n. 50/L alla Gazzetta Ufficiale - Serie generale - n. 144 del 21 giugno 2013), coordinato con la legge di conversione 9 agosto 2013, n. 98 (in questo stesso S.O. alla pag. 1), recante: «Disposizioni urgenti per il rilancio dell'economia». (13A07086) (GU Serie Generale n.194 del 20-08-2013 - Suppl. Ordinario n. 63), (known as 'Decreto del Fare'): http://www.gazzettaufficiale.it/eli/id/2013/08/20/13A07086/sg (IT) |
| PRS.2.g | | Are the parents of a stateless child required to fulfil a period of residence for the child to be granted nationality? If yes, please specify length and if this must be legal residence. | Committee on the Rights of the Child, Concluding observations on Czech Republic (2011) : The outcome of an application by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State. ENS, No Child Should Be Stateless (2015) : Demanding that the child or their parents reside lawfully on the territory is prohibited by the 1961 Convention. | No. | |
| PRS.2.h | | What are the age limits (if any) for making an application for nationality for a stateless person born on the territory? | 1961 Convention : Article 1(2) UNHCR, Guidelines on Statelessness No. 4 (2012) : Contracting States need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21. ENS, No Child Should Be Stateless (2015) : Closing the window of opportunity to apply for a nationality has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child. | In addition to situations where nationality is granted at birth, Italian legislation provides another mode of acquisition of nationality based on conditional jus soli. This criterion is applied to otherwise stateless children who, albeit born on Italian territory do not obtain Italian nationality at birth since they do not fall in the legal situations enshrined in art 1 of law 91/92. Article 4 paragraph 2 of Law n. 91/1992 states that "the foreign person born in Italy, who has been legally resident without interruption on its territory until the age of majority, becomes a national upon application, filed within one year from turning 18, where (s)he expresses the willingness to acquire Italian nationality". This rule must be considered as a safeguard for children born in Italy whose parents are at risk of statelessness. If the child remains stateless on reaching the age of majority, they may submit an application for Italian nationality up to the age of 19 if they can | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Arts. 4(2) & 1(1)(b): https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) Read in conjunction with: DECRETO DEL PRESIDENTE DELLA REPUBBLICA 12 ottobre 1993, n. 572 Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza. (GU Serie Generale n.2 del 04-01-1994), Art. 3(4): https://www.refworld.org/docid/46b84a1f2.html (IT) |

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| | | | | meet certain conditions, including a declaration of will (dichiarazione di volontà) to the competent authority, and uninterrupted residence proven through residence permits, school reports, vaccination records, medical certificates etc. | Art. 33 Testo del decreto-legge 21 giugno 2013, n. 69 (in S.O. n. 50/L alla Gazzetta Ufficiale - Serie generale - n. 144 del 21 giugno 2013), coordinato con la legge di conversione 9 agosto 2013, n. 98 (in questo stesso S.O. alla pag. 1), recante: «Disposizioni urgenti per il rilancio dell'economia». (13A07086) (GU Serie Generale n.194 del 20-08-2013 - Suppl. Ordinario n. 63), (known as 'Decreto del Fare'): http://www.gazzettaufficiale.it/eli/id/2013/08/20/13A07086/sg (IT) CIR-ENS, Ending Childhood Statelessness: A study on Italy, Working paper 07/15, .June 2015: https://www.statelessness.eu/resources/ending-childhood-statelessness-study-italy ASGI, L'acquisto della Cittadinanza Italiana da Parte dello Straniero Nato in Italia ai Sensi dell'Art. 4, Comma 2, Legge 91/1992, Scheda Pratica, 2016: http://www.asgi.it/wp-content/uploads/2016/08/ASGI-scheda-cittadinanza-straniero-nato-in-Italia-ex-art.-4-comma-2.pdf (IT) |
| PRS.2.i | | Are there specific provisions to protect the right to a nationality of children born to refugees? | UNHCR, Guidelines on Statelessness No. 4 (2012) : Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities. | No. | |
| PRS.3.a | Foundlings | Are foundlings granted nationality automatically by law? If not automatic, please describe the procedure. | 1961 Convention : Article 2 ECN : Article 6(1)(b) | By law, a person found on the Italian territory is an Italian national at birth. However, a further requirement is that 'it has not been proven [that the person concerned] possesses any other nationality'. This criterion is impossible to satisfy so the provision is interpreted to mean the child acquires Italian nationality unless there is proof that (s)he has obtained another. If an unrecognised child is abandoned in a hospital or other institution, or anywhere on Italian territory, the child is automatically granted Italian nationality at the moment of registration at the Population Registry Office. The civil officer who receives the communication of abandonment, drafts a report, gives a name and surname to the child, immediately informs the competent authorities, and registers the child in the Municipality as an Italian national. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Art. 1(2): https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) CIR-ENS, Ending Childhood Statelessness: A study on Italy, Working paper 07/15, .June 2015: https://www.statelessness.eu/resources/ending-childhood-statelessness-study-italy |
