ORDINARY COURT OF GENOA – ELEVENTH

CIVIL SECTION

HEARING MINUTES WITH SIMULTANEOUS JUDGMENT PURSUANT TO ARTICLE 281-SEXIES OF THE CODE OF CIVIL PROCEDURE

Judge of the Eleventh Section, Dr. Enzo Bucarelli

Having reviewed the petition filed under No. [redacted] R.G.
submitted by:

[redacted], (Tax with elected domicile at the law office of Attorney APRIGLIANO SALVATORE, who represents and defends him by virtue of the power of attorney on file

and others

petitioner

against

MINISTRY OF THE INTERIOR, represented by the State Attorney's Office

respondent

[redacted]

[redacted]

ORDINARY COURT OF GENOA – ELEVENTH

CIVIL SECTION

ITALIAN REPUBLIC

IN THE NAME OF THE ITALIAN PEOPLE

The Court of Genoa, sitting in single-judge composition in the person of Dr. Enzo Bucarelli, in the simplified cognition proceedings registered under No. [redacted] R.G.,

brought by.

- [redacted] (Tax Code [redacted]), U.S. citizen, born in [redacted] (USA) on [redacted], residing in [redacted] (USA);

- [redacted] (Tax Code [redacted]), U.S. citizen, born in [redacted] (USA) on [redacted], residing in [redacted] (USA);

- [redacted] (Tax Code [redacted]), U.S. citizen, born in [redacted] (USA) on [redacted], residing in [redacted] (USA);

- [redacted] (Tax Code [redacted]), U.S. citizen, born in [redacted] (USA) on [redacted], residing in [redacted] (USA);

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. For the purposes and effects of Article 125, paragraph 1, and Article 136, paragraph 3 et seq. of the Italian Code of Civil Procedure, the petitioners declare their intention to receive court clerk communications at the following fax number: 02.73.95.07.15 and/or at the certified email address (PEC): salvatore.aprigliano@milano.pecavvocati.it;

petitioner

against

MINISTRY OF THE INTERIOR, in the person of the Minister *pro tempore*, domiciled *ex lege* at the Office of the State Attorney in Genoa, Via Brigate Partigiane no. 2,

responding party, duly appeared

and with the intervention of the

PUBLIC PROSECUTOR – *intervening party*

Subject matter: *recognition of Italian citizenship jure sanguinis*

PROCEEDINGS

FACTUAL BACKGROUND

By introductory petition filed pursuant to Articles 281-*decies* and 281-undecies of the Italian Code of Civil Procedure, the current petitioners requested **recognition of their status as Italian citizens *jure sanguinis*** and, as a consequence, that the Ministry of the Interior—and, on its behalf, the competent Civil Registrar—be ordered to proceed with the relevant registrations, transcriptions, and legal annotations.

They claimed to be, each by their respective family relationship, descendants of xxxxxxxxx, an Italian citizen by birth, born in [redacted] (Italy) on [redacted], who later emigrated abroad to the United States.

They detailed the genealogical line, submitting specific supporting documentation—particularly certificates (or extracts thereof), duly apostilled and accompanied by sworn translations into Italian—issued by civil or religious authorities. Specifically, with respect to each ancestor and ascendant, as well as the petitioners themselves, the legal counsel submitted certificates (or extracts thereof) documenting birth and/or baptism, marriage, and, for deceased ascendants, death.

Based on this documentation, they outlined the **family's genealogical line**, also preparing a family tree for reference, to which full reference is made (doc. 1).

[redacted]

[redacted]

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The Ministry of the Interior entered an appearance in the proceedings, requesting that the Court evaluate whether the factual and legal conditions underlying the petition were met. In the alternative, it requested a supplementation/acquisition of documentation pursuant to Articles 210 (by order of production) and/or 213 of the Code of Civil Procedure (by request for information from the Public Administration), in order to verify the absence of any grounds for the extinction of the claimed Italian citizenship. The Ministry further requested, should the petition be upheld, that legal costs be fully offset between the parties.

In a written brief, the petitioner contested the respondent's counterarguments and reiterated the request for the petition to be upheld.

The **Public Prosecutor**, duly notified, intervened and requested that the petition be granted.

At the conclusion of the hearing held pursuant to Article 127-ter of the Code of Civil Procedure, and taking into account the briefs submitted by the parties, the case was taken under advisement for decision pursuant to Article 281-sexies of the Code of Civil Procedure.

LEGAL CONSIDERATIONS

Territorial Jurisdiction

The identification of the **territorially competent Court** is correct.

The current "distributed" **territorial jurisdiction** (as opposed to the previous "centralized" jurisdiction before the Court of Rome, which applied the general rule of the forum of the respondent—i.e., the Ministry of the Interior) was established by **Article 1, paragraph 36, of Law No. 206 of November 26, 2021** (*Delegation to the Government for the efficiency of civil proceedings and for the revision of rules on alternative dispute resolution tools and urgent measures for the rationalization of proceedings relating to personal and family rights as well as enforcement procedures*), which amended the criteria for determining territorial jurisdiction.

Paragraph 36 specifically provides that: *"At the end of Article 4, paragraph 5, of Decree-Law No. 13 of February 17, 2017, converted with amendments by Law No. 46 of April 13, 2017, the following sentence is added: 'When the plaintiff resides abroad, proceedings for the determination of Italian citizenship status shall be assigned with reference to the municipality of birth of the Italian father, mother, or ancestor.'"*

As for its temporal application, **paragraph 37** provides that: *"The provisions of paragraphs 27 to 36 of this article shall apply to proceedings initiated starting from the one hundred eightieth day following the entry into force of this law."*.

Therefore, starting from **June 22, 2022**, in cases where the petitioners reside abroad, jurisdiction shifted from the Court of Rome to the Court within the District of the Court of Appeal where the municipality of birth of the ancestor (the family's original Italian citizen) is located.

Within the district court, jurisdiction lies with the **Specialized Sections for Immigration, International Protection, and Free Movement of European Union Citizens**, as established by Law No. 46 of April 13, 2017, operating within the ordinary courts located in the cities where the Courts of Appeal are based.

