R.G. n. [redacted]

ITALIAN REPUBLIC

IN THE NAME OF THE ITALIAN

PEOPLE

COURT OF CAMPOBASSO
Section for International Protection

The sole judge, Dr. Emanuela Luciani, in the case registered under general docket no. [redacted]

brought by

[redacted], born on [redacted] in the United States of America, Tax Code [redacted];

[redacted], born on [redacted] in the United States of America, Tax Code [redacted];

[redacted], born on [redacted] in the United States of America, Tax Code [redacted];

all represented and defended in this proceeding, as per the powers of attorney on file, by **Attorney Salvatore Aprigliano**, with elected domicile at his office in Milan, Via Fabio Filzi no. 41

plaintiffs

against

MINISTRY OF THE INTERIOR (Tax Code: 97149560589) in the person of the Minister pro tempore, represented and defended by law by the District Attorney's Office of the State of Campobasso, with domicile at said office in Campobasso, Via Insorti d'Ungheria no. 74

defendant

with the mandatory intervention of the Public Prosecutor at the Court of

Campobasso, has issued the following

JUDGEMENT

Pursuant to an application under Article 281-decies of the Italian Code of Civil Procedure [redacted] applied to this Court seeking a declaration of their status as Italian citizens and, as a consequence, an order directing the Ministry of the Interior and, through it, the competent civil registrar to carry out the relevant registrations, transcriptions, and annotations required by law in the civil status registers, as well as any necessary communications to the competent consular authorities.

Specifically, the plaintiffs claimed to be descendants of their Italian ancestor [redacted], born on [redacted] in [redacted] ([redacted]) and who later emigrated to the United States of America, and therefore requested the recognition of their Italian citizenship *iure sanguinis.*

The defendant administration, upon entering an appearance, opposed the claim, requesting:

- primarily, that the application be declared inadmissible due to lack of legal standing, or in any case, its dismissal on the merits for lack of grounds;

- in the alternative, the suspension of the proceedings pursuant to Article 295 of the Code of Civil Procedure, or a suitable adjournment pending the outcome of the constitutional review of Article 1 of Law no. 91/1992 initiated by the Court of Bologna through an order dated 26 November 2024.

The administration specifically objected to:

- the lack of standing of the plaintiffs, arguing that the necessary incidental determination of the ancestors' citizenship cannot be made by the court ex officio, in the absence of a request by the entitled persons, which is not possible in this case as the ancestors are deceased;

- with specific reference to the male line of descent, the inadmissibility of the application due to lack of legal interest to act under Article 100 of the Code of Civil Procedure, since no documentation was provided showing that the plaintiffs had properly initiated the preliminary administrative procedure as required under Article 1, paragraph 1, of Presidential Decree no. 364/1994, prior to bringing the matter before the judicial authority;

- with reference to the female line of descent, the non-retroactivity of Constitutional Court rulings and the extinguishment of the legal situation underpinning the claim to Italian citizenship;

- the lack of proof regarding the line of descent, the maintenance of Italian citizenship, and its transmissibility to descendants;

- the introduction of the new citizenship rules under Decree-Law no. 36 of 28 March 2025. La

The case was examined exclusively on documentary evidence.

At the hearing of 28 April 2025, which was replaced by the filing of written notes pursuant to Article 127-ter of the Code of Civil Procedure, the parties confirmed their conclusions as already set out in their respective briefs.

In view of the favourable opinion expressed by the Public Prosecutor on 5 May 2025, the Court observes the following.

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I. Sulla legittimazione ad agire

The objection raised by the Ministry concerning the lack of standing on the part of the plaintiffs is unfounded and must be rejected.

It must be noted that each plaintiff is acting in this proceeding *iure proprio* to assert their own right to the recognition of Italian citizenship *iure sanguinis*, and they are not requesting any ruling on the citizenship status of their ancestors, who are in part necessarily deceased.

Therefore, the reference to Article 81 of the Code of Civil Procedure is irrelevant, as the plaintiffs are not asserting another person's right, but their own, as expressly recognized by Italian law.

The determination requested of the court is thus focused on the legal position of the party bringing the action, not on that of third parties outside the proceeding, and is aimed exclusively at establishing, within the present case, the evidence necessary to demonstrate the citizenship-acquiring fact and the line of transmission

It must be emphasized, as also affirmed by the Supreme Court, that *"where citizenship is claimed by a descendant, under the current legislation, he is required to prove nothing more than this: that he is a descendant of an Italian citizen; whereas it is for the opposing party, if raising such objection, to prove any event interrupting the transmission line"* (see Italian Supreme Court, United Civil Sections, Judgment no. 25317 of 24/08/2022).