| PRS.3.b | | Is there an age limit (e.g. 'new-born' or 'infant') in law or practice specifying when a foundling would qualify for nationality? | UNHCR, Guidelines on Statelessness No. 4 (2012) : At a minimum, the safeguard should apply to all young children who are not yet able to communicate information about the identity of their parents or their place of birth. | There is no reference to an age limit in the nationality law. In the Civil Code, the word 'foundling' is connected to the birth of the child. In CIR's opinion, the concept of 'foundling' could not be connected to a teenager, for example. | D.P.R. 3 novembre 2000, n. 396 (1), Regolamento per la revisione e la semplificazione dell'ordinamento dello stato civile, a norma dell'articolo 2, comma 12, della L. 15 maggio 1997, n. 127, Art. 38: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto:2000-11-03:396lvig |
| PRS.3.c | | Can nationality be withdrawn from foundlings if this leads to statelessness? | UNHCR, Guidelines on Statelessness No. 4 (2012) : Nationality acquired by foundlings may only be lost if it is proven that the child possesses another nationality. | Not to our knowledge. | Consiglio Italiano per i Refugiati (CIR) practice |
| PRS.4.a | Adoption | Where a child national is adopted by foreign parent(s), does the child lose their original nationality before the new nationality is acquired? | 1961 Convention : Article 5 ENS, No Child Should Be Stateless (2015) : Children may be exposed to a (temporary) risk of statelessness during the adoption process due to the nationality law of the child's country of origin. | No. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Art. 11: https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) |

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| PRS.4.b | | Does a foreign child adopted by national parents acquire nationality? Please specify any age limits and/or risk of statelessness during the adoption process. | ECN: Article 6(4)(d) Committee on the Rights of the Child, Concluding Observations on Switzerland (2015) : Ensure that the child is not stateless or discriminated against during the waiting period between arrival and formal adoption. | Law 91/92 states that any minor adopted by an Italian national is considered an Italian national. The age limit is 18 years-old. In the framework of Italian legislation there is no risk of statelessness for minors during the adoption process. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18, Art. 3(1): https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) LEGGE 4 maggio 1983, n. 184, Disciplina dell'adozione e dell'affidamento dei minori. (GU Serie Generale n.133 del 17-05-1983 - Suppl. Ordinario), Art. 34: http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1983-05-17&atto.codiceRedazionale=083U0184&elenco30giorni=false (IT) |
| PRS.5.a | Ius sanguinis | Can children born to nationals abroad acquire nationality by descent (<i>ius sanguinis</i>) in general and/or if they would otherwise be stateless? | 1961 Convention: Article 4 UNHCR, Guidelines on Statelessness No. 4 (2012) : Where a child who would otherwise be stateless is born to parents of another Contracting State but does not acquire the nationality of the State of birth responsibility falls to the Contracting State of the parents to grant its nationality to the child. | Jus sanguinis is the principle determining Italian nationality irrespective of where the child is born. The acquisition of nationality occurs automatically where Italian descent is registered at birth. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18: https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) Arts. 231 & 250 of the Civil Code: https://www.altalex.com/documents/news/2014/08/22/della-filiazione (IT) |
| PRS.5.b | | Are there any discriminatory conditions in law and/or practice for the acquisition of nationality by descent (e.g. differential treatment of children born out of wedlock, rights of father/mother/same-sex parents to confer nationality, etc.)? | ECtHR, Genovese v. Malta (2011) : The state must ensure that the right to nationality is secured without discrimination. CEDAW, Gen. Rec. 32 (2014) : Requires States parties to ensure that women and men have equal rights to confer their nationality to their children and that any obstacles to practical implementation of such laws are removed. UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 4 | The law states that for children born in wedlock, the father is the person married to the mother. Whereas, for children born out of wedlock, paternity must be declared. The law however does not provide any different treatment for children and parents. As far as same-sex parents, no legislative provisions are in place for the adoption of children. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18: https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.7809808931921656&title=lbl.dettaglioAtto (IT) Arts. 231 & 250 of the Civil Code: https://www.altalex.com/documents/news/2014/08/22/della-filiazione (IT) |
