COUNTRY PROFILE: ITALY

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Country expert/s: Daniela Di Rado, Consiglio Italiano per i Rifugiati (CIR) and Agnese Zucca (on Detention Theme)

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COUNTRY OVERVIEW

Italy's record on accession to relevant human rights instruments is relatively good, although it has not acceded to the European Convention on Nationality. Some data on people recognised as stateless residing in Italy is publicly available, but the stateless population has not been comprehensively mapped and figures on stateless refugees and detainees are not routinely published. The Italian system provides two possibilities for determining statelessness: an administrative procedure and a judicial one. Access is somewhat limited, particularly in the administrative procedure, and the burden of proof lies with the applicant in the administrative procedure. There are procedural protections in the judicial procedure but few in the administrative one. Protection during the procedure is also limited although there are appeal rights and people granted stateless status have a range of rights, including to residence, work, social security, healthcare and education, as well as a reduced residency requirement for naturalisation.

However, there are gaps in safeguards against the arbitrary detention of stateless people, including no requirement for a country of removal to be identified prior to detention and no formal mechanism to refer detainees to a procedure to determine statelessness. There are relatively strong procedural safeguards but protections on release are minimal and re-detention is a risk. There are safeguards in law to prevent statelessness, including for otherwise stateless children born in Italy, and children born to Italians abroad; but there are issues with how provisions are implemented in practice. There is a recognised risk of statelessness among Roma populations in Italy, and structures to address it have been established, but there is a lack of concrete action to reduce the risk. Revocation provisions in nationality law could lead to a new risk of statelessness.

THEME 1: International and Regional Instruments

Description: Assesses whether countries are state party to the relevant international and regional instruments, including whether reservations have an impact on statelessness, and whether instruments are incorporated into domestic law. The four core statelessness treaties (1954 Convention relating to the Status of Stateless Persons; 1961 Convention on the Reduction of Statelessness; European Convention on Nationality; Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession) carry more weight than other relevant human rights instruments in the assessment.

Overview (ITALY): Italy is state party to the 1954 and 1961 statelessness conventions, but, although it has signed the European Convention on Nationality, it has not yet acceded to it, and it is not party to the European Convention on the Avoidance of Statelessness in Relation to State Succession. Italy's record on other relevant international and regional instruments is generally good, though it is not party to the Convention on Migrant Workers.

1. 1954 Convention

++	Italy is state party to the 1954 Convention but has reservations relating to the right to work. International instruments have automatic legal effect in Italy on accession and enactment upon ratification.

2. 1961 Convention

++	Italy is state party to the 1961 Convention and has no reservations. International instruments have automatic legal affect in Italy on accession and enactment.

3. Other conventions

+/-	Italy has signed but not acceded to the European Convention on Nationality and it is not party to the Convention on the Avoidance of Statelessness in Relation to State Succession. Italy is bound by or state party to all other relevant regional and international instruments, except for the Convention on Migrant Workers, to which it is not party. Italy maintains reservations to the International Covenant on Civil and Political Rights, but these do not impact significantly on statelessness.

THEME 2: Statelessness Population Data

Description: Examines the availability and sources of disaggregated population data on statelessness. Provides recent figures and assesses reliability of measures countries have in place to count stateless persons, including in the census, population registries and migration databases. Notes whether statelessness has been mapped in the country and whether there are effective measures in place to count stateless people in detention.

Overview (ITALY): Italy has a separate category to count stateless people in the national census, but the data only captures those who have been granted stateless status residing in Italy and there are other categories in which stateless people may be recorded. Statelessness has not been comprehensively mapped in Italy, and the Government does not routinely publish figures on stateless refugees or asylum seekers, nor on stateless people held in detention.