These Specialized Sections now hold territorial jurisdiction pursuant to **Article 4, paragraph 5, of Decree-Law No. 13 of February 17, 2017**, which states: *"The disputes referred to in Article 3, paragraph 2, are assigned according to the criterion provided in paragraph 1, with reference to the place where the plaintiff resides. When the plaintiff resides abroad, disputes regarding the determination of Italian citizenship status are assigned with reference to the municipality of birth of the father, mother, or Italian ancestor."*

In the present case, the ancestor was born, as noted in the factual background, in [redacted], in the Municipality of [redacted] ([redacted]), and from this arises the jurisdiction of this Court, sitting in single-judge composition, **Specialized Section for Immigration and International Protection**.

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Standing to Sue

Having clarified the above, it is necessary to verify the existence of *standing to sue*, based on the procedural principle set forth—among other sources—in **Article 100 of the Code of Civil Procedure**, which provides that *"in order to bring a claim or to oppose one, one must have an interest in doing so."*

It must first be recalled that the **Supreme Court**, in addressing the jurisdiction of the Ordinary Court over claims concerning the determination of citizenship status—based on the statutory reservation contained in **Article 9 of the Code of Civil Procedure**—has held that the **right to citizenship** (which is a subjective right that may be adjudicated only by the Ordinary Court) is **immediately and unconditionally enforceable**, regardless of any administrative procedure. In fact, **neither Law No. 91/1992 nor its implementing decrees** require the individual to first submit an administrative application in order to obtain recognition of citizenship acquired *ex lege*. Nor could such a requirement be valid, as it would affect the individual's ability to immediately and at any time—given the imprescriptible nature of the right—request judicial recognition of this status.

In light of this, it has been established that filing an administrative application does **not** constitute a **procedural prerequisite** for bringing a judicial claim. When it comes to the **recognition of a subjective right to citizenship**, the system operates on a **dual-track basis** (see Cass. Joint Sections, Judgment No. 28873 of 2008, which held that *"the submission of an administrative application cannot be considered a procedural condition for filing a judicial claim, as the matter concerns the determination of a personal status right. The absence of administrative certification cannot preclude the judicial process for recognizing a perfect subjective right, which falls under the jurisdiction of the ordinary courts."*).

In accordance with this principle, case law has repeatedly affirmed that requiring the individual to make an **a priori choice** between administrative and judicial procedures for exercising a subjective right relating to personal status would be contrary to our legal system. It has thus been held that: *"The existence of a specific administrative procedure governed by Presidential Decree No. 572/1993* ***does not preclude judicial protection before the ordinary court. The individual may choose to request either certification from the administrative authority or a judicial ruling confirming their citizenship status****. Furthermore, Law No. 91/92 on citizenship—which is implemented by the aforementioned Presidential Decree—does not require the individual to submit a prior request to the competent consular authority to obtain recognition of their citizenship status."* (see Rome Ordinary Court, 18th Civil Section, orders of November 2, 2018, and October 23, 2019)).

It should also be noted that, pursuant to **Article 2 of Law No. 241 of August 7, 1990**, every administrative procedure must be concluded within certain and defined time limits. Even mere uncertainty about its outcome and/or the passage of an unreasonably long period of time, in relation to the interest at stake (in this case, the interest in obtaining recognition of *status civitatis jure sanguinis*), constitutes a **concrete and implicit harm** to that interest and thus creates valid grounds for seeking **judicial protection**.

In matters concerning the recognition of citizenship, the time limit for the conclusion of the administrative procedure is set by **Article 3 of Presidential Decree No. 362 of April 18, 1994** (*Regulations governing procedures for acquiring Italian citizenship*) at **730 days**.

More specifically, pursuant to **Article 14 of Legislative Decree No. 300/1999**, referenced by Presidential Decree No. 398/2001, the **recognition and protection of citizenship status falls under the responsibility of the Ministry of the Interior**, which, by **Circular No. K.28/1 of April 8, 1991**, provided that descendants of Italian citizens who emigrated abroad may request recognition of Italian citizenship at the **Consular Authorities** in the foreign country of residence, on the basis of documentation proving their descent from an Italian citizen.

The above-mentioned time limit was confirmed by **Prime Ministerial Decree (D.P.C.M.) No. 33 of January 17, 2014**, which reaffirmed that the maximum duration of the administrative procedure for verifying the possession of Italian citizenship *jure sanguinis* by Consular Offices is 730 days.

In summary, the procedures for the **recognition of Italian citizenship *jure sanguinis*** or the revocation of Italian citizenship status are as follows:

- **For individuals residing abroad** (as in the present case), competence lies with the Consular Authority corresponding to the applicant's place of residence, pursuant to Article 9 of Presidential Decree No. 200 of January 5, 1967;

- For applicants residing in Italy, the possession of Italian citizenship status must be certified by a formal attestation issued by the Mayor of the Italian municipality of residence.

In both cases, the procedure concludes with the issuance of a **citizenship certificate**, granted in accordance with **Article 16, paragraph 9, of Presidential Decree No. 572 of October 12, 1993**, without the adoption of any formal decision by the Ministry of the Interior. The Ministry is entrusted exclusively with **guidance, coordination, and oversight** over the proper application of rules concerning the acquisition, loss, or reacquisition of citizenship.

As for the **administrative competence** of the Ministry of the Interior, it should be noted that the Ministry is specifically responsible **within procedures leading to the issuance of a decree** pursuant to **Articles 7 and 8 of Law No. 91 of February 5, 1992**, for the conferral of citizenship to a **foreign national who has become the spouse of an Italian citizen**. It does **not have a direct role** in the **administrative procedure for recognizing the subjective right to citizenship by descent**, although it remains, in judicial proceedings such as this one, the main respondent.

It should also be recalled that case law (Rome Court, Order of April 23, 2020) has affirmed that *"the expiration of the **730-day period**, in the absence of an express statutory provision, cannot be considered a condition for the admissibility, proposability, or procedural viability of a claim. Indeed, cases of inadmissibility cannot be extended or analogically applied, as they are procedural sanctions that limit the right of action."*.