| PRS.6.a | Birth registration | Does the law provide that all children are registered immediately upon birth regardless of the legal status and/or documentation of parents? | CRC: Article 7 ICCPR: Article 24(2) CoE, Recommendation CM/Rec(2009)13 (2009) : Member states should register the birth of all children born on their territory even if they are born to a foreign parent with an irregular immigration status or the parents are unknown. UNHCR, Guidelines on Statelessness No. 4 (2012) : Article 7 CRC applies irrespective of the nationality, statelessness or residence status of the parents. UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 7 UN Sustainable Development Goal 16.9 | Birth registration is compulsory by law. Italian legislation ensures birth registration for every child born on the territory, regardless of nationality and legal status of the parents, as well as to every child born abroad to an Italian national. Children of irregular migrants are not prevented from registering a birth by law. A ministerial circular (19/2009) states that "in order to file a declaration of birth or a document concerning the recognition of filiation for registration in the municipal population registry it is not required to exhibit a permit of stay since the mentioned declarations are made with the purpose of protecting the minor concerned as well as in the public interest of the certainty of factual situations". | DECRETO DEL PRESIDENTE DELLA REPUBBLICA 3 novembre 2000, n. 396, Regolamento per la revisione e la semplificazione dell'ordinamento dello stato civile, a norma dell'articolo 2, comma 12, della legge 15 maggio 1997, n. 127. (GU Serie Generale n.303 del 30-12-2000-Suppl. Ordinario n. 223): http://www.gazzettaufficiale.it/eli/id/2000/12/30/000G0442/sg (IT) Ministero dello'Interno, Circolare n.19 del 7 agosto 2009, Legge 15 luglio 2009, n. 94, recante "Disposizioni in materia di sicurezza pubblica". Indicazioni in materia di anagrafe e di stato civile: http://dait.interno.gov.it/servizi-demografici/circolari/circolare-n19-del-7-agosto-2009 (IT) |
| PRS.6.b | | Are all children issued with birth certificates upon registration? If no, please describe legal status of documentation issued. | HRC, Resolution A/HRC/RES/20/4 (2012) : Underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of immigration status and that of parents or family members. Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : Take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. | Yes, following birth registration, a copy of the birth certificate is issued by the Registry Office. | DECRETO DEL PRESIDENTE DELLA REPUBBLICA 3 novembre 2000, n. 396, Regolamento per la revisione e la semplificazione dell'ordinamento dello stato civile, Art. 30: http://www.gazzettaufficiale.it/eli/id/2000/12/30/000G0442/sg (IT) https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2000-12-30&atto.codiceRedazionale=000G0442&queryString=%3FmeseProvvedimento%3D%26formType%3Dricerca_semplice%26numeroArticolo%3D%26numeroP |

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| PRS.6.c | | Is the child's nationality determined or recorded upon birth registration? If yes, please describe how and by whom (e.g. if the mother/father's nationality is recorded and/or automatically attributed to the child, if there's a formal procedure, if information on both parents is recorded etc.) | CRC : Articles 3 & 7 | <p>The birth certificate does not contain the nationality of the child, but only that of the parents. The child's nationality is recorded at the time of registration (anagrafica) on the Municipal Population Registry. The nationality is often automatically recorded on the basis of the parent's nationality. If this is unclear, practice shows that the tendency is to record a presumed nationality, such as that of the parents' country of origin.</p> <p>A recent indication by Anusca (the National Association of Civil Status and Registry Officials) establishes that in the absence of documents proving the nationality of the person concerned (e.g. passport) the registry officer should indicate in the nationality field 'data not available' and not enter a nationality of which they have no evidence. Once evidence of a nationality is available, parents can go back to the registry office and ask for the insertion of the nationality.</p> <p>According to ANUSCA, more and more registry officers are following this approach (which they indicate in the trainings they organise on the subject), so gradually the problem should be overcome.</p> | <p>DECRETO DEL PRESIDENTE DELLA REPUBBLICA 30 maggio 1989, n. 223 Approvazione del nuovo regolamento anagrafico della popolazione Residente, Art. 20: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.pre.sidente.della.repubblica:1989-05-30:223!vig=2017-12-07 (IT)</p> <p>A.N.U.S.C.A., Associazione Nazionale Ufficiali di Stato Civile e d'Anagrafe: http://www.anusca.it/home</p> |
| PRS.6.d | | If a child's nationality is not determined or recorded upon birth registration, is there a legal framework to determine the child's nationality later? If yes, please describe the procedure, including the legal grounds, deadlines and competent authority. | <p>CRC: Articles 3 & 7 1961 Convention: Articles 1 & 4 UNHCR, Guidelines on Statelessness No. 4 (2012): States need to determine whether a child would otherwise be stateless as soon as possible so as not to prolong a child's status of undetermined nationality. Such a period should not exceed five years. HRC, CCPR General comment No. 17 (1989): States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. HRC, D.Z. v. Netherlands (2021)</p> | <p>Yes, it is possible to ask for the correction/revision or integration of the birth certificate. The claim must be lodged before the Civil Court in the district of the Civil Registry Office where the birth certificate has been registered. There is no timeframe nor deadline to lodge the claim and it is not necessary to be assisted by a lawyer. There is no fee for submitting the claim although applicants can be requested to pay bureaucratic expenses or taxes (e.g., stamps). When a child is registered, the civil registrar does not certify the state of origin of the newborn. When the parents cannot prove their nationality, the registrar should, in theory, indicate "undocumented information". Any new development should be registered once it occurs. The parents are responsible for informing the Registry office of any update.</p> | <p>DECRETO DEL PRESIDENTE DELLA REPUBBLICA 3 novembre 2000, n. 396, Art. 95: https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.pre.sidente.della.repubblica:2000-11-03:396!vig (IT)</p> <p>City of Rome website, Acquisizione della cittadinanza italiana: https://www.comune.roma.it/web/it/scheda-servizi.page?contentId=INF142975&pagina=6 (IT)</p> |
