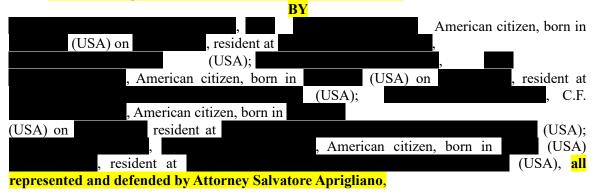
N. 3229/2023 R.G.TRIB.



COURT OF LECCE SPECIALIZED SECTION FOR IMMIGRATION, INTERNATIONAL PROTECTION, AND FREE MOVEMENT OF EUROPEAN UNION **CITIZENS**

The Court of Lecce, in a single-judge composition, represented by Dr. Piera Portaluri, having examined the documents regarding the resolution taken during the hearing on 27.04.2023, has issued the following decision:

JUDGMENT in the case registered under number 3229/2023 R.G. filed



PETITIONERS

against

MINISTRY OF THE INTERIOR represented by the Minister pro tempore, represented and defended as required by law by the State Advocacy Office of Lecce,

RESPONDENT

With the intervention of the PUBLIC PROSECUTOR

Subject matter: appeal under art. 281 decies of the Italian Civil Procedure Code for recognition of Italian citizenship

PROCEEDINGS OF THE CASE															
With	a p	etition	filed	on	28	.04.202	<mark>23</mark> ,	the	petitioners	speci	fied	that	they	are	direct
descendants	of					born	in			(TA)	on				from
					;										



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- The petitioners submitted documentation attesting to the line of succession and concluded by requesting recognition of Italian citizenship 'jure sanguinis' based on their descent from their ancestor, with costs awarded in their favor;
- The Public Prosecutor from the Public Prosecutor's Office of the Court of Lecce intervened and provided a favorable opinion;
- By decision dated 29.03.2024, following a written hearing, and after reviewing the submitted notes within the prescribed deadline, the case file was transferred from the delegated General Office for Procedure (GOP) to the assigned judge for adjudication.

REASONS FOR THE DECISION

The petitioners are descendants of the It	dian citizen , who w	vas married on
in (United States of	f America) to the Italian citizen	
naturalize	d as Italian citizens after the birth of thei	r daughter, who
therefore became an Italian citizen by desc	ent.	
		married a
Venezuelan citizen,	, in taking on his surname. At	the time of the
marriage between	, Article 10	of Law No. 555
of 1912 was in force in Italy regarding citiz	enship, which stated: "A married woman	cannot acquire
a citizenship different from that of her hus	band, even if there is personal separati	on between the
spouses. A foreign woman who marries an	Italian citizen acquires Italian citizens	hip. She retains
it even after becoming a widow, unless	she retains or moves her residence a	broad, thereby
reacquiring her original citizenship."		

Article 10 of Law No. 555 was subsequently repealed by Law No. 123 of 21 April 1983 (later repealed by the current Law No. 91 of 5 February 1992). The 1983 law eliminated automatic acquisition of Italian citizenship for women married to Italian citizens after its entry into force.

In this specific case, as noted, there was a maternal transmission that occurred prior to 1 January 1948, the date of entry into force of the Italian Constitution. Based on the general position taken by

Courtesy translation, without legal validity. For all legal purposes, only the original Italian version of the judgment is valid.

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the Public Administration (Ministry of the Interior Circular No. K28.1/1991), this would normally prevent the transmission of Italian citizenship status to descendants of an Italian woman.

In fact, the effects of Constitutional Court ruling No. 30 of 1983 have influenced cases like the one at hand, declaring the constitutional illegitimacy of Article 1, paragraph 1 of Law No. 555 of 1912, insofar as it did not provide for automatic citizenship by birth for children born to an Italian mother.

Even earlier, with ruling No. 87 of 1975, the Constitutional Court declared unconstitutional Article 10, paragraph 3 of Law No. 555 of 1912 (Provisions on Italian citizenship), which resulted in the loss of Italian citizenship for women marrying foreign citizens regardless of their own will.

Furthermore, with ruling No. 4466/2009, the Supreme Court of Cassation in joint sections consistently ruled that "Italian citizenship status must be recognized judicially, irrespective of the declaration made by the interested party under Law No. 151 of 1975, Article 219, to a woman who lost it for marrying a foreign citizen before 1 January 1948, as the loss without the holder's consent continues beyond that date due to the unconstitutional provision, which contradicts the principles of gender equality and the legal and moral equality of spouses (Articles 3 and 29 of the Constitution). By the same principle, from 1 January 1948, the child of a woman in this situation, born before that date and during the validity of Law No. 555 of 1912, regains Italian citizenship, establishing the relationship of filiation, after the Constitution came into force, with the automatic transmission to them of the status of citizen, which they would have been entitled to without the discriminatory law."

In reality, both logically and legally, under Article 136 of the Constitution and Law No. 87 of 11 March 1953, Article 30, the cessation of effects of an illegitimate and discriminatory law immediately and "automatically" affects pending or still justiciable situations, such as the right to citizenship. Consequently, the indisputable right to the non-loss or acquisition of citizen status of the appellants' ancestors can be recognized at any time, and thus their right to declare their own status as descendants of a citizen through descent from a woman who, from 1 January 1948, should have been considered an Italian citizen from birth.

Essentially, laws prior to the Constitution coming into force, deemed illegitimate by judicial rulings, are inapplicable even retroactively, and from 1 January 1948, they no longer affect the relationships they previously influenced, provided there is a person still affected by unjust but justiciable consequences, i.e., protectable in a judicial context.

Based on the civil registration certi	ficates provided, translated	, and apostilled, it is	s evident that				
	never naturalized as	a citizen of the Unite	ed States, and				
therefore, she never lost her Italian c	itizenship.						
As a consequence, the children		, born in	(USA) on				
and	, born in	(USA) on	<u>,</u> in				
addition to the US citizenship acqu	ired by "jus soli" under th	e laws then in force	in the United				
States of America, also acquired l	<mark>Italian citizenship "jure s</mark> a	anguinis" through t	the maternal				
line, as the daughter of an Italian o	<mark>citizen mother.</mark>						
who in turn transmitted citizenship to her son							
, born in (USA)							
The petitioners have never naturalize	zed as US citizens nor hav	e they ever made ar	ny explicit or				

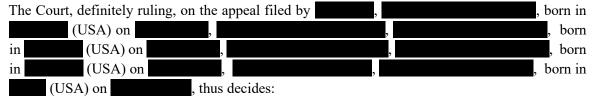
implicit renunciation of their Italian citizenship, as provided for by law.

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Therefore, the direct descent of the appellants from the Italian citizen Mr. Domenico Maggio has been proven uninterrupted and continuous. As a result, their right to have Italian citizenship recognized is indisputable from birth, as evidenced by the documentation submitted.

The legal costs can be declared non-reimbursable since the decision stems from the application of principles derived from case law.

ON THIS MATTER



- 1. Accepts the application and, consequently, declares that the petitioners are Italian citizens;
- 2. Orders the Ministry of the Interior and, through it, the competent civil registry official, to proceed with the registrations, transcriptions, and legal annotations in the civil registry records regarding the citizenship of the individuals mentioned, and to provide any necessary communications to the competent consular authorities;
- 3. Makes no ruling on costs.

Decided in Lecce, on 9-5-2024

The Judge dott. Mario Cigna

The present measure was drafted based on the draft prepared by Dr. Marcello Cafueri, GOP appointed pursuant to Legislative Decree No. 116/2017.