This principle has been repeatedly reaffirmed in case law, which holds that: *"With reference to Article 3 of Presidential Decree No. 362 of April 18, 1994, the expiration of the 730-day period, in the absence of an explicit legal provision, cannot be considered a condition of procedural admissibility or viability. Starting from the definition of procedural inadmissibility as a punitive consequence of a procedural omission—namely, the failure to carry out an act expressly required in the procedural sequence—such a sanction must be explicitly established by law, as procedural sanctions are not subject to analogical application. Furthermore, since rules establishing conditions of admissibility or procedural viability constitute an exception to the right of access to the courts guaranteed by Article 24 of the Constitution, they also cannot be interpreted expansively."* (See Rome Court judgment of February 14, 2022; similarly, consistent case law from the Rome Court, including decisions dated April 12, 2022; January 31, 2022; December 14, 2021; and April 23, 2020—the latter published in the De Jure legal database).

This follows from the fact that, according to the Court of Cassation, the subjective right to citizenship constitutes a **permanent and imprescriptible status** (see Cass. No. 6205/2014; Cass. No. 20870/2011; Cass. No. 18089/2009). The uncertainty surrounding the resolution of the application for recognition of *status civitatis* and the passage of an unreasonably long period of time in relation to the asserted interest—which also results in harm to that interest—are equivalent to a denial of the recognition of a subjective right. This circumstance justifies the interest in seeking judicial protection (see the consistent case law of the Rome Court, among many: judgments of January 11, 2012; June 28, 2016; March 8, 2017; February 24, 2017; July 11, 2018; April 17, 2018; November 15, 2018; July 3, 2019; judgment No. 12839/2018; January 29, 2019; June 12, 2019)- The Court of Rome has also equated actions concerning personal status under Article 237 of the Civil Code to those seeking recognition of citizenship, concluding that even in the latter cases standing to sue exists when the legal situation is objectively subject to uncertainty (see Rome Court, October 28, 2016)

The Court of Cassation has furthermore stated that, in **actions for declaratory relief**, *"standing to sue (…) consists in the removal of a state of uncertainty that could not be eliminated without judicial intervention. The harm must be concrete and current—even if it arises after the challenged act—but need not necessarily involve the violation of a right (…); it is sufficient that there exists an objective uncertainty regarding the existence of a legal relationship or the precise scope of the rights and obligations arising from it; in such a case, removing that uncertainty represents a legally relevant and useful outcome that can only be achieved through judicial intervention (…)"* (Cass., January 20, 2010, No. 919).

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If, therefore, **any requirement of administrative preconditions for judicial relief must be excluded**, it still remains necessary to assess—based on the general procedural principles governing contentious proceedings (since this is not a case of voluntary jurisdiction)—whether or not the petitioner has a **concrete and current interest to sue**, and to define the parameters for evaluating the existence of such interest.

It should also be noted that **the absence of standing to sue may be raised ex officio** at any stage and level of the proceedings, since such interest constitutes a **prerequisite for the examination of the merits** of the claim, in order to avoid unnecessary judicial activity.

Furthermore, it must be added that, **as a general rule, standing may also arise during the course of the proceedings**, provided that it **exists at the time of the decision**.

To that end, it is appropriate to examine the most common factual scenarios.

1) **Standing to sue is undoubtedly present** when an administrative application for the recognition of citizenship status has been rejected by the competent authority following the conclusion of the corresponding administrative procedure. In such cases, there is clearly an interest in triggering judicial review over the lawfulness of the administration's decision and, essentially, in seeking a court determination of the citizenship status that is claimed to have been unjustly denied.
2) **Likewise, standing exists when the administration fails to respond within the time limits provided by law** after receiving the request for recognition. In such a case, the applicant is clearly entitled to turn to the judiciary to assert a right harmed by the administrative authority's inaction.
3) **Standing to sue is also present when no application has been submitted** because, based on consistent practice and supported by legal provisions, it would in any case have been rejected by the competent Consulate.
   This applies, first and foremost, in cases where Consulates **continue to deny recognition of citizenship to the children (and their descendants) of Italian women** who lost their Italian citizenship prior to January 1, 1948, by acquiring the citizenship of their husbands *iure matrimonii* (and without any voluntary action), or who, before that date, were unable to transmit citizenship to their children. In such instances, the competent administrative authorities declare—even in official communications—that these women, and more importantly their descendants, are **not entitled to Italian citizenship**.

The legislature has **not yet incorporated the legal principles** established by the Joint Sections of the Court of Cassation (discussed in greater detail in the following paragraphs, to which reference is made), and has thereby **prevented recognition of citizenship through the maternal line before 1948** by the competent administrative bodies. As previously discussed, the Court has highlighted the existence of a so-called **"dual track" system** in administrative and judicial forums for the protection of the right to citizenship recognition. It clarified that the **administrative route is constrained** by procedural rules still in force, especially the requirement for the woman to submit a declaration of intent to reacquire Italian citizenship. Moreover, even when such a declaration is submitted, **Article 15 of Law No. 91/1992** prevents, in the absence of legislative reform, **the direct application of the principles established by Judgment No. 4466/2009** in administrative proceedings, as the provision states: "*The acquisition or reacquisition of citizenship takes effect... from the day following that on which the required conditions and formalities are fulfilled".* As a result of this provision, in administrative proceedings, the declaration to reacquire citizenship can only produce effects **for the future**, from the day after it is made. This **excludes the possibility—accepted in judicial proceedings—that its effects may retroactively extend back to the date of entry into force of the Constitution**, as affirmed by the Joint Sections of the Court of Cassation. It should also be noted that the limitation established by Article 15 of Law No. 91/1992, while allowing a woman who lost citizenship under Article 10, paragraph 3, of Law No. 555/1912 to reacquire it *ex nunc* through the abovementioned declaration, permits her minor children to acquire citizenship as of that same date by operation of law, pursuant to Article 14 of Law No. 91/1992. **In all these cases, the existence of standing to sue is evident**.

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Different, however, are those situations in which **there is no dispute—whether prior or subsequent, express or implied—on the part of the administration regarding the recognition of Italian citizenship status**.

These are cases in which the petitioners, **had they submitted appropriate and complete documentation to the administrative authority (i.e., the territorially competent Consulate), could reasonably have obtained recognition of citizenship *jure sanguinis***

4) In cases of transmission exclusively through the *male/paternal* line, or through the *female/maternal* line but **after January 1, 1948**, since—**in theory and by law—there are no obstacles to administrative recognition of citizenship**, the interest in bringing legal action **cannot be presumed to exist implicitly or automatically**, especially if the respondent party, in appearing in court, **did not contest the legal basis of the claim** (and therefore did not oppose it judicially), but merely asked and invited the Court to examine the documentation submitted to assess its completeness, accuracy, and compliance.