| PRS.6.e | | Are there credible reports to suggest that children are prevented from registering in practice because of parents' migration or residence status, sexual orientation or gender identity, or other reasons (please specify)? | <p>Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC: Urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles to birth registration should be removed. Global Compact for Safe, Orderly and Regular Migration: States will contribute resources and expertise to strengthen the capacity of national civil registries to facilitate timely access by refugees and stateless persons to civil and birth registration. Global Compact on Refugees: States commit to fulfil the right of all individuals to a legal identity and ensure that migrants are issued documentation and civil registry documents. European Parliament Resolution (2018): Calls on Member States to take immediate corrective measures to stop discriminatory birth registration.</p> | <p>There are no current/recent reports to suggest children are prevented from registering in practice.</p> | <p>CIR-ENS, Ending Childhood Statelessness: A study on Italy, Working paper 07/15, June 2015: https://www.statelessness.eu/resources/ending-childhood-statelessness-study-italy</p> |

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| PRS.6.f | | Are there mandatory reporting requirements that would deter undocumented parents from coming forward to register their children (e.g. health or civil registry authorities required to report undocumented migrants)? If not, is there a clear firewall to prohibit the sharing of information by other entities with immigration authorities? | Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC and Joint General Comment No. 3 (2017) CMW and No. 22 (2017) CRC : Legal and practical obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status. Children's personal data, in particular biometric data, should only be used for child protection purposes. CoE, ECRI General Policy Recommendation No. 16(2016) : States should clearly prohibit the sharing of information about migrants suspected of irregular presence with immigration authorities. These firewalls must be binding on state authorities and the private sector. | Not to our knowledge. | CIR casework |
| PRS.6.g | | Is there a statutory deadline for birth registration? If yes, please state the deadline and whether late birth registration is possible in law and practice. | Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late registration. HRC, Resolution A/HRC/RES/20/4 (2012) : Calls upon States to ensure free birth registration, including free or low-fee late birth registration, for every child. | The law states that the declaration of birth may be presented either to the municipality within 10 days of the birth, or to the hospital management within three days. Late registration is possible and the reason for the delay should be provided. The reasons for the delay are assessed by the public prosecutor (procuratore della Repubblica). If reasons are not well-founded or supported by reliable documents, the birth certificate can be registered only after an order adopted by the judge. The judge assesses the legality and authorises the registration in the Population Registry. | DECRETO DEL PRESIDENTE DELLA REPUBBLICA 3 novembre 2000, n. 396, Regolamento per la revisione e la semplificazione dell'ordinamento dello stato civile, a norma dell'articolo 2, comma 12, della legge 15 maggio 1997, n. 127. (GU Serie Generale n.303 del 30-12-2000-Suppl. Ordinario n. 223), Art. 31(2): http://www.gazzettaufficiale.it/eli/id/2000/12/30/000G0442/sg (IT) Consiglio Italiano per i Rifugiati (CIR) practice |
| PRS.6.h | | Are there additional requirements for late birth registration (e.g. fees, documents, court procedure)? Please describe the procedure including the competent authority and procedural deadlines. | As above | The reasons for the delay are assessed by the public prosecutor (procuratore della Repubblica). If reasons are not well-founded or supported by reliable documents, the birth certificate can be registered only after an order adopted by the judge. The judge assesses the legality and authorises the registration in the Population Registry. This provision is considered as a protective measure for children. | |
| PRS.7.a | Reducing <i>in situ</i> statelessness | Does the government have any programmes in place to promote civil registration (including birth registration)? If yes, please provide details. | UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 7 | Not to our knowledge. | Consiglio Italiano per i Rifugiati (CIR) practice |
