ITALIAN REPUBLIC

IN THE NAME OF THE ITALIAN PEOPLE

COURT OF CATANIA

1ST CIVIL SECTION

The Judge Rosario Maria Annibale Cupri has pronounced the following

JUDGEMENT

In the case registered under No. [redacted] R.G. brought

BY

[redacted] born in [redacted] ([redacted]) on [redacted],
[redacted] born in [redacted] ([redacted]) on [redacted],
[redacted] born in [redacted] ([redacted]) on [redacted] both in their own capacity and as the legal representative of the minor children [redacted], born on [redacted] in [redacted] ([redacted]) and [redacted], born on [redacted] in [redacted] ([redacted]), [redacted], born on [redacted] in a [redacted] ([redacted]) represented and defended, pursuant to the power of attorney on record, by Attorney SALVATORE APRIGLIANO

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Petitioners-

AGAINST

MINISTRY OF THE INTERIOR, in the person of the Minister pro tempore, represented and defended by law by the District State Attorney's Office of Catania

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Respondent
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With the intervention of the Public Prosecutor

SUBJECT: Recognition of Italian citizenship

CONCLUSIONS: At the hearing for the specification of conclusions, replaced by the filing of written notes pursuant to Article 127-ter of the Italian Code of Civil Procedure, the petitioner's attorney concluded as set forth in the records, and the case was taken under advisement for a decision

REASONS FOR THE DECISION

By means of an application pursuant to Article 281-decies, paragraph 1, of the Italian Code of Civil Procedure, the petitioners mentioned in the heading have requested the recognition of Italian citizenship *iure sanguinis*, claiming to be descendants of [redacted], an Italian citizen by birth, born on [redacted] in [redacted].

In this regard, they stated that Mr. [redacted], who emigrated to [redacted], never naturalized as a Mexican citizen [redacted] ; the petitioners attempted to initiate the administrative procedure for the recognition of Italian citizenship but were unable to access the reservation system despite multiple attempts.

The petitioners have submitted the following documents, duly authenticated with an Apostille in accordance with the Hague Convention:

1) Birth certificate of [redacted];
2) Birth certificate of [redacted];
3) Birth certificate of [redacted];
4) Birth certificate of [redacted];
5) Birth certificate of [redacted];
6) Birth certificate of [redacted];
7) Birth certificate of [redacted], born in [redacted] on [redacted]
8) Genealogical family tree;
9) Attempts to book an appointment at the Consulate of [redacted];
10) Attempts to access the Prenot@mi portal to obtain an appointment;
12) Application for citizenship by naturalization;
13) Responses from the Consulates contacted;

14) Click Day – clickers 2022;

15) Request for civic access to the Consulate of [redacted];

The Ministry of the Interior entered an appearance in court on February 27, 2024, without contesting the merits of the claim. It also requested that the opposing claims be declared inadmissible due to lack of passive legitimacy and, consequently, sought an order for costs. In the event that the opposing claims were upheld, it requested that litigation costs be offset.

Preliminarily, it should be noted that the recognition of *status civitatis* falls within the competence of the Ministry of the Interior. The applicant should merely request the issuance of the relevant certificate or, in the case of a non-resident applicant, apply for recognition of this status from the competent consular authority for the jurisdiction in which they reside, based on documentation proving descent from an Italian citizen.

Pursuant to Article 2 of Law No. 241 of 1990, administrative procedures under the competence of state administrations must be concluded within specific and certain timeframes, in accordance with the principle of reasonable duration of proceedings. In the case of procedures concerning the verification of possession of Italian citizenship and the issuance of the relevant certification—applicable to all cases of acquiring Italian citizenship, including its transmission *iure sanguinis*—the timeframe established by D.P.C.M. of January 17, 2014, No. 33 is 730 days**.**

Therefore, according to the prevailing case law, the petitioner has a legitimate interest in seeking judicial determination of *status civitatis* when they provide evidence of having unsuccessfully attempted to proceed through administrative channels by submitting a request to the competent Consular Authority.