5) Another (not uncommon) situation concerns cases where the applicants, particularly in the cases described in point 4, **claim to have been unable to submit any request for recognition due to serious and sometimes chronic delays** in the handling and resolution of such procedures by some Italian Consulates.

With regard to this latter case, **case law (Tribunal of Florence, Order of 11 May 2023, No. 2982/2023)** has held—at least for Italian Consulates in **Brazil, Argentina, and Venezuela**—that **interest in bringing legal action exists even in the absence of proof of an attempt to book an appointment**, given that:

*"There is evidence, derived from public knowledge, that at the Consulates—at least in Brazil, Argentina, and Venezuela—waiting lists for the initial review of citizenship applications exceed 10 years. Therefore, there is a legitimate interest in taking legal action, stemming from the **objective state of uncertainty** caused by the failure to examine the application within the legally established timeframe, due to the **structural and widespread inability** of the administrative authorities to effectively and promptly ensure recognition of the right."*

In relation to this last hypothesis, the case law (see Florence Tribunal, Order of May 11, 2023, No. 2982/2023) has held—**at least with regard to Italian Consulates located in Brazil, Argentina, and Venezuela**—that **the interest to bring legal action exists even in the absence of evidence of an attempt to book an appointment** to submit the application:
"Since there is evidence, based on **notorious fact**, that at the consulates—at least in Brazil, Argentina, and Venezuela—the **waiting lists for the first review of citizenship applications exceed ten years**, the interest to act exists, arising from the **objective situation of uncertainty** caused by the failure to examine the application within the timeframes established by law, and due to the **structural and widespread inability of the competent administrative authorities** to ensure effective and timely recognition of the right."
However, **such a conclusion cannot be endorsed in absolute terms**, especially **if it intends to eliminate any evidentiary burden on the claimant** by assuming that **the interest to act exists *in re ipsa*** (i.e., inherently), **solely on the basis that the applicant comes from certain countries**, notably **Brazil, Argentina, or Venezuela**.
Contrary to the position taken by the Florence Tribunal, the conditions for recognizing the existence of a **"notorious fact"**—which would waive the general rule on the burden of proof—are not met in this context. Consequently, the general evidentiary rule still applies, meaning that it is the claimant who must prove the existence of a concrete interest in bringing the action.
More generally, it should be stated that there is a lack of interest to bring a judicial action for the recognition of Italian citizenship, as the responsibility for recognizing citizenship status lies with the Ministry of the Interior. Thus, applicants should have requested the issuance of the relevant certificate, or in any case sought recognition of status from the Consular Authority in their country of residence—in this case, Argentina—on the basis of documentation proving their descent from an Italian citizen, without the need to go before the Judiciary.

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Having outlined the most recurring scenarios, it is now necessary—taking into account the arguments put forward by the claimants on this point, and even independently of the objections raised by the respondent—to assess whether an interest to bring the **action exists in the specific case under consideration**.

In the present case, the matter falls under scenario no. 3: transmission of citizenship through the maternal line prior to January 1, 1948—the date on which the Italian Constitution came into force—(through the daughter of the ancestor [redacted]). Therefore, the administrative authority (i.e., the territorially competent Consulate), due to the ongoing legislative prohibition, would not have recognized the citizenship, which can thus only be obtained through judicial proceedings.

The interest to bring the action is, therefore, clearly present, as stated.

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The request for recognition of Italian citizenship

Turning to the merits of the dispute, the petitioners request recognition of Italian citizenship *jure sanguinis*, as descendants of an Italian citizen by birth, pursuant to Article 1, letter (a) of Law no. 91 of February 5, 1992.

It should first be recalled that, based on the so-called principle of effectiveness (undisputed in international law), each State has the sovereign right to determine the conditions under which a person is to be regarded as its national (see Italian Supreme Court, First Civil Section, no. 9377/2011, as also cited by the lower court; see also, in the EU context, CJEU, October 19, 2004, *Zhu*).

This principle was specifically clarified by the Italian Supreme Court, United Civil Sections, in its twin decisions of August 24, 2022—nos. 25317 and 25318—on the topic of the so-called "Great Brazilian Naturalization of 1889." The Court held that the principle of effectiveness negatively delineates the limits of a State's discretion in granting citizenship to individuals who lack any genuine connection with the set of relationships in which effective (or substantial) citizenship is expressed. It further stated that the bond of citizenship can never be based on a *fictio*, but must involve a real link between the individual and the State. In this context, a bloodline connection (*jus sanguinis*) certainly cannot be regarded as a mere *fictio*.

The Court clarified that the principle of effectiveness is typically invoked to prevent arbitrary revocations of citizenship where real ties between the individual and their country persist (cf. CJEU, March 2, 2010, *Rottmann*, case C-135/08, regarding the implications of citizenship acquisition or loss on EU citizens). The principle also serves to restrain domestic rules—such as those in Dutch law—that allow for discretionary loss of nationality due to the absence of a sustained connection between the individual and the State.

It must also be recalled that the loss or revocation of citizenship, as provided for by individual national laws, remains theoretically admissible, since it reflects a more comprehensive understanding of citizenship as a network of concrete ties between a person and a community. Such measures are therefore not incompatible with EU law, provided they meet the requirements of proportionality and do not result in statelessness (cf. CJEU, March 12, 2019, *Tjebbes*, case C-221/17).

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General principles governing the matter

Having clarified the above, it must be affirmed that **citizenship is a legal status** conferred by law, denoting a person's membership in a State. It entails a variable set of public and constitutional rights and duties.

On this point, the **Italian Supreme Court** (in its aforementioned twin rulings of August 24, 2022, nos. 25317 and 25318) emphasized that the **Italian legal system** "has traditionally maintained a **conservative approach**, without substantial changes to the prevailing principle of citizenship acquisition *jure sanguinis*, which has remained virtually unchanged since the Civil Code of 1865. This approach was first inherited by Law no. 555 of 1912 and then by the current Law no. 91 of 1992.".

*The fundamental mode of **acquisition is original, by birth**.*

Until 1992, this meant that a person was considered an Italian citizen if they were the child of an Italian father—or, where the father was unknown or stateless, of an Italian mother.