In the aforementioned ruling, it is unequivocally stated that *"once acquired, the status of citizen is permanent, imprescriptible, and may be asserted at any time on the basis of simple proof of the acquiring fact, integrated by birth from an Italian citizen."*.

Well then, if one were to adopt the interpretation put forth by the Ministry, it would amount to an outright denial of this very principle, as the status of citizen would no longer be permanent and imprescriptible, nor could it be asserted at any time. Instead, it would become a legal position protected only under the condition that the Italian ancestor, as well as all individuals along the line of descent, are still alive.

Such an interpretation would lead to an *interpretatio abrogans* of the legislation in force at the time the application was submitted—an outcome that is inadmissible in the absence of a specific statutory provision explicitly introducing such a limitation, and which cannot be endorsed by this court.

To deny someone who, by law, holds a right the ability to seek judicial protection would in fact constitute a serious violation of Article 24 of the Constitution, which provides that everyone has the right to take legal action to protect their rights and legitimate interests.

II. On the failure to initiate the administrative procedure

Likewise, the objection of inadmissibility of the claim due to lack of standing pursuant to Article 100 of the Code of Civil Procedure must be rejected, as it is entirely irrelevant to the case at hand.

This is because, as will be shown, the case involves a maternal line of descent with a generational passage occurring prior to the entry into force of the Constitution. Therefore, the recognition of Italian citizenship *iure sanguinis* in favor of the present claimants can only be established through judicial (and not administrative) proceedings, as such recognition depends on an interpretative activity that falls within the exclusive competence of the judicial authority.

III. On the non-retroactivity of the Constitutional Court's rulings

This objection is likewise unfounded and must be dismissed.

On this point, full reference is made to the decision of the Civil Court of Cassation, Joint Sections, no. 25317 of 24 August 2022 (already cited in paragraph I), in order to clarify further, if necessary, that the recognition of Italian citizenship *iure sanguinis*, where there have been generational passages through the maternal line before the entry into force of the Constitution, does not require the retroactive application of the Constitutional Court's rulings prior to 1948, since citizenship is a "*permanent, imprescriptible status that can be judicially asserted at any time*".

Reference is also made to another well-known ruling by the Court of Cassation, Joint Sections (no. 4466 of 25 February 2009), which clearly affirmed that *"By virtue of Constitutional Court rulings no. 87 of 1975 and no. 30 of 1983, Italian citizenship must be judicially recognized to women who lost it under Article 10 of Law no. 555 of 1912, due to marriage to a foreign citizen prior to 1 January 1948, regardless of whether they made a declaration under Article 219 of Law no. 151 of 1975. This is because the unlawful deprivation resulting from the unconstitutional rule does not end with the involuntary loss due to the marriage bond but continues to produce effects even after the Constitution came into force, in violation of the fundamental principle of gender equality and the legal and moral equality of spouses, as established by Articles 3 and 29 of the Constitution.*

It follows that the temporal limitation of the effects of the declaration of unconstitutionality to 1 January 1948 does not preclude the recognition of the 'citizenship status', which is permanent and imprescriptible and may be judicially asserted at any time, except in cases where the applicant renounces it. Based on this principle, the son of a woman in the described situation, born before that date and during the validity of Law no. 555 of 1912, reacquires Italian citizenship as of 1 January 1948. This right is then transmitted to his children, as the parent-child relationship

established after the Constitution came into effect enables the transmission of the 'citizenship status' that would have rightfully belonged to him in the absence of the discriminatory law".

IV. On the non-retroactivity of Decree Law No. 36/2025

The petition in question was filed before the entry into force of Decree Law No. 36/2025 (*Urgent provisions on citizenship*), which, under Article 1, letter b), expressly provides that: "*the status of citizenship of the applicant shall be judicially ascertained, in accordance with the law applicable as of 27 March 2025, following a judicial application submitted no later than 11:59 p.m., Rome time, on that same date*".

It clearly follows that the new legislation cited by the opposing party is not applicable to the present case—both because of the explicit provision just quoted, and also in light of the general principle of non-retroactivity of the law, which provides that "the law shall apply only to future cases" (Article 11 of the Preliminary Provisions to the Civil Code).

It is thus clear that the new legislation may only apply to citizenship applications submitted after its entry into force. Moreover, it should be noted, on one hand, that Decree Law No. 36/2025 does not expressly provide for retroactive effect, and on the other, that it would be entirely unreasonable to interpret and decide applications subject to the previous legal framework in light of the new one.

