



ITALIAN REPUBLIC IN THE NAME OF THE ITALIAN PEOPLE

ORDINARY COURT OF CAMPOBASSO

**Specialized Section for Immigration, International Protection, and Free
Movement of European Union Citizens**

The Court, in the person of Judge Dr. Claudia Carissimi, has pronounced the following

JUDGEMENT

in the civil case of First Instance registered under no. r.g. [REDACTED] brought pursuant to Article 281 decies of the Italian Code of Civil Procedure by:

[REDACTED] (Tax Code [REDACTED]), born in [REDACTED] (USA) on [REDACTED];

[REDACTED] (Tax Code [REDACTED]), born in [REDACTED] (USA) on [REDACTED];

[REDACTED] (Tax Code [REDACTED]), born in [REDACTED] (USA) on [REDACTED],

all represented and defended by Attorney Salvatore Aprigliano, by virtue of the power of attorney on record, with an elected domicile at his law firm located in Milan, Via Fabio Filzi no. 41;

Applicants

against

THE MINISTRY OF THE INTERIOR

Defendant

and with the intervention of the Public Prosecutor at the Court

Intervenor ex lege

Subject: Application for Citizenship

Conclusions: The parties have concluded as recorded in the case file.

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

Brief Statement of the Factual and Legal Grounds of the Decision

The applicants, of U.S. nationality, request that their status as Italian citizens be declared by virtue of their descent from [REDACTED], born in Sesto [REDACTED] ([REDACTED]) on [REDACTED], who later emigrated to the United States of America and passed away there without ever renouncing Italian citizenship. Although duly summoned to appear, as evidenced by the notifications on record, the Ministry has not entered an appearance in the proceedings.

The case was substantiated through documentary evidence and was argued during the hearing on January 21, 2025, conducted in a written-only format. Written submissions were authorized, in which the parties reiterated their conclusions by referring to their respective briefs, seeking full acceptance of their claims.

In a memorandum filed on January 23, 2025, the Public Prosecutor raised a constitutional legitimacy issue, based on the assessed relevance and non-manifest unconstitutionality of Article 1 of Law No. 91 of February 5, 1992, with reference to Articles 1 and 117 of the Constitution. The latter was considered in relation to international obligations and Articles 9 of the Treaty on European Union and 20 of the Treaty on the Functioning of the European Union. The Public Prosecutor requested the suspension of the proceedings and the referral of the case to the Constitutional Court.

1) On the Issue of Constitutional Legitimacy

The Court considers that, although relevant, the issue raised is manifestly unfounded.

The Public Prosecutor, referring primarily to Order No. 247/2024, by which the Court of Bologna raised the issue of the constitutional legitimacy of Article 1 of Law No. 91 of February 5, 1992 (which provides that *"a person is a citizen by birth: a) if they are the child of a father or mother who are citizens,"* without imposing any limits on the recognition of Italian citizenship by descent), in reference to Articles 1, 3, and 117 of the Constitution—particularly Article 117 in relation to international obligations and Articles 9 of the Treaty on European Union and 20 of the Treaty on the Functioning of the European Union—requested the suspension of the proceedings and the referral of the matter to the Constitutional Court.

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However, as presented by the Public Prosecutor, the issue, while relevant (since the law in question is the one to be applied for the resolution of the case under review), is nonetheless manifestly unfounded for the following reasons:

- 1) According to the very case law cited by the Public Prosecutor in their observations, *"each State has the right to determine the conditions under which a person shall be considered to hold its citizenship. This is subject solely to the negative condition that there must be an actual connection between the State and the person in question. It is for the national legislation to establish what constitutes such a connection (...) citizenship cannot be based on a legal fiction (...) and certainly the bloodline connection is not a fiction"* (Supreme Court of Cassation, United Sections, No. 25317/2022);
- 2) Citizenship falls within the exclusive competence of Member States. Indeed, pursuant to Article 117, paragraph 2, letter i) of the Constitution, *"The State has exclusive legislative power in the following matters: (...) i) citizenship, civil status, and registries"*.
- 3) The lack of a limitation on the recognition of citizenship by descent, that is, based on bloodline, constitutes an exercise of legislative power and therefore falls within the discretion of the legislator. Introducing a two-generation limit would amount to an additive intervention, which is not permitted for the judiciary;
- 4) The reference to the different situation of foreign nationals born in Italy, who must undergo a specific administrative procedure for the recognition of Italian citizenship due to the absence of *ius soli* in the legal system, similarly constitutes an exercise of legislative discretion. The same considerations apply as previously stated;
- 5) Ultimately, it is the Italian legislator itself, exercising its discretion, that has determined the conditions required for the recognition of citizenship. These conditions are based on a connection criterion that cannot be deemed ineffective, as highlighted by the Supreme Court of Cassation, United Sections, referenced above;
- 6) Finally, Article 28 of Law No. 87 of March 11, 1953, provides that "The Constitutional Court's legitimacy review of a law or an act with the force of law excludes any assessment of a political nature and any review of the use of the

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discretionary power of Parliament." Therefore, the issue of constitutional legitimacy raised is likely inadmissible, as it entails a political assessment and oversight of the use of Parliament's discretionary power, both of which are expressly excluded from the Court's jurisdiction.

In conclusion, the issue under discussion is manifestly unfounded and must be rejected. Therefore, it is necessary to proceed to the resolution of the dispute on its merits.

2) On the merits

The claim is well-founded and must be upheld.

The line of descent has been duly documented by the applicants, who have filed the birth certificate of Mr. [REDACTED], along with the birth certificates of his descendants, up to the present applicants.

The applicants have also submitted evidence of their attempts to file applications for the recognition of Italian citizenship with the First-Class General Consulate of Italy in [REDACTED], [REDACTED], which has territorial jurisdiction over their respective residences. These attempts were made through an online procedure and demonstrate the applicants' inability to secure an appointment with the consular authority.

The defendant party failed to meet its burden of proof, as it has not provided any documentation to demonstrate that the Italian citizenship of the Italian ancestor in question was renounced.

From the examination of the documentation on record, it emerges that there were no cases of citizenship transmission through the maternal line before the entry into force of the Italian Constitution.

Therefore, no legal obstacle could oppose the transmission of Italian citizenship under the law in force at the time each individual descendant was born. In other words, the transmission occurred irrespective of subsequent constitutional and case law developments, which removed the restrictions on the transmission of citizenship through the maternal line and reaffirmed that the system—thus aligned with constitutional values—must also be considered applicable to descendants born before the Italian Constitution came into effect.

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In principle, therefore, the request, if properly substantiated, should be resolved favorably through administrative channels without the need for recourse to the courts. In this regard, it should be noted that state administrations, pursuant to Article 2 of Law No. 241 of August 7, 1990, are required to conclude proceedings within specific and defined time limits.

However, the applicants have provided evidence of their attempts to submit an application for recognition of Italian citizenship via the online platform of the First-Class General Consulate of Italy in [REDACTED], [REDACTED], which has territorial jurisdiction over their respective residences. These attempts demonstrated the impossibility of obtaining a resolution of their application within a reasonable timeframe. Such circumstances have therefore justified resorting to judicial proceedings.

The litigation costs may be fully offset, given the substantial lack of opposition from the defendant administration.

FOR THESE REASONS

The Court, ruling definitively:

- Rejects the issue of constitutional legitimacy;
- Declares the default of the Ministry of the Interior;
- Declares that the applicants are Italian citizens;
- Orders the Ministry of the Interior, and through it the competent civil status officer, to carry out the registrations, transcriptions, and annotations required by law in the civil status registers regarding the citizenship of the individuals indicated, and to make any necessary communications to the competent consular authorities;
- Offsets the litigation costs between the parties.

Thus decided in Campobasso, January 25, 2025.

The Judge
Dott.ssa Claudia Carissimi