This formulation essentially characterized national citizenship laws throughout the relevant historical period: Articles 4 and 7 of the Civil Code of 1865, and Article 1 of Law no. 555 of 1912.

The legal framework changed only with the enactment of **Law no. 91 of 1992**, which reflected a subsequent evolution in constitutional awareness. However, it simply updated the rule to state that a person is an Italian citizen by birth if they are the child of either an Italian father or mother, or if they are born in the territory of the Republic to unknown or stateless parents (or if, according to the law of the parents' country, the child does not acquire their nationality).

Looking at the early expressions of legislative intent under pre-constitutional law, there is no doubt that the Italian legislator acted in substantial continuity of purpose. Indeed, it is widely accepted that Law no. 555 of 1912 served merely as a refinement of the principles already embedded in the Civil Code of 1865.

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Applicable Legislation

Before the entry into force of Law no. 91 of February 5, 1992 ("New rules on citizenship"), the legal framework governing the recognition of Italian citizenship was previously regulated—within the Kingdom of Sardinia—by the Civil Code of 1837 (known as the Albertine Code), and subsequently by the Civil Code of the Kingdom of Italy dated June 25, 1865, which entered into force on January 1, 1866 (now repealed and referred to as the 1865 Code);

Later on, in response to the mass migration phenomenon at the end of the 19th century, the rules on citizenship were incorporated—as was customary—into specific laws, notably: the Migration Law of January 31, 1901, no. 23; then Law no. 217 of May 17, 1906; and finally, Law no. 555 of June 13, 1912. All of these legislative acts followed a consistent and uninterrupted legal tradition.

The framework of citizenship law has always been based, as mentioned, on **transmission jure sanguinis (by blood).**

Specifically, **Article 19 of the Albertine Code** explicitly stated: *"A child born in a foreign country to a father who still enjoys, within the Kingdom's States, the civil rights pertaining to the status of subject, is also a subject and enjoys all the related rights."*

From this it follows that the children of citizens of the Kingdom of Sardinia (so-called *regnicoli*) born abroad retained *regnicolo* citizenship.

This principle of citizenship transmission *jure sanguinis* was also reaffirmed in Article 4 of the 1865 Civil Code: *"A citizen is the son of a citizen father."*

Moreover, since the Kingdom of Italy succeeded the Kingdom of Sardinia as its legal successor, all citizens of the Kingdom of Sardinia automatically acquired Italian citizenship on March 17, 1861 (the date of Italy's unification), in accordance with customary international law—later codified in Article 21 of UN General Assembly Resolution 63/118 adopted on December 11, 2008: *"The successor State shall attribute its nationality to all persons who, on the date of succession of States, had the nationality of the predecessor State."*

Therefore, individuals born in the former Kingdom of Sardinia prior to Italian unification were considered Italian citizens after unification, even if they had emigrated, provided that at the time their pre-unitary State of origin became part of the Kingdom of Italy, they had not lost Sardinian citizenship (e.g., by acquiring foreign citizenship).

This principle is also confirmed by the Italian Ministry of the Interior in the publication *"Italian Citizenship – Legislation, Procedures, Circulars"*, where on page 9 it explicitly states:

"It may happen that the ascendant (ancestor) from whom citizenship is claimed emigrated from Italy before the unification of Italy, with a passport from a pre-unitary State. This circumstance is not considered an obstacle to the recognition of Italian citizenship. In fact, the Civil Code of 1865, which governed the matter before Law no. 555 of June 13, 1912, did not exclude individuals who emigrated prior to the formation of the Kingdom of Italy from holding Italian citizenship. However, it should be noted that those born before 1861 and who emigrated abroad may only be considered Italian citizens from the moment the pre-unitary State of origin became part of the Kingdom of Italy. If, instead, at the time of possible foreign naturalization or at the time of their death, the pre-unitary State had not yet been incorporated into the Kingdom of Italy, they must be considered as never having acquired Italian citizenship…"

These concepts are therefore to be considered well-established, as they are rooted—as shown—in the principles of the 1837 Albertine Code and the 1865 Civil Code of the Kingdom of Italy. They are further confirmed by the fact that Article 11 of the 1865 Civil Code, which regulated the loss of citizenship, did not exclude from Italian citizenship individuals who had emigrated before the establishment of the Kingdom of Italy.

Conversely, **if the ancestor who emigrated had either naturalized as a foreign citizen or died before March 17, 1861**, he could never have transmitted **Italian citizenship** to his descendants, as he himself never possessed it;

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As previously mentioned, all citizenship laws enacted over time were based on the principle of *jure sanguinis* (by blood) transmission of Italian citizenship, but only **through the paternal line**.

This provision was declared unconstitutional by the **Constitutional Court in Judgment No. 30 of February 9, 1983**, insofar as it *"did not provide for citizenship by birth for a child born to an Italian mother,"* thereby aligning the previous legislative framework on citizenship status with constitutional values and enabling the transmission of Italian citizenship through the maternal line.

In fact, even earlier, the same **Constitutional Court—in Judgment No. 87 of April 9, 1975**—had declared **Article 10 of Law No. 555/1912** unconstitutional for violating Articles 3 and 29 of the Constitution, specifically in the part where it *"provided for the automatic loss of Italian citizenship by a woman who married a foreign national, regardless of her will."*

In particular:

In **Judgment No. 87/1975**, the Court held that Article 10(3) of Law No. 555/1912 was discriminatory against gender equality and violated not only Article 3 of the Constitution, but also the equality of spouses and family unity as enshrined in Article 29. The Court noted that the rule could lead a woman to refrain from getting married—or to dissolve her marriage—simply to avoid losing her citizenship, especially since the same law (in the part not declared unconstitutional) allowed for the reacquisition of citizenship upon the dissolution of the marriage, which was the legal condition for her loss of citizenship.

In **Judgment No. 30/1983**, by declaring the unconstitutionality of Article 1, No. 1 of Law No. 555/1912, the Court stated that the provision, by granting original acquisition of citizenship only through the father, undermined the mother's legal standing both in relation to the State and within the family. The Court emphasized that both parents have a legally significant interest in their children being citizens—that is, members of the same national community as themselves, with access to the protections that citizenship affords. Furthermore, the Court added that the rule infringed upon the mother's role in the family, especially considering the evolving legal recognition of equal parental duties and responsibilities toward children in modern legal systems.