1. Availability and sources

+/-	The Italian Government counts stateless people under a separate category in the national census, but the data only captures those who have been granted stateless status residing in Italy and there are other categories in which stateless people may be recorded. The *Istituto Nazionale di Statistica* (ISTAT) records 822 stateless persons (457 men and 365 women) as of 1st January 2019. The data is disaggregated by sex and other variables including age and place of residence. On the basis of data collected by MIUR (Ministry of Education, University and Research), the IDOS Study Centre reports that in the school year of 2017 to 2018, there were 354 stateless students attending Italian schools. Statelessness has not been comprehensively mapped in Italy although some studies have attempted to document statelessness among the Roma population, with estimates ranging from between 3000-15000 Romani people at risk of statelessness or stateless. Figures for stateless refugees and asylum seekers are not published by the Government, although an aggregate category of 'other - including stateless and nationality unknown etc.' is reported by the Ministry of Interior. Data and trends on asylum and immigration are published but these do not explicitly report on statelessness.

2. Stateless in detention data

-	The Italian Government does not routinely publish data on stateless people held in administrative immigration detention. Some general detention data is available from a Parliamentary Commission inquiry into detention, and the Global Detention Project. There have been reports of stateless persons in immigration detention in Italy.

THEME 3: Statelessness determination and status

Description: Identifies whether countries have a definition of a stateless person in national law that aligns with the 1954 Convention, and whether they have a dedicated statelessness determination (SDP) procedure; or, if not, whether there are other procedures or mechanisms by which statelessness can be identified and legal status determined. Countries are subdivided in four groups to enable comparison between those with an SDP in place, those with other administrative procedures, those with a status but no clear mechanism, and those without any status or mechanism. Where a procedure and status exist, these are assessed against norms and good practice, and the rights granted to recognised stateless persons are examined.

Overview (ITALY): Italian law does not set out a definition of a stateless person, but since the 1954 Convention has direct effect in Italy, the Convention definition applies. The Italian system provides two possibilities for determining statelessness: an administrative procedure and a judicial one. Access to the procedures is somewhat limited in that applications must be in writing in Italian and cannot be initiated ex officio. For the administrative procedure, the applicant must hold a residence permit and possess a birth certificate. For the judicial procedure, a lawyer is required. The standard of proof is the same as in the asylum procedure, but in the administrative procedure the burden of proof lies with the applicant. There are procedural protections in the judicial procedure such as (conditional) free legal aid and a hearing, whereas in the administrative procedure there is no legal aid and no right to an interview. Protection during the procedure is also limited as the practice of granting temporary residence to applicants is inconsistent. Negative decisions can be appealed, and those granted stateless status have a right to a residence permit, travel document, work, social security, healthcare and education, as well as a reduced residency requirement for naturalisation.

1. Definition of a stateless person

++	There is no definition of a stateless person set out in Italian law but since the 1954 Convention has direct effect, the Convention definition is applied.

2. Existence of a dedicated SDP

+	The Italian system provides for two possibilities for identifying and determining statelessness: an administrative procedure and a judicial one. However, the provisions of the 1954 Convention and the parameters for determining statelessness are not clearly laid down in national law. The responsible body for the administrative determination of statelessness is the Ministry of Interior. A specialised section of the Civil Court in the applicant's place of residence is responsible for the judicial procedure.

3. Access to procedures

+/-	Statelessness determination is the specific objective of both the administrative and judicial procedures and the authorities are obliged to consider an application in both cases. There is no provision in law for either procedure to be initiated ex officio. Applications to both procedures must be made in writing. In the judicial procedure, the application must be made in Italian and with the assistance of a lawyer. In the administrative procedure, there is no provision on the language of the application, but in practice it is made in Italian. There is no time limit for accessing either procedure, and no application fee for an application under the administrative procedure, though applicants may need to pay stamp fees. Free legal aid may be obtained for the judicial procedure subject to eligibility (i.e. low income, no assets). If the applicant does not qualify for legal aid, they must pay a fee for the judicial procedure, which is usually 259 EUR for the initial procedure. The main barrier to accessing the administrative procedure is that the Ministry of Interior interprets the 'residence' requirement in the law to mean 'lawful residence' and requires applicants to hold a residence permit and a birth certificate in order to access the procedure. There is no requirement to demonstrate lawful stay to access the judicial procedure. The law provides that 'specialised training is compulsory for judges and members of the territorial commission', but there is no compulsory training for decision-makers in the administrative procedure. UNHCR provides training to court and asylum decision-makers. There is no standardised procedure for cooperation or referral between the asylum procedure and the SDPs, though the authorities may inform a stateless person about the possibility to have their statelessness determined.

