COURT OF TURIN

Specialized Section for Immigration, International Protection and Free Movement of EU Citizens

The Court of Turin, in the person of Judge Fabrizio Alessandria,

-appellants-

versus

MINISTRY OF THE INTERIOR, represented by the Minister *pro tempore* (Ministry holding office at the time), having elected statutory domicile at the District State Attorney's Office of Turin

-defendant in default-

and versus

PUBLIC PROSECUTOR, represented by the Prosecutor of the Republic at the Court of Turin.

-indispensable party-

having taken the matter under advisement at the hearing held on June 16, 2025,
issued the following

JUDGMENT

1. In the appeal pursuant to Art. 281 *decies* of the Italian Code of Civil Procedure filed on March 28, 2025 which was duly served, the appellants brought an action against the Ministry of the Interior, requesting to ascertain and declare their *status* as Italian citizens *jure sanguinis* (i.e., by right of blood), based on the allegation that they are descendants of Italian citizen

(see exhibit no. 1), who later emigrated to Venezuela where he never naturalized as Venezuelan citizen (see exhibit no. 2).

Consequently, the appellants requested that the Ministry of the Interior, and through it the competent civil registrar, be ordered to proceed with the registration, transcription and annotation of citizenship in the Registries of Civil Status.

The Ministry of the Interior did not enter an appearance.

The Public Prosecutor had no objection to the granting of the appeal.

Having verified the regularity and timeliness of the service of process, the Court declared the defendant Ministry to be in default at the hearing on June 16, 2025. In the preliminary stage, the appellants objected to the unconstitutionality of the Article 3-*bis* of Law No. 91/1992, referring to the arguments set forth in the authorized memorandum on June 11, 2025. In particular, they claimed that the issue of constitutionality would be admissible and relevant, for the legislation introduced by the Decree-Law No. 36/2025 being applicable to the case at hand (appeal filed on March 28, 2025 and not preceded by an application via administrative proceedings, since it was a matter of descent *jure sanguinis* through maternal line).

The Court, having acknowledged the matter, reserved decision.

2. Preliminarily, the jurisdiction of the Specialized Section for Immigration, International Protection and Free Movement of EU Citizens should be affirmed at the Court of Turin, pursuant to Art. 1, paragraphs 36 and 37 of Law 206/2021 which introduced the following sentence in Art. 4, paragraph 5 of Decree-Law No. 13/2017 (as converted into law, with amendments, by Law No. 46/2017): *"when the plaintiff resides abroad, disputes to ascertain the status of Italian citizenship are assigned having regard to the municipality of birth of the father, mother or ancestor who are Italian citizens."*

3. Specifically, regarding the admissibility of the constitutionality matter raised by the appellants, it is noted that according to the legislative framework in force prior to the enactment of Decree-Law No. 36/2025, the applicants' claim would have been well-grounded, as the direct descent through paternal line from an Italian citizen is based on the documentation; direct descent is proven despite the fact that the genealogical lines includes a female ascendant who was married to a foreign citizen, and said couple had a child before the promulgation of the current 1948 Constitution.

However, it is further considered that the documentation submitted by the applicants allows the Court to deem satisfied the requirement set forth in the amended Article 19-*bis* of Legislative Decree No. 150/2011. As is well known, Decree-Law No. 36/2025 introduced into said provision paragraph 2-*bis*, which establishes a prohibition on the use of witness testimony, and paragraph 2-*ter*, which states that: *"In proceedings concerning the recognition of Italian citizenship, the petitioner is required to attach and prove the absence of any legal*

grounds for non-acquisition or loss of citizenship as provided by law." In the present case, as previously noted, the negative certificate of naturalization of the ancestor (exhibit no. 2) is on file; therefore, the new evidentiary burden requiring documentary proof, introduced by Decree-Law No. 36/2025, must also be considered as fulfilled.

Having set forth the above, as a matter of fact, the petitioners state that:

- They are all descendants through direct line from Mr. , Italian citizen by birth, specifically born in and deceased in Venezuela after the Kingdom of Italy was proclaimed. As a result, should be considered to have acquired Italian citizenship upon unification occurred in 1861; in this regard, see, among others, Order No. 23849 of 2023 by the Court of Rome);
- Mr. emigrated to Venezuela and never renounced his Italian citizenship;
- They rebuilt the line of descent through Mr. 's daughter and the latter's daughters;
- Mr. 's descendants are Italian by birthright, but the Venezuelan Consulate does not allow them to receive application for recognition of citizenship in case the line of descent includes a woman born prior the entry into force of the Republican Constitution. This condition requires them to pursue their claims exclusively through judicial proceedings (see excerpt from the website of the Consulate General of Italy in Caracas, *sub* exhibit no. 19).