Indeed, in the present case, the petitioners have provided evidence of having attempted to submit a request for the verification of their status as Italian citizens to the competent Consular Authorities through the **"Prenot@mi"** service on the website of the Italian General Consulate of [redacted] (United States) and were unable to do so due to the unavailability of available dates.

Therefore, their interest in taking legal action must be considered well-founded.

On the merits, it is observed that, pursuant to Article 1, paragraph 1, of Law No. 91/1992: *"A person is a citizen by birth: a) if born to a father or mother who are citizens;*

b) if born in the territory of the Republic to parents who are both unknown or stateless, or if the child does not inherit the citizenship of the parents under the law of the state to which they belong." Italian legislation, as also noted in the petition, establishes *ius sanguinis* as the fundamental principle for acquiring citizenship *ab origine*, thereby emphasizing the blood relationship between parent and child.

In this regard, the United Sections of the Supreme Court, with Judgment No. 25317 of August 24, 2022, clarified that: "With regard to the rights of Italian citizenship, under the system outlined by the Civil Code of 1865, the subsequent Citizenship Law No. 555 of 1912, and the current Law No. 91 of 1992, citizenship by birth is acquired originally 'iure sanguinis,' and once the 'status' of citizen has been acquired, it is of a permanent nature, is imprescriptible, and can be judicially asserted at any time based solely on proof of the acquisition through birth from an Italian citizen. Consequently, the burden on the applicant seeking recognition of citizenship is only to prove the acquisition and the transmission line, while the burden falls on the opposing party, if it raises an objection, to provide evidence of any interrupting circumstance.

The Court of Cassation, in *Order No. 12894 of May 11, 2023, Section I*, further clarified that "Article 11, No. 2 of the Civil Code of 1865, in establishing that Italian citizenship is lost by those who have 'obtained citizenship in a foreign country,' implies, for the purpose of affecting the transmission of citizenship *iure sanguinis* to descendants, that it must be ascertained whether the emigrated individual at the time voluntarily and deliberately performed an act aimed at acquiring foreign citizenship. The mere fact of having established residence abroad, having stabilized their life there, or having failed to oppose a generalized naturalization measure is not sufficient to constitute the loss of *status civitatis* through tacit acceptance of the effects of such a measure."

On the merits, the claim is well-founded in light of the documentation on record, which has been duly translated and apostilled. The lack of naturalization of the ancestor has not been contested by the opposing party, nor has any evidence been provided to the contrary. It follows that the Italian ancestor [redacted], in the absence of interruptions or obstructive elements, was able to transmit Italian citizenship *iure sanguinis* to their child [redacted] born in [redacted] ([redacted]) on [redacted] and to all their descendants, as specified above.

The documentation reveals that the line of descent tracing back to the Italian ancestor includes transmissions through the female line. However, the transmission of citizenship to the children of [redacted], born in [redacted] on [redacted] and [redacted], is deemed to have occurred at the time of their birth and, therefore, after the entry into force of the Italian Constitution.

This circumstance is significant because it ensures that no obstacle, not even *ratione temporis*, can hinder the retention or transmission of Italian citizenship iure sanguinis, in accordance with the applicable law, up to the present petitioners.

It is useful to clarify that, before the entry into force of the Italian Constitution, transmission through the maternal line would have resulted in the interruption of the *iure sanguinis* transmission of citizenship, as it was recognized only through the paternal line.

Furthermore, pursuant to article 10 of Law No. 555/1912, a woman who married a foreigner lost her Italian citizenship. However, this legal framework was later dismantled by constitutional jurisprudence.