4. Assessment

+/-	In the administrative procedure, the burden of proof lies in practice with the applicant, whereas in the judicial procedure, it is shared, and the judge can use ex officio powers to assist the applicant if they are unable to provide evidence. The standard of proof is the same as in the asylum procedure following case law on this matter. There are no protective measures in place to prevent and address discrimination. There is no published guidance available for determining authorities, though there may be internal guidance that is not publicly available.

5. Procedural protections

+/-	Legal aid is not perceived to be necessary for submitting an application under the administrative procedure and is not provided unless offered by NGOs. In the judicial procedure, free legal aid may be obtained subject to eligibility (low income and no assets). Applicants in the administrative procedure do not have the right to an interview. In the judicial procedure there is a hearing before the court and applicants may be heard, but interpreters are not provided in practice. In the administrative procedure, the timeframe set is 895 days, but this is rarely met in practice with examples of cases taking years to decide. In both procedures, decisions are given in writing and are reasoned. It is not clear whether quality assurance audits are undertaken as no information is available. There is no referral mechanism between the statelessness procedures and asylum procedures. UNHCR does not participate in the procedures, but it provides training, guidelines and other technical support to the authorities.

6. Protection during the procedure

+/-	Applicants to either procedure do not have an automatic right to residence and convention rights, but they can apply for a temporary residence permit, which is generally granted within the administrative procedure, but in the case of the judicial procedure, the police has discretion, and some may be refused a residence permit. If the applicant already has a residence permit and applies for stateless status, they can benefit from a temporary residence permit pending the procedure. Applicants with a temporary residence permit are not detained, and following a 2019 judgement of the Court of Cassation, no-one should be detained for removal while awaiting determination of stateless status. The legislation has not yet been amended to reflect the ruling, but it is hoped that this will be applied in practice. The law does not specify the right to work pending the procedure. By law, only temporary residence permits issued to applicants already in possession of another residence permit allow the right to work, but in practice it is quite unusual for a person to hold a residence permit before applying for stateless status.

7. Appeals

+	A negative decision in the administrative procedure can be appealed, and, at the end of the administrative procedure, an applicant may undertake a judicial procedure. If rejected in the judicial procedure, there is the possibility to appeal before the Court of Appeal and the Court of Cassation. Free legal aid is available before the courts but there are eligibility criteria (low income and no assets). If an applicant does not qualify for free legal aid, as well as paying for legal representation they must also pay a fee to make the appeal. There is no evidence of significant errors in decision making.

8. Stateless Status

+	Recognition under either procedure entitles a stateless person to apply for a renewable residence permit, which is normally granted for two years but practice varies considerably ranging from one to five years and is not consistent across the country. Recognised stateless people may apply for a 1954 Convention travel document. There are no specific family reunion provisions for stateless persons, so the same rules as non-EU third country nationals apply. Recognised stateless persons have permission to work, primary, secondary and higher education, healthcare and social security.

9. Access to nationality

-	People with stateless status may apply for naturalisation after five years, which is reduced from the standard 10 years for third country nationals. A criminal offence may bar someone from naturalisation depending on individual circumstances, which should be assessed in each individual case by the Ministry of Interior. Since 2018, the law allows for the revocation of nationality if a person has been sentenced for

	certain crimes, such as terrorist acts, subversion of the constitutional order, subversive association etc. To obtain nationality through naturalisation there are language and other requirements, with no exemptions for stateless persons. Applicants who have not subscribed to the 'integration contract' (as provided by the Immigration Law) or are not beneficiaries of a long-term EU residence permit must demonstrate a B1 level of Italian language. Applicants must also demonstrate an annual income of 8,200 EUR (plus 516 EUR for each dependent). The cost to initiate the procedure is 250 EUR, and there may be additional costs for stamp fees or other expenses.