Based on the aforementioned rulings, which were incorporated into the new citizenship law, it was therefore established that a wife retains her Italian citizenship even in the event of marriage to a foreign citizen, and that a child has the right to acquire the citizenship of the mother.

With regard to the scope of application of these decisions, two different judicial interpretations developed. According to the first view, the ("favorable") effects of the two judgments could only arise from the date of entry into force of the Constitution. According to the opposing view, no temporal limitation could be imposed by the approval of the Constitutional Charter.

The Court of Cassation, in its landmark rulings by the Joint Sections (Sezioni Unite) Nos. 4466 and 4467 of 2009, confirmed—as previously mentioned—that even for situations predating the entry into force of the Constitution, the right to citizenship must be regarded as a **permanent and imprescriptible status**, which can be judicially asserted at any time, if the illegitimate deprivation persists after the Constitution's enactment due to a discriminatory provision later declared unconstitutional.

While the rulings accepted the first theory of "subsequent unconstitutionality"—meaning that pre-constitutional norms can only have an effect on situations not yet concluded as of January 1, 1948, and cannot retroactively extend beyond the Constitution's entry into force—they also held that **citizenship, being a permanent and imprescriptible status** (barring renunciation by the rightful holder), can be claimed **at any time**, including after the death of the ancestor or parent from whom citizenship would derive, if the discriminatory effect continued after the Constitution's entry into force.

Specifically, the Joint Sections stated that: **"The status of citizen is permanent and has lasting effects over time,** *manifesting through the exercise of the rights it entails; it can only be lost by renunciation, even under prior legislation (Art. 8 No. 2, Law No. 555/1912). Therefore, it is correct to affirm that citizenship status, as an effect of the condition of being a child, constitutes an essential quality of the person, characterized by absoluteness, originarity, unavailability, and imprescriptibility, making it judicially actionable at any time and generally not considered concluded or settled unless it has been denied or confirmed by a final court judgment*".

And further: *"Italian citizenship must be recognized judicially, regardless of any declaration made by the woman under Art. 219 of Law No. 151 of 1975, to those who lost it due to marriage to a foreign national before January 1, 1948, since such loss—absent the woman's will—continues to have effect after that date due to an unconstitutional norm. This continued effect contradicts the principles of gender equality and the legal and moral equality of spouses (Arts. 3 and 29 of the Constitution). By the same principle, a child born before that date to a woman in such a situation—under the effect of Law No. 555/1912—regains Italian citizenship from January 1, 1948, because the parent-child relationship, after the Constitution came into force, gives rise to the transmission of citizenship, which would have rightfully belonged to the child were it not for the discriminatory law."*

The pre-constitutional rules declared unconstitutional by the above judgments are, therefore, **no longer applicable** and **have no effect** after January 1, 1948, on legal situations that remain affected by gender-based discrimination or the husband's dominance in family relationships—**provided** there remains a person still suffering unjust consequences from them, who may **seek judicial protection** for their rights.

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In 1992, the legislator repealed the 1912 law, rewriting the entire framework with **Law no. 91 of February 5, 1992 ("New Rules on Citizenship")**.

Article 1 provides that a person is "a citizen by birth: a) if they are the child of a father or mother who are citizens [...]".

This provision (reaffirming a principle already stated in Article 1 of the previous Law no. 555 of June 13, 1912, and corrected by Constitutional Court judgment no. 30 of February 9, 1983) grants **citizenship *iure sanguinis*** (i.e., by descent) to direct descendants of Italian citizens—whether male or female—even if they emigrated abroad (or to those born in the territory of the Republic if both parents are unknown or stateless, or if the person does not acquire their parents' citizenship under the laws of their country of nationality).

As affirmed by the Supreme Court of Cassation in the so-called **"twin rulings" of 2022**, *"the emphasis on blood ties (iure sanguinis), as opposed to other criteria linking a person to a territory (iure loci, or iure soli, sometimes with added conditions), has justified (and still partially justifies, under Law no. 91 of 1992) a strict limitation on the possibility of acquiring Italian citizenship for those without Italian ancestry. At the same time, it equally limits the cases in which Italian citizens residing abroad might lose their citizenship."*

*From this perspective, **the loss of Italian citizenship** can only result from **national legislation**, based on the rules in effect at the time, and **never** from decisions made under the legal systems of foreign states.*

*This principle gave rise to the **recognition of dual citizenship**, which is consistent with the evolution of international law. The current legal framework (Law no. 91/1992) aims instead to manage potential conflicts that could arise from such situations.*

*Furthermore, the Supreme Court of Cassation recalled that "the relevance of such dual nationality phenomena was acknowledged even at the time," as noted in the often-cited judgment of the **Court of Cassation in Naples from 1907**.*
The possibility of having "dual nationality over time" was already considered back then to be an "inevitable consequence [...] of the concept of sovereignty, which necessarily includes the elements of autonomy and independence of each state within its own territory."

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Procedural principles on the burden of proof

The **burden of proof** for those requesting recognition of Italian citizenship is therefore focused on **demonstrating the continuous line of transmission, with the only exception being the extinction of citizenship through renunciation** (in accordance with Cass. Sez. U. no. 4466/2009).

When citizenship is claimed by a descendant, under the general principles governing the allocation of the burden of proof, it is **only necessary for the claimant to prove that they are a descendant of an Italian citizen**.

As succinctly explained by the Supreme Court of Cassation in its 2022 joint civil rulings:
Citizenship acquired **by birth** is considered **original** in nature.
Once obtained, **citizenship status is permanent and imprescriptible**.
It can be enforced at any time, **based solely on proof of acquisition through birth from an Italian citizen**.

Thus, the **key proof lies in establishing the line of descent**.
The only exception is **loss of citizenship by voluntary renunciation** (see again Cass. Sez. U. no. 4466/2009).

Therefore, where citizenship is claimed by a descendant, **they are required to prove nothing more than being descended from an Italian citizen**, whereas **the burden shifts to the opposing party (typically the State)** to demonstrate any **interruption in the transmission**, should it raise such an objection.

