



ORDINARY COURT OF ROME

PERSONAL RIGHTS AND IMMIGRATION SECTION

CIVIL

In monocratic composition by Honorary Judge Avv. Elisabetta Ferrari, resolving the decision reserved in the hearing of XXXXXXXXXXXXXXXX, issued the following:

ORDER PURSUANT TO ART. 702 BIS C.P.C.

In the appeal filed under case number [REDACTED] in the General Register of Contentious Matters of the year 2020

BETWEEN

[REDACTED],

in their own right and together with [REDACTED] in their capacity as parents exercising parental authority over their minor children

[REDACTED],

all represented and defended by **Avv. Salvatore Aprigliano** of the Milan Bar by virtue of a special authenticated, translated, and apostilled power of attorney attached to the case file, and electively domiciled at the office in Milan, Via Fabio Filzi no. 41

applicants

AND

THE MINISTRY OF THE INTERIOR, represented by the Minister *pro tempore*, electively domiciled at the State Attorney's Office,

respondent in default

and with the intervention of the Public Prosecutor.

SUBJECT: Recognition of Italian citizenship

With an appeal pursuant to art. 702 bis c.p.c., the applicants requested the recognition of Italian citizenship *jure sanguinis*, explaining that they are descendants of

[REDACTED]
[REDACTED],
who emigrated to the United States, where he died and became a naturalized U.S. citizen on

[REDACTED].
The applicants asserted that the ancestor was an Italian citizen, and in turn, his daughter [REDACTED], born on [REDACTED], was an Italian citizen as she was born to citizen parents according to Law no. 555 of 1912, in effect at that time. However, this law denied mothers the right to transmit citizenship *jure sanguinis* to their children and descendants. They further argued that the Constitutional Court, with decision no. 30 of 1983, declared unconstitutional Article 1, no. 1 of Law no. 555 of 1912, in so far as it did not provide for children of female citizens to also be citizens by birth. The Supreme Court of Cassation, in a judgment of the United Sections no. 4466 of February 25, 2009, recognized that citizenship is a permanent and imprescriptible status, which can be claimed at any time if its illegitimate deprivation persists after the Constitution came into effect due to a discriminatory norm declared unconstitutional.

[REDACTED]
[REDACTED]

The lineage presented in the appeal is confirmed by the documents submitted in the case file, duly translated and apostilled.

It appears that [REDACTED] became a naturalized U.S. citizen on [REDACTED] when his daughter was already of age. Therefore, there was no interruption in the lineage, and Italian citizenship was transmitted *jure sanguinis* to his daughter, who, in turn, transmitted it to her descendants. It cannot be considered that [REDACTED] lost her Italian

citizenship by marrying a foreign citizen. Therefore, her descendants are also Italian citizens, even if born before the Italian Constitution came into effect.

In fact, by virtue of the Constitutional Court's judgment no. 30 of 1983, which declared unconstitutional Article 1, no. 1 of Law no. 555 of 1912, in so far as it did not provide that a child born to an Italian mother was also a citizen by birth, it must be concluded that the descendants of Ms. Francesca Pacella also acquired Italian citizenship by birth. This is in light of the Constitutional Court's judgment no. 87 of 1975, which declared the unconstitutionality of Article 10, third paragraph, of Law no. 555 of June 13, 1912 (Provisions on Italian Citizenship), in so far as it provided for the loss of Italian citizenship regardless of the woman's will upon marrying a foreign citizen.

The Court deemed that the law clearly violated Article 29 of the Constitution, as it imposed a severe moral, legal, and political inequality between spouses, placing the woman in a state of inferiority by automatically depriving her of her rights as an Italian citizen solely because of her marriage.

Indeed, "Italian citizenship must be recognized in court, regardless of any declaration made by the interested party pursuant to Article 219 of Law no. 151 of 1975, to a woman who lost it due to marriage to a foreign citizen prior to January 1, 1948, since the loss of citizenship without the holder's will persisted after the unconstitutional law's effect, conflicting with the principles of gender equality and the legal and moral equality of spouses (Articles 3 and 29 of the Constitution). By the same principle, the child of a woman in such a situation, born before January 1, 1948, also regains Italian citizenship from that date, with the parent-child relationship established after the Constitution's entry into force, transmitting citizenship to the child as would have been his right, had it not been for the discriminatory law" (Cass. SSUU Judgment no. 4466 of 2009).

Thus, citizenship status must be judicially recognized (even without an explicit declaration of intent by the interested party) to the legitimate child of a female citizen born before the Constitution came into effect, given the inherent absolute, original, inalienable, and imprescriptible characteristics of citizenship as a personal quality. This status cannot be classified as a 'settled situation' that would be unaffected by the naturally retroactive effect of rulings of unconstitutionality, except in cases where it has been definitively resolved in a final judgment.

The effects of an unjust and discriminatory law on parentage, marriage, and citizenship status, which persist over time, must be nullified even after the death of any ancestors, with the cessation of the law's effect dating back to January 1, 1948. From that date, citizenship must be considered automatically restored to those who lost or did not acquire it due to an unjust law, unless there was an explicit renunciation by those entitled to it. Pre-constitutional norms deemed illegitimate by judicial rulings are inapplicable and have no effect from January 1, 1948, on relationships still affected by them, as long as there remains someone experiencing unjust but legally remediable consequences.

Therefore, the applicants' request is granted, and it is declared that they are Italian citizens, with the Ministry of the Interior required to adopt the necessary subsequent measures.

FOR THESE REASONS

The Court, ruling definitively, decides as follows:

- **The claim is upheld, and as a result, the applicants are declared Italian citizens.**
- The Ministry of the Interior, through the competent civil status officer, is ordered to carry out the necessary registrations, transcriptions, and annotations in the civil status records concerning the citizenship of the persons indicated, and to make any necessary communications to the relevant consular authorities.
- The court costs are fully compensated.

Decided in Rome, May 23, 2022

THE JUDGE

Elisabetta Ferrari