THEME 4: Detention

Description: Analyses law, policy and practice relating to immigration detention generally, focusing in on protections in place to prevent the arbitrary detention of stateless people during removal and deportation procedures. Subthemes examine areas such as detention decision-making, whether alternatives to detention are legislated for and implemented, procedural safeguards such as time limits, judicial oversight and effective remedies, as well as protections on release and whether statelessness is considered juridically relevant in bilateral return and readmission agreements.

Overview (Italy): There are gaps in Italian law with regards to safeguards against the arbitrary detention of stateless people. There is no requirement for a country of removal to be identified prior to detention and people at risk of statelessness, or whose statelessness has not been formally recognised in law, may be subject to detention and considered to have irregular residence status. In practice, detention is used prior to alternatives and there is no formal mechanism of referral from detention to a procedure to determine statelessness. There are relatively strong procedural safeguards including time limits, information provided to detainees, remedies and periodic judicial reviews. However, protections on release for those without residence status are minimal, with only very basic rights and no guarantee against re-detention.

1. Detention screening

-	There is no provision in law to identify a country of removal prior to detention and, in practice, the identification of a country of removal is not a condition for authorising detention. Statelessness is juridically relevant in decisions to detain in that recognised stateless persons who are legally resident cannot be detained. However, people at risk of statelessness, or whose statelessness has not been formally recognised in law, may be subject to detention and considered to have irregular residence status. People at risk of statelessness or whose statelessness has not been formally recognised are detained in practice. In theory, people in detention may be informed about the possibility to apply for stateless status, especially if NGOs are present in pre-removal centres, but there is no formal mechanism for referral established in law or policy. The law states that people with certain vulnerabilities cannot be detained, but in practice there is no standardised procedure nor mechanisms to identify vulnerabilities (for example, pregnant women or unaccompanied minors) and refer people to appropriate services either prior to or during detention. Statelessness is not considered a factor increasing vulnerability.

2. Alternatives to detention

-	The Consolidated Immigration Act states that a request for voluntary departure may be made by an individual, and, if granted, might make the person eligible for certain 'alternatives to detention' that are set out in law. However, the principle of the state being obliged to consider all less coercive measures prior to issuing a decision to detain is not clearly laid down in law. In practice, detention is used prior to all alternative measures.

3. Procedural safeguards

+	The maximum length of pre-removal detention is 180 days; for asylum seekers, the time limit for pre-removal detention is 12 months. Periodic judicial reviews are provided for: the first validation (judicial check) is made by the Judge of Peace within 96 hours of issuing the expulsion order. A subsequent validation takes place after 30 days if the Chief of Police (*Questore*) asks for an extension of detention. Further validations are possible within the maximum time limit for detention of 180 days. However, validation hearings have been criticised as ineffective remedies. Detainees can appeal to the Court of Cassation against each judicial review decision to extend/continue the detention. Legal aid is provided by law, but the appeal does not have suspensive effect and the quality of free legal aid provided in detention has been subject to criticism. Detainees must be informed in writing of the reasons for detention, their rights and obligations, and given a list of lawyers, in a language they are reasonably supposed to understand. However, in practice, lawyers can encounter difficulties accessing clients held in detention centres. There is no formal referral to the SDPs, nor guidance on accessing the procedures, though detainees may be informed about them in practice. No public information is available about any rules in place governing the process of redocumentation and/or verification of nationality.

4. Protections on release

- -	Stateless people released from detention whose statelessness has not been formally recognised by the state and do not have any other form of residence status, have no guarantee against re-detention in practice. If a person is released without residence status due to removal being unable to take place, they have only very basic rights including access to medical care. Cumulative time spent in detention does not count towards the maximum time limit.

5. Return and readmission agreements

-/+	It is not clear whether statelessness is considered juridically relevant in readmission and/or bilateral return agreements, as only scarce information is available on these agreements.

THEME 5: Prevention and reduction

Description: Assesses the adequacy of safeguards in nationality laws to prevent and reduce statelessness, including protections for otherwise stateless children born on the territory or to nationals abroad, foundlings and adopted children. Examines law, policy and practice on birth registration, including access to late birth registration, reduction measures taken by states to prevent statelessness among groups at high risk, and provisions regarding withdrawal of nationality.

