

N.R.G. 5728/2023



**ITALIAN REPUBLIC IN THE NAME OF THE ITALIAN PEOPLE**

The Court of Bari, Special Section for Immigration, International Protection, and Free Movement of EU Citizens, in the person of Judge Lorenzo Mennoia, has pronounced the following

**JUDGMENT**

in the case concerning the recognition of Italian citizenship proposed by:

[REDACTED], born [REDACTED] in [REDACTED] (USA)

[REDACTED], represented and defended by Attorney

Salvatore Aprigliano;

PETITIONER

versus

MINISTRY OF THE INTERIOR;

DEFENDAND IN DEFAULT

**CONCLUSIONS**

The petitioners have requested the recognition of Italian citizenship by iure sanguinis,

[REDACTED]  
[REDACTED]  
[REDACTED]

**FACTS**

The *petition.* With an act filed on 04/24/2023,

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sentenza n. 2867/2024 pubbl. il 14/06/2024

RG n. 5728/2023

Repert. n. 3100/2024 del 17/06/2024

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The *proceeding*. Duly summoned to appear in court, the Administration did not enter an appearance. A hearing was scheduled, and on 06/13/2024, the Judge reserved the case for decision.

#### LAW

#### The claim is well-founded.

*Territorial jurisdiction.* Firstly, the court seized of the matter has territorial jurisdiction because, pursuant to Article 4, paragraph 5 of Legislative Decree No. 13/2017, "when the plaintiff resides abroad, disputes regarding the recognition of Italian citizenship are assigned with reference to the municipality of birth of the father, mother, or ancestor who are Italian citizens."

[REDACTED]

[REDACTED]

*Framing of the claim.* On the merits, the recognition of Italian citizenship in the case of an ancestor married to a foreign citizen before January 1, 1948, born before the effective date of Law No. 555 of 1912, must be carried out judicially, pursuant to the ruling of the Court of Cassation, United Sections, dated 02/25/2009, No. 4466<sup>1</sup>.

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<sup>1</sup> In this ruling, it was stated that "the ownership of Italian citizenship must be recognized judicially, regardless of the declaration made by the interested party pursuant to Law No. 151 of 1975, Article 219, to the woman who lost it due to being married to a foreign citizen before January 1, 1948, as the loss without the will of the citizenship holder is a lasting effect, after the indicated date, of the unconstitutional

The referenced judgment, also addressing situations existing before the Constitution came into effect, recognized that the right to citizenship is a permanent and imprescriptible status, enforceable at any time if its unlawful deprivation persists even after the Constitution's entry into force due to a declared unconstitutional discriminatory norm. This ruling reflects the jurisprudential evolution stemming from two decisions of the Constitutional Court.

Firstly, Judgment No. 30 of 1983 declared the illegitimacy of Article 1 No. 1 of Law No. 555 of 1912 insofar as it did not provide that the child of an Italian mother should also be a citizen by birth.

Additionally, Judgment No. 87 of 1975 declared the constitutional illegitimacy of Article 10, third paragraph, of Law No. 555 of 13 June 1912, insofar as it provided for the loss of Italian citizenship regardless of the will of the woman marrying a foreign citizen. The Court found that the norm flagrantly violated Article 29 of the Constitution by imposing a grave moral, legal, and political inequality on spouses and placing women in a state of obvious inferiority, automatically depriving them of Italian citizenship rights solely by virtue of marriage.

*The verification of Italian citizenship.* The lineage of descent presented in the petition is accurately supported by the documentation submitted, duly translated and apostilled. It appears that the ancestor never lost Italian citizenship, passing it down to the petitioner. Furthermore, in accordance with the aforementioned jurisprudence, the effects produced by an unjust and discriminatory law on filiation, marriage relationships, and citizenship status, which persist over time, inevitably cease to exist upon the law's cessation of effect. This begins from January 1, 1948, a date from which citizenship must be considered automatically restored for those who lost it or did not acquire it due to an unjust norm, unless there was an explicit renunciation of citizenship status by those entitled. Indeed, by virtue of Constitutional Court Judgment No. 30 of 1983, which declared the constitutional illegitimacy of Article 1, No. 1, of Law No. 555 of 1912 insofar as it did not recognize citizenship by birth for children born to Italian mothers, it must be understood that the petitioner also acquired Italian citizenship from birth, as described above.

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*norm, an effect that conflicts with the principle of gender equality and the legal and moral equality of spouses (Articles 3 and 29 of the Constitution). By the same principle, the son of a woman in the described situation, born before that date and under the effect of Law No. 555 of 1912, also regains Italian citizenship from January 1, 1948, as the parent-child relationship, after the Constitution's entry into force, determines the transmission to him of the citizen status that would have rightfully belonged to him without the discriminatory law."*

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

**Therefore, the petition must be accepted, declaring the petitioner an Italian citizen from birth, and ordering the Ministry of the Interior to take the necessary measures accordingly.**

*The costs of litigation.* The costs may be balanced considering that there was no real dispute with the Administration, which did not respond to the petitioner but also never denied the existence of the relevant right. The legitimate choice to pursue the matter before the Ordinary Judge for the recognition of citizenship rights, even in light of the Administration's acknowledged delay, does not justify its condemnation to pay costs, especially since the petitioner did not allege or prove that they first prompted the Administration using the legal remedies available (in particular, interim applications under Article 700 of the Italian Civil Procedure Code and appeals against silence). In the absence of such actions, the Administration's silence can be deemed an actual default, thus justifying its condemnation to pay the costs of litigation.

### ON THIS MATTER

The Court of Bari, Specialized Section in Immigration, International Protection, and Free Movement of European Union Citizens, sitting as a single judge, definitively pronouncing on the petition submitted by the petitioner identified above, against the Ministry of the Interior, orders as follows:

1. DECLARES the petitioner an ITALIAN CITIZEN, instructing the Ministry of the Interior and, on its behalf, the competent Civil Registry Officer, to proceed with the registrations, transcriptions, and legal annotations of citizenship in the civil registry, and to make any necessary communications to the competent consular authorities;
2. COMPENSATES the costs of litigation.

**So decided in Bari<sup>2</sup>, on the 14th of June 2024.**

The Judge

*Lorenzo Mennoia*

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<sup>2</sup> Decision drafted with the collaboration of Dr. Antonio de Manna, UPP official.