V. On the Alleged Lack of Evidence: Vagueness of the Objection

The objection raised by the Ministry regarding an alleged lack of evidence is unfounded and must be rejected.
Aside from the fact that the objection was formulated in extremely vague terms, it must be noted that, in the present case, the petitioners have fulfilled their burden of proof by submitting the birth certificate of the Italian-born ancestor, together with the birth certificates of all subsequent descendants, up to the current petitioners. These documents have allowed for a clear reconstruction of the line of descent, as each birth certificate contains the names of the parents.

There is no document in the record concerning the non-naturalization of the Italian-born ancestor, [redacted], however, this omission is not decisive. The burden lies with the opposing party to prove any renunciation of Italian citizenship by the ancestor, and the Ministry has failed to submit any such evidence.

Once again, reference is made to the position of the Supreme Court on the burden of proof in this context:
"Where citizenship is claimed by a descendant, there is nothing else — under current legislation — that they are required to prove other than this: that they are indeed a descendant of an Italian citizen; whereas the burden lies with the opposing party, should they raise an objection, to prove the occurrence of any event interrupting the transmission of citizenship" (see Italian Supreme Court, Civil Division, Joint Sections, Judgment No. 25317 of 24 August 2022).

VI. On the Question of Constitutional Legitimacy and the Request for Suspension under Article 295 of the Code of Civil Procedure

The Ministry of the Interior, essentially referring to Order No. 247/2024 by which the Court of Bologna raised the question of the constitutional legitimacy of Article 1 of Law No. 91 of 5 February 1992 — which states that "a person is a citizen by birth if born to a father or mother who is a citizen," without imposing any limits on the recognition of Italian citizenship by descent — in relation to Articles 1, 3, and 117 of the Constitution (the latter 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 and 20 of the Treaty on the Functioning of the European Union), requested the suspension of the present proceedings and, alternatively, a reasonable adjournment in order to await the ruling of the Constitutional Court.

It must be noted that the raising of a constitutional legitimacy question results in the suspension only of the proceedings in which the issue is raised (under Article 23, paragraph 2 of Law No. 87 of 11 March 1953), and therefore cannot be invoked as a ground to suspend other proceedings (see, among others, Supreme Court of Cassation, Joint Divisions, Judgment No. 3783 of 3 June 1983).

Consequently, the request for suspension of the present proceedings, based on the pending judgment of constitutional legitimacy referenced above, cannot be upheld, as such a possibility is not provided for by law.

Moreover, the Ministry has not, within this proceeding, itself raised a question of constitutional legitimacy under the same terms as those raised by the Court of Bologna in the aforementioned order. Only in such a case would the undersigned judge have been required to suspend the proceeding, pending referral to the Constitutional Court — which may only occur if the question is considered relevant and not manifestly unfounded.

Furthermore, and for the sake of completeness, it is observed that the question, as formulated by the opposing administration, while relevant — inasmuch as it concerns the legislation to be applied to resolve the case at hand — appears, nevertheless, to be manifestly unfounded, for the following reasons:

1) According to settled case law, "each State is entitled to determine the conditions under which a person is to be regarded as its national. This is subject only to a negative constraint — namely, the existence of an effective link between the State and the individual concerned. It is up to the national legislature to determine what constitutes such a link (...) citizenship may never be based on a fictio (...) and a blood relationship is certainly not a fictio" (Supreme Court of Cassation, Joint Divisions, Judgment No. 25317/2022);

2) Citizenship is a matter falling within the exclusive competence of the Member States. Indeed, under Article 117, paragraph 2, letter i) of the Italian Constitution: "The State has exclusive legislative competence in the following matters: (...) i) citizenship, civil status, and registries";

3) The absence of a limit on the recognition of citizenship by descent — i.e., by bloodline — constitutes an exercise of legislative power and thus rightly falls within the discretion of the legislature. The introduction of a limit of two generations, as suggested, would amount to an additive intervention not permitted by the judiciary;

4) The reference to the different status of foreign citizens born in Italy, who are subject to a specific administrative procedure for the recognition of Italian citizenship (in the absence of ius soli in the legal system), likewise constitutes an exercise of legislative discretion, to which the same considerations apply;

5) Ultimately, it is the Italian legislature itself, in the exercise of its discretion, that has determined the conditions to be met for the recognition of citizenship. It did so by identifying a criterion of connection that cannot be said to lack effectiveness, as emphasized by the aforementioned Supreme Court judgment;

6) Finally, under Article 28 of Law No. 87 of 11 March 1953: "The constitutional legitimacy review by the Constitutional Court of a law or act having the force of law excludes any political evaluation and any scrutiny over the exercise of Parliament's discretionary power," and therefore the question of constitutional legitimacy previously raised is likely inadmissible, since it entails a political evaluation and a review of Parliament's discretionary power — both expressly excluded from the scope of review entrusted to the Constitutional Court.