Overview (ITALY): Italian law provides that a child born in Italy to parents who are stateless or cannot confer their nationality, acquires nationality at birth. However, in practice, the implementation of the provision is not automatic, and parents must provide relevant supporting documentation to have the child's Italian nationality recognised. Foundlings acquire Italian nationality but may need to prove they do not possess another; and there is no risk of statelessness during adoption procedures. Children born to Italian nationals abroad are Italian by law, but registration is required in practice and if the parents are unmarried, paternity must be declared. Birth registration is assured in law and practice, though late registration may require a court procedure. Some initiatives have been established to address the risk of statelessness among Romani populations, but it is unclear what concrete action has been taken to address this risk; and reforms to revocation provisions in nationality law could lead to a new risk of statelessness.

1. Stateless born on territory

+/-	The law provides that children born in Italy to stateless parents or parents who cannot confer a nationality to the child are Italian. However, in practice, the implementation of the provision is not automatic, and parents must provide relevant supporting documentation to request recognition of the child's Italian nationality. Only parents recognised as stateless are considered as such for the purposes of the law, and parents who can't confer nationality are often requested to provide a declaration from their embassy to that effect. A further provision in the law allows a child born on the territory, who can prove uninterrupted residency, to become Italian by application on reaching the age of majority (18). This option is available for one year (until the person is 19 years-old).

2. Foundlings

+	There is a provision in law to grant nationality to foundlings, but the law contains a requirement to prove the child does not possess another nationality. However, in practice this is interpreted and implemented by the authorities in such a way as to grant the foundling nationality unless it is proven the child possesses another nationality. There is no specific time limit in law, but the interpretation is connected to a new-born child and it would be unlikely to apply to a teenager.

3. Adoption

++	There is no risk of statelessness under Italian law and practice during the adoption procedure of an Italian national child by foreign parents, nor a foreign child by Italian parents. Children adopted by Italian nationals are considered Italian by birth.

4. Ius sanguinis

-/+	Nationality law states that children born to Italian nationals abroad are Italian. However, in practice, birth registration is required, and the law also states that for children born to married parents, the father is the person married to the mother. Where children are born to unmarried parents, paternity must be declared.

5. Birth registration

+/-	Birth registration is assured by law for every child born on the territory, regardless of nationality and residence status of the parents, as well as to every child born abroad to an Italian national. Births must be reported within 10 days to the population register or within three days to the hospital management. Children born outside a hospital can remain unregistered if parents do not take action to register the birth. All children are issued with birth certificates and a copy of the birth certificate by the Registry Office following registration. There are no requirements for the authorities to report undocumented migrants or people with irregular residence status. Late birth registration is possible, but if the reasons for the delay are not accepted by the public prosecutor as well-founded, registration can only be conducted following a judicial investigation and order for child protection reasons. The child's nationality is recorded at the time of registration in the Municipal Population Registry. The child's nationality is automatically recorded on the basis of the parents' nationality. If this is unclear, the tendency is to record a presumed nationality, such as that of the parents' country of origin.

6. Reduction

-	There are reports that Romani children whose parents originate from the Former Yugoslavia face barriers to registration with the authorities of their parents' countries of origin, often required for them to acquire nationality by jus sanguinis, thus heightening the risk of statelessness. Parents may themselves be stateless (though not formally recognised), or registration may not be possible because the country of origin requires a period of residence in that country. In 2012, a "National Strategy for social inclusion of Roma People" was introduced, but there is little evidence of significant activities towards its implementation. There is a working group that was set up to elaborate proposals for reducing Romani statelessness, but it is unclear what concrete action has been taken by the Italian Government so far.

7. Withdrawal of nationality

+/-	Provisions for loss and deprivation of nationality are established in law and the competent authority is the Ministry of Interior.

	Since reforms introduced in 2018, the nationality law provides for the possibility of withdrawal of nationality in the event of a final sentence for some specific crimes. Revocation can be proposed by the Ministry of Interior within three years from the criminal conviction and is adopted through a Decree of the President of the Republic. Decisions on deprivation or revocation can be appealed as a general administrative decree. The 2018 provisions on revocation of nationality do not align with the 1961 Convention and could lead to a risk of statelessness.