ITALIAN REPUBLIC
IN THE NAME OF THE ITALIAN PEOPLE

ORDINARY COURT OF CATANZARO
SPECIALIZED SECTION FOR IMMIGRATION, INTERNATIONAL PROTECTION AND FREE MOVEMENT OF EUROPEAN UNION CITIZENS

The Court, sitting in single-judge composition, in the person of Judge Dr. Wanda Romanò, has issued the following

JUDGMENT

in the civil case of first instance registered under no. xxxx R.G.A.C. of the year 2023, concerning "citizenship rights,":

BETWEEN

[redacted], Tax Code [redacted], born in [redacted] (CAN) on [redacted], residing at [redacted];

[redacted], Tax Code [redacted], born in [redacted] (CAN) on [redacted], residing at [redacted];

[redacted], Tax Code [redacted], born in [redacted] (CAN) on [redacted], residing at [redacted]; all represented and defended, pursuant to powers of attorney attached to this act, by Attorney Salvatore Aprigliano, Tax Code PRGSVT74R31F205H, member of the Milan Bar, with elected domicile in Milan at Via Fabio Filzi no. 41.

-PETITIONERS-

AND

Ministry of the Interior, Tax Code 80014130928, in the person of the current Minister, legal representative *pro tempore*, represented and defended *ex lege* by the State Attorney's Office of Catanzaro, where it is domiciled *ope legis* at Via G. Da Fiore, 3, Catanzaro.

- RESPONDENT-

With the necessary intervention of the Public Prosecutor at the Court of Catanzaro.

Subject matter: Recognition of Italian citizenship *jure sanguinis*.

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CONCLUSIONS

The case, based on documentary evidence, was heard at the hearing of January 28, 2025. Following the parties' final submissions, it was taken under advisement and decided within the timeframe indicated in the heading.

FACTUAL AND LEGAL REASONS FOR THE DECISION

By petition duly served pursuant to Article 281-decies of the Italian Code of Civil Procedure, the current petitioners summoned the Ministry of the Interior before this Court, requesting that their status as Italian citizens be declared, as direct descendants of an ancestor who was an Italian citizen. They claimed that the ancestor had never lost Italian citizenship and had validly transmitted it to their descendants.

The petitioners stated that they are descendants of [redacted], born in [redacted] (Italy) on [redacted] (doc. 3). [redacted] later emigrated to Canada. From the union of xx[redacted] and [redacted], [redacted] was born on [redacted] in [redacted] (CAN), acquiring Canadian citizenship at birth by virtue of the *jus soli* principle in force there (doc. 4). At birth, [redacted] was named [redacted].

[redacted] later naturalized as a Canadian citizen on [redacted], therefore after the birth of his daughter. [redacted] married [redacted] in [redacted] (CAN) on [redacted], and gave birth to [redacted] and [redacted].

The petitioners also explained the practical impossibility of booking an appointment at the Italian Consulate to obtain recognition of their right to Italian citizenship *jure sanguinis*.

The Ministry of the Interior filed a defensive brief, raising no objections to the petitioners' claim and requesting that legal costs be offset, given its merely formal role as respondent.

The Public Prosecutor expressed a favorable opinion regarding the acceptance of the petition.

As to the jurisdiction of the Court of Catanzaro, it should be noted that, pursuant to Article 4, paragraph 5, of Decree-Law No. 13/2017, as most recently amended: *"when the plaintiff resides abroad, disputes concerning the recognition of Italian citizenship status are assigned with reference to the municipality of birth of the Italian father, mother, or ancestor."*.

In the present case, the ancestor of the petitioners was originally from Soveria Mannelli, in the province of Catanzaro—a circumstance which, combined with the petitioners' residence abroad, establishes the jurisdiction of this Court, Specialized Section for Immigration, International Protection and Free Movement of European Union Citizens.

On the merits, the petition is well-founded and is therefore upheld.

In this case, the petitioners sought judicial recognition of their status as Italian citizens by virtue of their common descent from an Italian citizen who emigrated to Canada.

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For the purpose of recognizing Italian citizenship today, any automatic "naturalization" that may have occurred in the country of emigration is not relevant.

Indeed, certain foreign countries had laws regulating naturalizations, which forcibly provided that all foreigners residing in that country as of a certain date would be considered citizens of that nation—unless a contrary declaration was made before the local municipality within a specified deadline from the law's publication.

It should be emphasized that such provisions were not well received and, in the case of Italy, were deemed inapplicable by the courts. A representative ruling in this regard is the 1907 judgment of the Court of Cassation in Naples, which stressed that, under the general provisions of the Civil Code, *"under no circumstances may the laws of a foreign country override the prohibitive laws of the Kingdom concerning persons, property, and legal acts."* The Court further observed that, under the law in force at the time (Art. 11 of the Civil Code), citizenship was lost only in the case of renunciation and transfer of residence abroad, or in the case of acquiring foreign citizenship.

According to the Court of Cassation, the term "to acquire" inherently required a prior request by the individual; in the context of naturalization, "acquiring" presupposed having first applied. The Court went on to stress the impossibility of presuming the renunciation of one's nationality based solely on passive behavior, without "clear and explicit proof"; in other words, the mere failure to renounce (in that case) Brazilian citizenship could not automatically result in the loss of Italian citizenship. In this sense, Article 8 of Law No. 555/1912, which highlights that renunciation of citizenship must be a conscious and voluntary act, can be considered consistent with the 1865 Civil Code.