The above considerations are consistent with the position adopted in such matters by the Specialized Section referred to in the heading, which has also been made publicly available through publication of the minutes of the Section's thematic meeting held on 22 January 2025 on the website of the Court of Campobasso.

VII. On the Merits

On the merits, the claim is well-founded and must therefore be upheld.

As recently reaffirmed by the Supreme Court sitting in Joint Divisions, *"those requesting the recognition of Italian citizenship are only required to prove the acquisition event and the line of transmission"* (see: Supreme Court, Joint Divisions, Judgment No. 25317/2022).

In the present case, the claimants have properly documented both the acquisition of citizenship *iure sanguinis* and the line of transmission, tracing back to their ancestor [redacted], born in Italy on [redacted] in [redacted] ([redacted]).

The line of descent, in particular, proceeds:

- from [redacted] to their son [redacted], born on [redacted];
- from [redacted] to their daughter [redacted], born on [redacted];
- from [redacted] to their daughter [redacted], born on [redacted];
- from [redacted] to their children [redacted] born on [redacted].

An examination of the documents submitted shows that the transmission of citizenship, under the law in force at the relevant times, was interrupted due to generational transitions through the maternal line.

In the past, the transmission of Italian citizenship *iure sanguinis* — with rare exceptions — occurred solely through the paternal line, as per Article 1 of Law No. 555 of 1912. Furthermore, Article 10 of the same law provided for the loss of Italian citizenship for women who married foreign citizens.

Equal treatment between citizen fathers and citizen mothers, for the purposes of *iure sanguinis* citizenship transmission to children, was introduced by Article 1 of Law No. 91/1992, which states that a person is an Italian citizen by birth if born to a father or mother who is an Italian citizen.

However, even prior to that, the Constitutional Court, in Judgment No. 30 of 1983, had declared Article 1, No. 1 of Law No. 555/1912 unconstitutional for violating Articles 3 and 29 of the Constitution, "insofar as it did not provide that a person born to an Italian mother would also be considered a citizen by birth." That ruling brought the prior legislation on citizenship status in line with constitutional values and allowed for the acquisition of Italian citizenship through the maternal line.

Even earlier, the same Court, in Judgment No. 87 of 1975, had declared Article 10 of Law No. 555/1912 unconstitutional for violating Articles 3 and 29 of the Constitution, insofar as it provided for the loss of Italian citizenship by women who married foreign nationals — regardless of the woman's will.

Therefore, based on the foregoing and with reference also to the Supreme Court judgment No. 4466 of 25 February 2009 cited in paragraph III above, Italian citizenship must be recognized also to the children of Italian mothers born before 1 January 1948, and consequently to their descendants.

In light of all the above, Italian citizenship must be declared in favor of [redacted], [redacted], and [redacted], and the Ministry of the Interior — and, through it, the competent civil registrar — must proceed with the relevant registrations, transcriptions, and annotations as required by law.

VIII. On Legal Costs

Legal costs shall follow the outcome of the case and are awarded as specified in the operative part of this decision, pursuant to Ministerial Decree No. 147/2022, applying the minimum rates for proceedings before the Court of first instance concerning claims of undetermined value and low complexity, and recognizing only the study and introductory phases.

FOR THESE REASONS

The Court, sitting in single-judge formation as indicated above, hereby rules as follows:

- **Rejects** the request for suspension of the proceedings filed by the Ministry of the Interior;
- **Declares** that the plaintiffs are Italian citizens;
- **Orders** the Ministry of the Interior, and through it the competent civil registrar, to carry out the registrations, transcriptions, and annotations required by law in the civil status registers regarding the citizenship of the individuals concerned, and to make any necessary communications to the competent consular authorities;
- **Rejects** all other claims;
- The Ministry of the Interior is ordered to reimburse the plaintiffs for legal costs, which are quantified at a total of €1,453.00, plus a flat-rate reimbursement of 15%, VAT and CPA as required by law, as well as documented out-of-pocket expenses (including the unified court contribution and stamp duty), to be paid directly to the plaintiffs' counsel if they have declared themselves as advancing the costs (i.e., antistatari).

Campobasso, 28/05/2025

The Judge

dott.ssa Emanuela Luciani