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The case at hand

Through the submission of birth, marriage, and death certificates of all ancestors and ascendants, the claimants have fulfilled the burden of proof incumbent upon them demonstrating their **direct descent from the Italian ancestor** who emigrated abroad.
In fact, by presenting certificates and/or extracts of birth, baptism, marriage, and death, the claimants have documented that **they all descend, through multiple lines of transmission, from Mr.** [redacted], the family's progenitor who emigrated to the United States.
In light of the documentation provided, therefore, the claimants have successfully **proven the continuity of the line of descent and, consequently, the transmission of Italian citizenship iure sanguinis**, as previously outlined in the preamble to this decision.

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The respondent, for its part, did not contest the above genealogical reconstruction nor the continuous line of transmission. Instead, it merely invited the Court to verify it—also with reference to the probative documentation submitted—and requested, in the event that the claim is upheld, that the legal costs be offset between the parties.
Indeed, as previously noted, the respondent also requested that the Court order an evidentiary integration pursuant to Articles 210 and/or 213 of the Italian Code of Civil Procedure, by ordering the claimants to produce additional documentation (or otherwise by requesting that the judge obtain such documentation for the case file).

Specifically, the State Attorney's Office requested the acquisition of:

- the **military draft record** (or an equivalent document under the foreign legal system) of all the male ascendants of the present claimants (as well as of the claimants themselves, insofar as they were born before the repeal—by Law No. 91/1992—of Law No. 555/1912); and
- the **social security contribution record** (or an equivalent document under the foreign legal system) of the claimants' ascendants (as well as of the claimants themselves, again if born before the repeal of Law No. 555/1912).

In support of this request, the respondent pointed out that such documentation is relevant given that, under the applicable laws, **military service rendered for a foreign country constituted grounds for loss of Italian citizenship** (under Article 11 of the Civil Code of 1865 and Article 8 of Law No. 555/1912), as did the **acceptance of public employment** (understood as holding office under a foreign government, as clarified in the 2022 ruling of the Court of Cassation's Joint Chambers on the issue of Brazil's mass naturalization).

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Before assessing the admissibility of the request, it is necessary to recall the **evolution of legislation regarding the loss or revocation of Italian citizenship** due to public employment or military service performed abroad.

Article 11 of the **Civil Code of 1865** stated: *"Citizenship is lost by anyone who, without permission from the government, has accepted employment from a foreign government or has entered into military service for a foreign power."* This provision was later **repealed by Article 35 of Law No. 23 of January 31, 1901**.

Article 8 of **Law No. 555 of 1912** provided: *"Citizenship is lost by anyone who, having accepted employment from a foreign government or having entered into military service for a foreign power, persists in doing so despite an official order from the Italian Government to abandon such employment or service within a set deadline."*

Article 12 of **Law No. 91 of 1992** states: *"An Italian citizen loses citizenship if, having accepted public employment or a public office from a foreign State or having performed military service for a foreign State, he or she fails to comply, within the set deadline, with the order issued by the Italian Government to abandon such employment, office, or military service."*

Moreover, the **Joint Chambers of the Italian Supreme Court (Cass. Sez. Unite No. 25318/2022)** have noted that the rationale behind the 1865 rule stemmed from **French national tradition**,

as most provisions of the 1865 Civil Code derived from the **Napoleonic Code of 1804**. This tradition was **hostile to citizens performing public functions abroad**, as such roles entailed stable and permanent obligations of **loyalty and hierarchy to foreign states**.

This rationale is clearly expressed in the preparatory works of the unified Italy's civil code project, where it was stated that **"no one can reconcile duties toward their own government with serving a foreign one, whether in the military or in public offices."**

It is therefore evident that the rule imposed a **strict prohibition** on citizens performing activities (such as military service or public office) that **necessarily required an oath of allegiance to foreign governments**, with the consequence that **citizenship would be lost automatically** (ipso iure), **unless prior permission was granted by the Italian government**.

However, subsequent laws—starting with the repeal of Article 11 of the 1865 Code on **January 1, 1901**—**softened this strict approach**, requiring **not only proof of public or military service abroad**, but also that the individual **failed to comply with a formal order from the Italian government** instructing them to abandon such service.

It follows that, **after the abrogation of Article 11 of the 1865 Code**, it is **not sufficient to merely document that an ancestor held a foreign public office or performed (even voluntary) military service**. It must also be proven that **he failed to comply with an official order from the Italian government** (should such order have been issued).

Finally, it is clear that, although the **Ministry of the Interior**, as the respondent public authority, **may easily provide evidence regarding the professional occupation of the ancestors**, it is **not equally easy to document the possible issuance and notification of such government orders** (which would be essential to confirm a lawful loss of citizenship).

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That being clarified, it must be noted that, according to the **rules on the allocation of the burden of proof**, as outlined also by the **Joint Chambers of the Supreme Court**, it was the responsibility of the **respondent party**—**prior** to requesting the acquisition of documents ex officio or through an invitation to the claimant—**to at least provide prima facie evidence** on the matter (specifically regarding the **occupation of the ancestors**, reserving the right, if public employment or military service were proven, to later produce any formal government order issued **after 1901**).

Requesting the claimant to produce such documentation, which—if affirmative—could demonstrate the existence of possible causes for the loss of the claimed right to citizenship, **cannot be considered procedurally admissible**, as it would result in an **unlawful reversal of the burden of proof**, contrary to the rules firmly established by the Supreme Court's case law, including by its **Joint Chambers**.

Nor can a different conclusion be reached by invoking the **principle of proximity of evidence**, according to which, in the present case, the **production or exhibition of documents** should fall on the claimant, being more easily accessible to them.

In fact, **it cannot be definitively stated** that a **private party** (the claimant), compared to a **public party** (the Consular Authority, which could have been properly asked for cooperation by the respondent Ministry—possibly through the Ministry of Foreign Affairs), would have **greater ease in obtaining the documentation** requested by the State Attorney's Office from a **foreign authority**.

In order to **invoke the proximity of evidence principle** (which, in any case, is not applicable to the possible formal government order issued by the Italian Government), the **respondent party** should have at least **attempted to meet its own burden of proof (more precisely, the burden of allegation)** by demonstrating that **it had tried to acquire the documentation directly from the competent foreign authority**, possibly through **consular channels**.