| PRS.7.b | | Are there particular sections of the population - such as minority groups or people affected by conflict - believed to be stateless/at risk of statelessness? Please provide details and source of information. | 1961 Convention : Article 9 UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 4 HRC, Recommendations of the Forum on Minority Issues (2019) : States should take legislative, administrative and policy measures aimed at eliminating statelessness affecting minorities. | Yes. According to estimates currently available, there may be around 3,000 stateless persons or persons at risk of statelessness in Italy. The majority of stateless or at risk of statelessness belong to Roma communities from former Yugoslavia who have been living in Italy for many years. From the information available, it is possible to estimate the presence of approximately 1,710 stateless persons or persons at risk of statelessness belonging to these communities, living in formal or spontaneous settlements. Taking these situations into account, it is possible to estimate the presence of about 2,250 Roma in total, stateless or at risk of statelessness from the former Yugoslavia. A factor of particular concern is the proportion of minors within this population, which, according to available information, is around 50-55%. The rest of the stateless population in Italy mainly originates from former USSR, Cuba, China (Tibet), and the Occupied Palestinian Territories. Since the dissolution of Yugoslavia, it became difficult (or impossible), for ex-nationals of the former Yugoslavia to obtain nationality from | CIR, IN THE SUN, Survey on the phenomenon of statelessness among Roma communities living in Italy, February 2013, p. 52 (footnote 73): http://www.cir-onlus.org/wp-content/uploads/2018/07/In-the-sun_CIR_last-review_final.pdf ASGI, Out of limbo: Verso uno status legale per le persone rom prive di documenti, apolide o a rischio di apolidia, maggio 2015: https://www.asgi.it/wp-content/uploads/2014/04/Rapporto-OUT-OF-LIMBO_def.pdf (IT) UNHCR, UNHCR Recommendations on the Relevant Aspects of the Protection of Stateless Persons in Italy, October 2014: https://www.refworld.org/docid/5513cff14.html Associazione 21 luglio ONLUS, Fantasmii urbani, December 2020: https://www.21luglio.org/2018/wp-content/uploads/2021/02/fantasmii-urbani-edit.pdf (IT) Tavolo Apolidia, September 2021: https://tavoloapolidia.org/advocacy/ |

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| | | | | the new states that emerged. The problem disproportionately affected Roma communities who had already arrived in Italy before the dissolution but also those who arrived after. They often lack any documentation and encounter obstacles when seeking to clarify their civil status. Roma children born in Italy to displaced families from the former Yugoslavia are thus disproportionately impacted. They often face difficulties accessing legal status and obtaining Italian nationality, passing on the risk of statelessness from generation to generation. | Presidenza del Consiglio dei Ministri, Ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza o sull'origine etnica, Strategia Nazionale d'inclusione dei Rom, dei Sinti e dei Caminanti, Attuazione Comunicazione Commissione Europea N.173/2011 https://www.unar.it/portale/strategia-rsc |
| PRS.7.c | | Has the State implemented any other measures specifically aimed at reducing (risk of) statelessness? (e.g. identification, registration or naturalisation campaigns, removal of treaty reservations, reform of discriminatory laws, etc.) | 1961 Convention UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Actions 1 & 8 UNHCR, Good Practices Paper - Action 1 (2015) : States parties to the 1954 Convention are required to help stateless persons become naturalised nationals. | No. In 2012, a 'National Strategy for the Social Inclusion of Roma People' was introduced, which aimed to reduce statelessness/risk of statelessness by 2020. However, no significant activity or campaign has been undertaken towards achieving this goal. Under the National Strategy, a 'Juridical Roundtable' was established with the support of the Italian Ministry of Interior along with other competent ministries and civil society (including CIR) to elaborate concrete proposals for the reduction of statelessness among Roma Communities. However, it has not met for some time. | Presidenza del Consiglio dei Ministri, Ufficio per la promozione della parità di trattamento e la rimozione delle discriminazioni fondate sulla razza o sull'origine etnica, Strategia Nazionale d'inclusione dei Rom, dei Sinti e dei Caminanti, Attuazione Comunicazione Commissione Europea N.173/2011: https://www.unar.it/portale/strategia-rsc (IT) Consiglio Italiano per i Rifugiati (CIR) practice |
| PRS.8.a | Deprivation of nationality | Are there any provisions on deprivation of nationality that could render a person stateless? Please state whether there is a safeguard against statelessness established in law and on what grounds deprivation of nationality may result in statelessness (e.g. national security, fraud, etc.). | 1961 Convention : Article 8 & 9 ECN : Article 7(3) UDHR : Article 15(2) Principles on Deprivation of Nationality and the Draft Commentary : Principle 2.2: Deprivation of nationality refers to any loss, withdrawal or denial of nationality that was not voluntarily requested by the individual; Principles 4, 5 & 6 HRC, Report of the Secretary-General on Human Rights and Arbitrary Deprivation of Nationality (2009) : para. 23 UNHCR Guidelines on Statelessness No.5 (2020) : the prohibition of arbitrary deprivation of nationality also includes situations where there is no formal act by a State