Also worth recalling here are the two recent "twin" judgments of the Joint Sections of the Court of Cassation—Nos. 25317/2022 and 25318/2022, published on August 24, 2022—which the Court itself described as "historic," considering the wide number of individuals affected.

With twin judgments No. 25317/22 and No. 25318/22, the Joint Sections of the Court of Cassation ruled on whether citizenship status may be renounced solely by virtue of belonging to another country and in the absence of a declared intention, or whether renunciation must be explicitly expressed. The Court established the following legal principles: Citizenship acquired by birth is obtained originally *jure sanguinis*, and once acquired, citizenship status is permanent, imprescriptible, and may be asserted at any time based on simple proof of the acquisitive event—namely, birth to an Italian citizen; A person seeking recognition of citizenship is only required to prove the acquisitive fact and

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the line of descent, whereas the burden of proof for any interrupting circumstance lies with the opposing party that raises such an objection; Loss of Italian citizenship results from a spontaneous and voluntary act aimed at acquiring foreign citizenship—for example, through applying for inclusion in the electoral register under the laws of the host country; Renunciation of Italian citizenship cannot be tacit or inferred from implied conduct—such as mass naturalizations or presumptions—but must result from an explicit and unequivocal substantive expression of will, from which the intention to renounce Italian citizenship can be clearly and certainly inferred; The legal provision regarding loss of Italian citizenship due to acceptance of "employment with a foreign government" without the permission of the Italian government must be understood as referring to the assumption of official public functions abroad that involve obligations of hierarchy and loyalty to the foreign government in a stable and definitive manner, and not to the mere performance of any public or private job.

The line of descent presented by the petitioners is accurately reflected in the documentation filed in the case, as indicated above. In particular, neither the petitioners nor their ancestor ever renounced Italian citizenship, thereby interrupting the chain of transmission of citizenship, as proven by specific certificates issued by the competent Italian diplomatic authority and duly apostilled.

It must be clarified that submitting an administrative application to the competent Consulate is not a condition of admissibility, standing, or procedural viability for a judicial petition, given the absence of any explicit legislative provision to that effect. More specifically, the Court finds that such an administrative application is an alternative to judicial proceedings and that the latter may be initiated even before the expiry of the 730-day term provided under Article 3 of Presidential Decree No. 362 of April 18, 1994 (*Regulations governing the procedures for the acquisition of Italian citizenship*). This is because cases of procedural inadmissibility cannot be applied by analogy or extended interpretation, as they constitute procedural sanctions that limit the right of action.

This stems from the principle that limitations on access to the courts must be established by explicit legislative provisions (which are absent in this case), and the exercise of legal action under Article 24 of the Constitution cannot be hindered by analogical or broad interpretations of regulatory provisions not specifically designed for the matter at hand.

Indeed, since this is a proceeding concerning personal status and legal capacity, individuals must always be granted legal protection under Article 113 of the Constitution before an ordinary court (see Cass., Joint Civil Sections, No. 28873 of December 9, 2008).

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Furthermore, with specific reference to the type of case at hand, it has been noted that Legislative Decree No. 150/2011 (which governs proceedings on citizenship matters brought before the ordinary courts) refers to the concept of "ascertainment of citizenship status" and not to the appeal or opposition of a consular decision.

Pertanto, si esclude una pregiudizialità di una qualsivoglia istanza amministrativa rispetto alla domanda giudiziaria qui in esame.

With specific regard to the issue of the petitioners' standing to bring the action, although Article 3 of Presidential Decree No. 362/1994 provides that interested individuals must request and obtain recognition of Italian citizenship from the Consular Authority in their country of residence, the well-known situation faced by various Italian Consulates in South American countries cannot be ignored. At these consulates, the average waiting time for an appointment can be estimated at no less than ten years.

It is now widely established in case law that the response times of Consulates are unreasonable and contradict the aforementioned legal provision, which, as previously mentioned, sets a timeframe of approximately two years (730 days, to be precise) for the conclusion of the citizenship procedure. Such extended delays effectively amount to a denial of justice, thereby granting applicants the right to appeal directly to the court, which—upon verifying the lineage based on the documents submitted—may declare or deny the applicant's Italian citizenship.

Therefore, based on the above considerations, this Court finds that the petitioners acted correctly by pursuing judicial relief (see Cass., Joint Sections, Judgment No. 28873 of 2008).

The lack of opposition from the Ministry of the Interior justifies full compensation of legal costs.

FOR THESE REASONS

The Court of Catanzaro – Specialized Section for Immigration, International Protection, and Free Movement of European Union Citizens, definitively ruling, hereby orders:

1) Upholds the petition and, as a result, declares the Italian citizenship status of: [redacted], Tax Code [redacted], born in [redacted] (CAN) on [redacted]; [redacted], Tax Code [redacted], born in [redacted] (CAN) on [redacted]; [redacted], , Tax Code [redacted], born in

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[redacted] on [redacted].

2) Orders the Ministry of the Interior, and on its behalf the competent Civil Registrar, to proceed with the registrations, transcriptions, and annotations required by law in the civil status registers for the persons indicated, and to carry out any necessary communications to the competent consular authorities.
3) Declares full compensation of legal costs between the parties.

Thus decided in Catanzaro on January 28, 2025.

The Judge

dott.ssa Wanda Romanò

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