



ITALIAN REPUBLIC

IN THE NAME OF THE ITALIAN PEOPLE

THE COURT OF CALTANISSETTA

PERSONAL RIGHTS AND IMMIGRATION SECTION

Dr. Marcello Testaquatra, acting as Single Judge of the **Court of Caltanissetta**,
Specialized Section on Immigration, has pronounced the following

SENTENCE

in the civil case registered under no. [REDACTED] R.G., concerning: "**recognition of Italian citizenship**"

promoted by

[REDACTED], born in [REDACTED] (U.S.A.) on

[REDACTED] and residing at

[REDACTED] (U.S.A.),

C.F.: [REDACTED],

represented and defended by **Lawyer Salvatore Aprigliano**, whose office is in Milan,
Via Fabio Filzi no. 41, where he is also elected to be domiciled, as per the power of
attorney at the foot of the introductory petition.

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PETITIONER-

AGAINST

The Ministry of the Interior, headquartered in Rome, Piazza del Viminale 1, represented
by the Minister p.t., C.F. 97149560589, represented and defended by the District
Attorney's Office of Caltanissetta, whose offices are located in Caltanissetta, Via Libertà
no. 174, where it is also elected to be domiciled.

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



DEFENDANT-

With the intervention of the Public Prosecutor

[REDACTED]

BRIEF STATEMENT OF THE FACTUAL AND LEGAL REASONS FOR THE
DECISION

With the properly notified appeal, the petitioner sued the Ministry of the Interior to request the Court to ascertain and declare his Italian citizenship by virtue of *iure sanguinis* descent from [REDACTED], an Italian citizen born in [REDACTED].

Having married in Italy, she emigrated to the U.S.A., where she spent her life, assuming upon her arrival in the United States the surname Augusta (cf. the naturalization certificate on file), even having children, and later naturalizing as an American citizen in 1954.

The Ministry of the Interior appeared in court, arguing that, based on the legal principles established by the United Sections of the Court of Cassation in sentence no. 4466 of February 25, 2009, and after verifying the regularity of the filed documentation, the appeal could be upheld with the costs of the proceedings compensated due to its substantial non-opposition to the request.

At the conclusion of the hearing on **10.7.2024**, held in written form pursuant to Article 127 ter of the Code of Civil Procedure, the case was reserved for decision based on the conclusions set forth above.

[REDACTED]
[REDACTED]



In the legal framework outlined by the 1865 Civil Code, the subsequent Law no. 555/1912, and the current Law no. 91/1992, citizenship by birth is acquired *iure sanguinis* as an original title, and the status of citizenship, once acquired, is permanent, imprescriptible, and enforceable at any time based on simple proof of the acquisitive fact established by being born to an Italian citizen.

The only necessary condition is that the chain of transmission of citizenship has not been interrupted by naturalization or renunciation by one of the ascendants before the birth of the child to whom citizenship is to be transmitted.

[REDACTED]

In line with this, Article 11, no. 2 of the 1865 Civil Code, which establishes that Italian citizenship is lost by those who have "*obtained citizenship in a foreign country*", implies that, for the purposes of transmission *iure sanguinis* to descendants, it must be established that the person emigrating at the time voluntarily acquired foreign citizenship "without the establishment of residence abroad or even the stabilization of one's living conditions abroad being considered sufficient, together with the failure to react to the generalized naturalization measure, to constitute the extinguishment of status due to tacit acceptance of the effects of that measure (cf. Court of Cassation, United Sections, judgment no. 25317 of August 24, 2022)."

[REDACTED]

What has been said aligns, when applying a historical interpretation of the cited Article 11, with the intent of the legislator of the time, which was to maintain the identity of citizenship within the family unit in order to preserve a connection with emigrants abroad, who were considered a potential resource for the nation; otherwise, this would have led to all children of Italian emigrants born in countries that follow the principle of



ius loci — that is, almost all countries in the American continent — becoming foreign citizens, unlike their parents.

Now, **the line of descent presented by the petitioner is in exact correspondence with the documentation on record**, particularly as neither the petitioner nor his ancestors ever renounced Italian citizenship before passing it on, thus interrupting the chain of transmission, as proven by the specific certificates issued by the competent authorities and duly apostilled.

However, it should be noted that an event occurred in the pre-constitutional era in the line of descent presented in the petition, concerning the predecessors of the current petitioner.

[REDACTED]

[REDACTED]

This act, based on the law in force at the time, caused an interruption in the transmission of *iure sanguinis* citizenship because, at that time, citizenship could be acquired, except for marginal cases, solely through the paternal line. Furthermore, Article 10 of Law no. 555/1912 established the loss of Italian citizenship for a woman who married a foreign citizen."

The Constitutional Court, in its judgment no. 30 of 1983, declared Article 1, no. 1, of Law 555/1912 unconstitutional for violating Articles 3 and 29 of the Constitution "insofar as it does not provide that the child of an Italian mother is also a citizen by birth."

Previously, the same Court, in judgment no. 87 of 1975, also declared unconstitutional Article 10 of Law no. 555 of 1912 "*insofar as it provides for the loss of Italian citizenship for women marrying a foreign citizen.*"

According to an initial interpretation, the favorable effects of such rulings could only take effect from the date of the Constitution's entry into force, with the 'protection' of situations that had already been settled at the time.



The United Sections of the Court of Cassation subsequently stated that citizenship is permanent and enforceable at any time unless voluntarily renounced (Cass. Sez. Unite sent. n. 4466 del 25/02/2009).

Consequently, by the entry into force of the new Constitution, Italian citizenship must be recognized to

[REDACTED] for being born to an Italian mother before 1948, and thus also to all her descendants.

It is also noted that no consequence can arise from the fact that the petitioner, in seeking recognition of the status in question, approached the judicial authority directly without first submitting the relevant application through administrative channels or awaiting its outcome. This is due to the current absence of a law that has incorporated the ruling of the aforementioned United Sections of the Court of Cassation (no. 4466 of 25/02/2009). Therefore, the administration cannot accept requests for Italian citizenship *iure sanguinis* presented by descendants of a woman (entitled to Italian citizenship) who had children before that date. This must be in accordance with the provisions of the Ministry of the Interior's Circular K28.1 of April 8, 1991, which states, referring to the aforementioned rulings of the Constitutional Court (no. 30 of 1983 and no. 87 of 1975), that 'even the descendants of our female emigrants are to be considered Italian citizens *iure sanguinis* by maternal descent, provided they were born after January 1, 1948, the date of entry into force of the Republican Constitution.'

In any case, the administrative procedure for the recognition of Italian citizenship is not a prerequisite for the related judicial procedure; therefore, no consequence can arise from its lack of submission and/or completion.

It follows that the application must be granted, with the recognition of Italian citizenship for the petitioner.

[REDACTED]
[REDACTED]
[REDACTED]



FINAL DECISION

The Court, in its capacity as Single Judge, pronouncing definitively and dismissing any contrary arguments, exceptions, and defenses, thus rules:

- **It grants the appeal and, as a result, declares that**
[REDACTED] is an Italian citizen;
- Orders the Ministry of the Interior, and through it, the competent civil registrar, to proceed with the necessary registrations, transcriptions, and annotations in the civil status registers of the citizenship of the individual indicated, making any necessary communications to the competent consular authorities;
- Legal costs are compensated.

Let this be communicated.

Caltanissetta, July 22, 2024

The Judge

Dr. Marcello Testaquatra