but where the practice of its competent authorities clearly shows that they have ceased to consider a particular individual/group as national(s) (e.g. where authorities persistently refuse to issue or renew documents without providing an explanation or justification). ILEC Guidelines (2015) : Deprivation of nationality must have a firm legal basis, should not be interpreted extensively or applied by analogy and deprivation-provisions must be predictable. | Yes. There is no safeguard to prevent statelessness, therefore provisions on deprivation of nationality can, in theory, render a person stateless. The law sets out when loss and/or deprivation of nationality can occur. Automatic loss occurs when a person joins the army of another state; accepts a public position with another State or public body or an international body that Italy does not recognise; acquires nationality or a government post in a State with which Italy is in a state of war. Additionally, amendments to the Nationality Law in 2018 introduced the possibility to deprive only a naturalised national of their Italian nationality in the event of a final sentence for the following crimes: terrorist acts; subversion of the constitutional order; subversive association; constitution, promotion or participation in armed groups; assistance and training of members of armed groups; assistance of members of subversive associations and of terrorist associations; misappropriation of properties and funds seized in order to prevent from financially supporting terrorist activities. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18: https://www.normattiva.it/atto/carica/DettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.8150194582286421&title=lbl.dettaglioAtto (IT) DECRETO DEL PRESIDENTE DELLA REPUBBLICA 12 ottobre 1993, n. 572 Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza. (GU Serie Generale n.2 del 04-01-1994): https://www.refworld.org/docid/46b84a1f2.html (IT) DECRETO DEL PRESIDENTE DELLA REPUBBLICA 18 aprile 1994, n. 362, Regolamento recante disciplina dei procedimenti di acquisto della cittadinanza italiana, (GU Serie Generale n.136 del 13-06-1994 - Suppl. Ordinario n. 91): http://www.gazzettaufficiale.it/eli/id/1994/06/13/094G0368/sg OHCHR Report of mission to Italy on racial discrimination, with a focus on incitement to racial hatred and discrimination, 28 January –1 February 2019, p. 20: https://www.ohchr.org/Documents/Countries/IT/ItalyMissionReport.pdf |
| PRS.8.b | | Who is the competent authority for deprivation of nationality and what procedural safeguards are in place (e.g. due process, fair trial, participation in the proceedings, legal aid, decision in writing with reasoning, judicial oversight, appeal, time limit, subject to prior sentencing)? | 1961 Convention : Article 8(4) ECN : Articles 10 to 13 Principles on Deprivation of Nationality : Principle 7. Deprivation of nationality must be carried out in pursuance of a legitimate purpose, provided for by law, necessary, proportionate and in accordance with procedural safeguards; Principle 8: Everyone has the right to a fair trial or hearing and to an effective remedy and reparation. ILEC Guidelines (2015) : The consequences of a decision to deprive somebody of his nationality must be assessed against the principle of proportionality. Adequate procedural safeguards are essential. Decisions should only take effect when the | The competent authority is the President of the Republic on the proposal of the Ministry of Interior. So far no precedents occurred. | Art 10 bis della LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18: https://www.normattiva.it/atto/carica/DettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.8150194582286421&title=lbl.dettaglioAtto (IT) |

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| | | | (judicial) decision cannot be challenged anymore. | | |
| PRS.8.c | | Are provisions on deprivation of nationality applied in practice? Have they been applied even where it results in (risk of) statelessness? If available, please provide any sources of data or information on cases that resulted in statelessness. | | No information is available. | |
| PRS.8.d | | Are there safeguards in law and practice to prevent renunciation or other forms of voluntary loss of nationality from resulting in statelessness? | 1961 Convention : Article 7 ECN : Articles 7 and 8 | There are no provisions for voluntary loss or renunciation of nationality that could render a person stateless. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18: https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.8150194582286421&title=lbl.dettaglioAtto (IT) |
| PRS.8.e | | Are there any provisions on deprivation of nationality in a national security context (regardless of whether they could render a person stateless)? Please describe these provisions and if/how they are applied in practice. | Principles on Deprivation of Nationality Principle 4: States shall not deprive persons of nationality for the purpose of safeguarding national security. Where provisions exist, these should be interpreted narrowly and in accordance with international law standards. UNHCR Guidelines on Statelessness No.5 (2020) : Laws that permit deprivation of nationality on the grounds of terrorism should be publicly available and precise enough to enable individuals to understand the scope of impermissible conduct. | Yes. 2018 amendments to the Nationality Law introduced the possibility to deprive naturalised nationals of their Italian nationality in the event of a final sentence for the following crimes: terrorist acts; subversion of the constitutional order; subversive association; constitution, promotion or participation in armed groups; assistance and training of members of armed groups; assistance of members of subversive associations and of terrorist associations; misappropriation of properties and funds seized in order to prevent from financially supporting terrorist activities. The provision is motivated by national security. The law does not provide any remedies if it renders a person stateless. There is no information available on whether the provisions are applied in practice. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18: https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.8150194582286421&title=lbl.dettaglioAtto (IT) |