Initially, the Constitutional Court, in judgment no. 87 of 1975, declared the unconstitutionality of article 10, third paragraph, of Law No. 555 of June 13, 1912, insofar as it provided for the loss of Italian citizenship regardless of the woman's will. Subsequently, the same Constitutional Court further intervened to declare the unconstitutionality, among other provisions, of article 1, no. 1, of Law No. 555 of 1912, insofar as it did not provide that a child born to an Italian mother was also an Italian citizen by birth (judgment no. 30 of 1983).

Moreover, the Court of Cassation, ruling in United Sections, overturned the previous jurisprudential orientation, which had limited the effects of the aforementioned judgments to cases occurring only after the entry into force of the Constitution. With judgment no. 4466 of 2009, the Court held that: *"as a result of Constitutional Court judgments no. 87 of 1975 and no. 30 of 1983, the right to Italian citizenship status must be recognized to applicants born abroad as children of an Italian woman married to a foreign citizen during the validity of Law No. 555 of 1912, who consequently lost her Italian citizenship due to marriage. While adhering to the principle of supervening unconstitutionality, according to which the declaration of unconstitutionality of pre-constitutional norms takes effect only on legal relationships and situations not yet exhausted as of January 1, 1948, without retroacting beyond the entry into force of the Constitution, the Court affirms*

that the right to citizenship, as a permanent and imprescriptible status, except in cases of renunciation by the applicant, is enforceable at any time (even in cases where the ascendant or parent from whom recognition is derived has passed away) due to the continued effect, even after the entry into force of the Constitution, of the unlawful deprivation caused by the discriminatory rule declared unconstitutional."

Furthermore, the Court stated that *"citizenship status is permanent and has enduring effects over time, manifesting in the exercise of the consequent rights; it can only be lost by renunciation, as was also the case under previous legislation (article 8 no. 2 of Law No. 555 of 1912). Therefore, it is correctly affirmed that citizenship status, as a consequence of being a child, constitutes an essential quality of a person, with characteristics of absoluteness, originality, inalienability, and imprescriptibility, making it enforceable at any time and generally not subject to being considered exhausted or closed, except when it has been denied or recognized by a final judgment."*

In any case, in the present case, it is considered that the transmission occurred independently of the aforementioned constitutional jurisprudence, which led to the elimination of the criterion of exclusively male transmission and the provision that stipulated the loss of citizenship for a woman who married a foreign citizen. [redacted]; therefore, the moment when the transmission of citizenship was completed occurred after the entry into force of the Italian Constitution, and Ms. [redacted] has never lost her Italian citizenship as a result of marriage.

Finally, the lineage from the Italian ancestor, documented through duly translated and apostilled civil status certificates, has been reconstructed as follows:

[redacted]

The direct descent from an Italian citizen is therefore proven.

The uncertainty regarding the definition of the request for recognition of Italian citizenship status *iure sanguinis* and the unreasonable passage of time in relation to the interest asserted, which also results in a violation of that interest, amount to a denial of the recognition of the right, thus justifying the interest in seeking judicial protection.

Therefore, the claim must be upheld, declaring the petitioners to be Italian citizens and ordering the Ministry of the Interior to adopt the consequent measures.

The lack of opposition to the claim by the Ministry of the Interior and the arguments put forward to explain the reasons why it is still not possible to grant citizenship at the administrative level to those in similar situations to the petitioners constitute those serious and exceptional reasons that justify, pursuant to Article 92 of the Italian Code of Civil Procedure, the full compensation of litigation costs.

FOR THESE REASONS

Definitively ruling in the case registered under no. [redacted] RG.

All opposing motions, exceptions, and defenses are dismissed.

The appeal is upheld and, as a result, it is declared that [redacted]

They are all Italian citizens.

It orders the Ministry of the Interior and, on its behalf, the competent civil status officer to proceed with the registrations, transcriptions, and legal annotations in the civil status registers regarding the citizenship of the individuals indicated, ensuring any necessary communications to the competent consular authorities.

Costs compensated.

Thus decided in Catania on Dec 12th, 2024.

The Judge

Rosario Maria Annibale Cupri