Furthermore, in the **genealogical line presented**, there appear to be **no male ancestors**—aside from the male progenitor, for whom a **certificate of non-naturalization has been submitted**—who could have held **public or military office**, as these roles were at the time **inaccessible to women**.

In any case, the **absence of male ancestors prior to 1912** is relevant, since **only under the legal framework in force before that year** could holding such positions have entailed, **under the limits and clarifications provided by the Supreme Court**, an **automatic loss of Italian citizenship** without the need for **any prior formal warning from the Italian Government**.

Therefore, the **request for additional evidence** under **Articles 210 and/or 213 of the Italian Code of Civil Procedure** cannot be upheld.

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It must also be noted that in the **genealogical line reconstructed by the claimant**, there is **at least one maternal transmission** that occurred **in the pre-constitutional era** (specifically through the daughter of the original Italian ancestor, xxxxxxxxx). According to the legislation in force at that time, this would have caused an **interruption in the transmission of Italian citizenship "iure sanguinis"**—both because citizenship was, **except in marginal cases, transmitted exclusively through the paternal line**, and because **Article 10, paragraph 3, of Law No. 555 of June 13, 1912** established the **loss of Italian citizenship by any Italian woman who married a foreign citizen**.

As previously noted, such **interruptions in the citizenship transmission line** have since been **declared unconstitutional** by the **Italian Constitutional Court** in **1975** and **1983**. According to the **Italian Supreme Court (Corte di Cassazione), sitting in joint sections**, the **effects of these declarations of unconstitutionality apply equally to events occurring before and after the entry into force of the Constitution**.

More specifically, as already mentioned, the **Corte di Cassazione in United Sections**, in its landmark **judgment no. 4466 of 2009**, overturned its previous position and held that, as a result of Constitutional Court rulings no. 87 of April 9, 1975, and no. 30 of February 9, 1983, the recognition of Italian citizenship iure sanguinis may also be granted to the children or descendants of women who had lost their Italian citizenship pursuant to Article 10, paragraph 3, of Law 555/1912, due to marriage with a foreign citizen contracted before January 1, 1948.

- A summary of the key developments in the matter of citizenship is provided below, for easier reference with respect to the content already discussed above:

- With its **ruling no. 87/1975**, the Italian Constitutional Court declared the unconstitutionality of Article 10, paragraph 3, of Law no. 555/1912, in the part that provided for the automatic loss of Italian citizenship by Italian women, without their consent, upon marrying a foreign citizen and acquiring his citizenship.

- A few years later, with **decision no. 30/1983**, the Court also ruled **unconstitutional Article 1 of the same Law**, insofar as it did not allow the transmission of Italian citizenship through the maternal line.

- Following judgment no. 87/1975, **Law no. 151 of May 19, 1975** (Reform of Family Law) established that women who had lost their Italian citizenship due to marriage to a foreign citizen (or due to the citizenship status of the husband) could reacquire it through an explicit declaration of will.

- However, a discrepancy remains at the administrative level: this declaration is interpreted as granting uninterrupted citizenship status to the woman only for marriages celebrated after January 1, 1948. If the marriage occurred before the Constitution entered into force, the reacquisition is considered effective only from the date of the declaration (ex nunc), and its effects apply only to children who were minors at the time of the declaration.

- With **ruling no. 4466/2009**, the Italian Supreme Court (Corte di Cassazione) clarified, pending legislative intervention, that:

- The reacquisition of citizenship is automatic as of January 1, 1948, regardless of the marriage date (whether before or after 1948), and is prevented only in cases of explicit renunciation of citizenship by the individual.

- In court, the recognition of citizenship for children and descendants of such women faces no additional restrictions, as long as it is proven that they were born to a woman who lost her Italian citizenship due to Article 10, paragraph 3, of Law 555/1912, and provided no renunciation of citizenship was made.

- Consequently, children and descendants of such women may obtain judicial recognition of Italian citizenship, regardless of whether the mother (or female ancestor) made the declaration under Article 219, and even if she is no longer alive).

In accordance with the principles outlined above, women who lost Italian citizenship under Article 10 of Law no. 555/1912, due to marriage with foreign nationals—even if such marriage was contracted before January 1, 1948—may now, through judicial proceedings, be recognized as having retained Italian citizenship as of the date on which the Constitution entered into force.

The legal obstacle to the transmission of Italian citizenship under the law in effect at the time the individual descendants were born has therefore been removed**.** Consequently, **Italian citizenship may now be recognized**, given that—**as demonstrated above**—the petitioners **have proven the continuity of the transmission line**, and **no evidence has been presented by the respondent** to support any circumstance that would legally interrupt or extinguish such citizenship *(see Italian Supreme Court, Civil Section I, judgment no. 3175 of February 11, 2020; and Supreme Court, Joint Sections, judgment no. 25317 of August 24, 2022)*.
Specifically, **there is no indication** that the petitioners or their ancestors ever **renounced Italian citizenship**, thereby breaking the genealogical transmission chain (reference is made to the certificates issued by the competent diplomatic-consular authorities, which have been duly legalized and whose authenticity is not in question).

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Therefore, the petition must be upheld, and it shall be declared that the petitioners are Italian citizens, with instructions for the Ministry of the Interior to adopt all relevant administrative measures.

Given the nature and complexity of the case—particularly in light of jurisprudential principles that are not always consistent—there are valid reasons to order **full compensation of legal costs** between the parties.

FOR THESE REASONS

The Court of Genoa, sitting in single-judge composition, hereby rules as follows:

- **Declares** Orders**are Italian citizens**;

- **Orders**, as a consequence, the **Ministry of the Interior**, through the Minister in office and, on its behalf, the **competent Civil Registrar**—in particular, the **Civil Registrar of the Municipality of** [redacted] **(**[redacted]**)**—to proceed with the **registrations, transcriptions, and annotations required by law** in the civil status registers regarding the citizenship of the above-mentioned individuals, and to ensure that the relevant communications are made to the **competent consular authorities** so that they may, in turn, carry out the necessary registrations, transcriptions, and annotations in the appropriate registers;

- **Declares** that **legal costs shall be entirely compensated** between the parties.

Let this be communicated to the parties and to all interested entities.

Genoa, April 18th 2025

THE JUDGE
Dott. Enzo BUCARELLI