| PRS.8.f | | Are there any provisions on deprivation of nationality that directly or indirectly discriminate a person or group of persons on any ground prohibited under international law or that discriminate between nationals? Please describe these provisions and if/how they are applied in practice. | ICCPR : Article 26 1961 Convention : Article 9 ECN : Article 5 Principles on Deprivation of Nationality : Principle 6. Prohibited grounds for discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, ethnicity, property, birth or inheritance, disability, sexual orientation or gender identity, or other real or perceived status, characteristic or affiliation. Each State is also bound by the principle of non-discrimination between its nationals. | Yes. The provisions on deprivation following a criminal conviction (see PR.7.e) apply only to people who acquired Italian nationality by naturalisation, not to Italian nationals by birth. There is no information available on whether the provisions are applied in practice. | LEGGE 5 febbraio 1992, n. 91, Nuove norme sulla cittadinanza, modificata dalla Legge 132/18: https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1992-02-15&atto.codiceRedazionale=092G0162&atto.articolo.numero=0&qId=&tabID=0.8150194582286421&title=lbl.dettaglioAtto (IT) |
| PRS.8.g | | Are there safeguards to prevent derivative loss of nationality (i.e., loss of nationality on the basis that a parent or a spouse has been deprived of that nationality)? Please describe the potential impact of deprivation on children and spouses. | CRC : Articles 2(2), 7 and 8 CEDAW : Article 9(1) Principles on Deprivation of Nationality : States must take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members (Principle 9.7). The derivative loss of nationality is prohibited (Principle 9.8). | The only case, in theory, would be if a parent had acquired their nationality on the basis of fraudulent declarations. The loss/deprivation of their nationality could affect the children, but there is no evidence so far of any practice in this regard. | |

Resources

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| RES.1.a | Published judgments | Please list the most relevant judgments relating to statelessness and include links to the cases (where available). | | <p>There are several significant Supreme Court judgments adjudicating statelessness in Italy. Key issues decided on include:</p> <ul style="list-style-type: none"> · Court of Cassation n.14918, 20/03/2007: Formal proof of loss of nationality is not required to be granted stateless status; statelessness can be inferred from other facts, such as refusal to grant the person rights usually linked to nationality. · Court of Cassation SU n.28873, 09/12/2008: Stateless persons can access the ordinary jurisdiction for the statelessness determination procedure, instead of the more complicated administrative one. · Court of Cassation n.7614, 04/04/2011: Requests to be granted stateless status must be presented and decided within the ordinary jurisdiction system, and the adversarial principle needs to be respected. · Court of Cassation n.15679, 21/06/2013: Statelessness determination procedures must consider the provisions regulating nationality in the state with which the applicant has significant legal links. The 1954 Convention applies only to those who do not have any nationality and not to those who, although entitled, did not activate the procedure to obtain it. · Court of Cassation n.25212, 08/11/2013: The condition of statelessness must be evaluated not only formally, but also substantially. · Court of Cassation n.4262, 03/03/2015: The burden of proof on the claimant in statelessness determination procedures should be attenuated and judges may use their investigative powers when intervention is needed. Stateless persons are entitled to the same reduced burden of proof as international protection seekers. · Court of Cassation n.19201, 28/09/2015: When deciding on the validation of a measure to detain a person for the purpose of expulsion, the Justice of the Peace must duly take into account the absence of reasonable prospects of repatriation, such as in cases of stateless persons. · Court of Cassation n.12643, 17/06/2016: A formal act demonstrating loss of nationality is not required in the context of a statelessness determination procedure, since statelessness can also be proven de facto. At the same time, applicants must give proof of such facts from which it is possible to infer that they are deprived of (some of) those prerogatives linked to nationality. · Court of Cassation n.28153, 24/11/2017: The burden of proof is shared between the applicant and the authority. The applicant should make all possible efforts to clarify their condition of statelessness. The declarations provided by the applicant should be supported by evidence. If the applicant, despite all possible efforts, does not manage to provide evidence, the judge can use ex officio powers to assist the applicant. · Court of Cassation n.1183, 18/01/2018: Recognition of stateless status to a bidoon refugee from Kuwait · Court of Cassation n. 16489, 19/06/2019: Pending the SDP and/or under a condition of persons at risk of statelessness, the stateless person cannot be expelled when the situation of statelessness clearly emerges from the information or documentation provided by the competent public authorities of the Italian State, the State of origin or the State | <p>Court of Cassation judgments: http://www.italgiure.giustizia.it/</p> <p>Council of State case-law: https://www.giustizia-amministrativa.it/web/guest/dcsnpr?p_p_id=GaSearch_INSTANCE_2NDgCF3zWBwk&p_p_state=normal&p_p_mode=view&GaSearch_INSTANCE_2NDgCF3zWBwk_javax.portlet.action=searchProvvedimenti&auth=HiNY4LNR&p_p_lifecycle=0</p> <p>Accertamento dello status di apolide: il richiedente deve allegare i non possedere la cittadinanza dello Stato con cui intrattenga o abbia intrattenuto legami significativi, Cass. civ. Sez. I, 18/01/2018, n.118 www.rassegnasentenze.it</p> <p>Progetto Melting Pot, Riconoscimento dello status di apolide a rifugiato proveniente dal Kuwait di etnia Bedoon, Tribunale di Roma, ordinanza del 24 gennaio 2018: http://www.meltingpot.org/Riconoscimento-dello-status-di-apolide-a-rifugiato.html#.W2qu2rh9jl (IT)</p> |

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| | | | | <p>with which a significant link with the person is established.</p> <ul style="list-style-type: none"> · Corte di Cassazione, I sez. civile, Ordinanza n. 16114/2019: Reaffirms the shared burden of proof. <p>Case-law issued by the Council of State establishing that nationality cannot be denied only because the applicant has committed a crime:</p> <ul style="list-style-type: none"> · Sentenza n. 5544 del 11 novembre 2014 Consiglio di Stato · Cons. Stato, sez. III, sent. n. 5262 del 06.11.2018 · Cons. Stato, sez. III, Sent. n. 3121 del 14.05.2019: <p>Order n. 4 giugno 2020 of Civil Court of Turin: And order n. 22 July 2020 Civil Court of Florence</p> <p>Both orders implement, at first instance, the case-laws stated by the judgment of the Court of Cassation n.28153, 24/11/2017 and the judgment of 11 November 2014 of the Council of State.</p> <p>Tribunale ordinario di Firenze, IV sez. civile Ordinanza 6558/2021 del 29.11.2021 the Court of Florence in a recent judgment recognised the stateless status to an asylum seeker who had been denied refugee status. The lawyer lodged an appeal against the denial of international protection and asked the judge for a preliminary assessment of the applicant's stateless status. The Court, considering the connection between the statelessness and asylum request, decided to handle them in the same procedure, recognising the statelessness status.</p> | <p>Case law (IT):</p> <p>https://webcache.googleusercontent.com/search?q=cache:Zkbx0P149JEJ:https://www.dirittoimmigrazione cittadinanza.it/allegati/fascicolo-n-3-2020/cittadinanza-1/634-2-tribunale-di-torino-4-6-2020+&cd=5&hl=it&ct=clnk&gl=it</p> <p>https://www.dirittoimmigrazione cittadinanza.it/allegati/fascicolo-n-3-2020/cittadinanza-1/635-3-tribunale-di-firenze-22-7-2020/file</p> <p>https://www.dirittoimmigrazione cittadinanza.it/allegati/fascicolo-n-3-2020/cittadinanza-1/633-1-trib-brescia-9-5-2020/file</p> <p>https://www.dirittoimmigrazione cittadinanza.it/allegati/fascicolo-n-3-2020/cittadinanza-1/637-5-trib-brescia-15-7-2020/file</p> <p>Tribunale ordinario di Firenze, IV sez. civile Ordinanza 6558/2021 del 29.11.2021 https://www.altalex.com/documents/news/2021/12/13/status-di-apolide-ricorso-giurisdizionale#p3</p> |
| RES.2.a | Pro Bono | Are there specialised lawyers or organisations providing free advice to stateless people or those at risk of statelessness? If yes, please describe. | UNHCR, Handbook on Protection (2014) : Applicants must have access to legal counsel. | <p>Yes, there are several law firms and organisations providing specialist advice, including civil society organisations providing free advice and specialist services. In 2016, UNHCR set up a network of organisations and lawyers working on statelessness. The network - Tavolo Apolidia – aims to elaborate proposals and recommendations on addressing statelessness for governments and authorities and to raise public awareness on the issue. In addition, several members of the network also provide individual counselling to stateless people.</p> | <p>Some examples of organisations providing specialist advice include:</p> <ul style="list-style-type: none"> · Progetto Meltingpot · ASGI – Associazione per gli Studi Giuridici sull’Immigrazione · Consiglio Italiano per I Rifugiati · Association 21 luglio · Council of Europe JUSTROM Programme (legal clinic) <p>Tavolo Apolidia: https://tavoloapolidia.org/ (IT)</p> |
| RES.3.a | Literature | Is there domestic academic literature on statelessness? Please list and provide references and hyperlinks (where available). | | <p>Yes, there is - it is mostly concerned with jurisprudence, law analysis and application.</p> | <p>Tavolo Apolidia: https://tavoloapolidia.org/advocacy/</p> <p>CIR Onlus website: https://www.cir-onlus.org/tutto-quello-che-devi-sapere-sull-apolidia-in-italia/</p> <p>UNHCR (2020) The impact of COVID-19 on Stateless Populations: Policy Recommendations and Good Practices, https://www.refworld.org/docid/5eb2a72f4.html</p> |