As evidence of these facts, the applicants submitted the birth extract of the Italian ancestor who emigrated in Venezuela (exhibit no. 1), the certificate of non-existence of naturalization records (exhibit no. 2) and the marriage certificate between the ancestor and a Venezuelan woman (exhibit no. 3). They also submitted the birth and marriage certificates of their ancestor's descendants (exhibits nos. 4 to 18), the indications provided by the Italian Consulate in Venezuela regarding the impossibility for descendants of Italian women born before 1948 to apply through administrative proceedings (see exhibit no. 19), as well as Order No. 23849 of 2023 issued by the Court of Rome in case No. 13107/2022 of the General Docket, in which — in a matter involving certain collateral relatives of the present petitioners, all descendants of ancestor — the status of Italian citizen was recognized in favor of ancestor , his daughter , and his grandson, with the consequent acknowledgment of the right of their descendants to Italian citizenship (see exhibit no. 20).

As a matter of law:

- the applicants recall the provisions of Article 1 of Law No. 555 of 1912 regarding the transmission of citizenship *jure sanguinis*;

- they recall the Order No. 30 of 1983 of the Constitutional Court, which established that Art. 1 of Law No. 555 of 1912 is unconstitutional insofar as it does not provide that the child of an Italian mother is also a citizen by birth;
- they acknowledge the settled case-law of the Court of Cassation, according to which there is no temporal limitation on the right to request recognition of Italian citizenship, as citizenship status is permanent and imprescriptible, and may be asserted at any time before a court of law, unless it has been extinguished by an express renunciation by the applicant. Furthermore, Italian citizenship must be judicially recognized in favor of a woman who lost it by reason of marriage to a foreign national prior to January 1, 1948, since such loss, occurring without her consent, is the ongoing effect of a law deemed unconstitutional, due to its violation of the principles of gender equality and the legal and moral equality of spouses, as enshrined in Articles 3 and 29 of the Italian Constitution (see Italian Supreme Court, Civil Division, Joint Sections, Judgment No. 4466 of 2009);
- they also refer to the case-law of the Supreme Court, according to which citizenship "by birth" is acquired originally, resulting in a *status civitatis* that is permanent, imprescriptible, and enforceable at any time, on the basis of simple proof of the constitutive facts — namely, birth from an Italian citizen — such that the line of descent constitutes both the necessary and sufficient proof for the granting of judicial relief (meaning that the applicant need only allege and prove to be a descendant of an Italian citizen);
- they also mention an additional aspect clarified by the case-law, namely that an Italian citizen born and residing abroad, who is considered by that foreign country to be its citizen by birth, nonetheless retains Italian citizenship and transmits it to his or her children (see Italian Supreme Court, Civil Division, Joint Sections, Judgment No. 2537 of 2022).

4. Within the factual and legal framework just described, **Decree-Law No. 36 of 2025** intervened, and was subsequently converted into law, with amendments, by Law No. 74 of 2025.

The Decree-Law inserted **Article 3-*bis* into Law 91/1992**, a provision reading as follows:

> *By way of derogation from Articles 1, 2, 3, 14 and 20 of this Law, Article 5 of Law No. 123 of April 21, 1983, Articles 1, 2, 7, 10, 12 and 19 of Law No. 555 of June 13, 1912, as well as Articles 4, 5, 7, 8 and 9 of the Civil Code approved by Royal Decree No. 2358 of June 25, 1865, any person born abroad, even prior to the date of entry into force of this Article, and who holds another citizenship, shall be considered as never having acquired Italian citizenship, unless one of the following conditions is met:*

a) the individual's status as an Italian citizen is recognized, in accordance with the legislation in force as of March 27, 2025, following an application accompanied by the necessary documentation and submitted to the competent consular office or mayor no later than 11:59 p.m. (Rome time) on that same date;
a-bis) the individual's status as an Italian citizen is recognized, in accordance with the legislation in force as of March 27, 2025, following an application accompanied by the necessary documentation and submitted to the competent consular office or mayor on the day indicated by an appointment communicated to the applicant by the competent office no later than 11:59 p.m. (Rome time) on March 27, 2025;
b) the individual's status as an Italian citizen is judicially recognized, in accordance with the legislation in force as of March 27, 2025, pursuant to a petition filed no later than 11:59 p.m. (Rome time) on that same date;
c) a first- or second-degree ascendant holds, or held at the time of death, exclusively Italian citizenship;
d) a parent or adoptive parent has been resident in Italy for at least two consecutive years following the acquisition of Italian citizenship and prior to the child's birth or adoption.

Essentially, the new emergency legislation introduces stricter requirements for the recognition of Italian citizenship to foreign-born individuals who, despite having the right to be recognized as Italian citizens pursuant to Law No. 91/1992, have not exercised this right by application (either administrative or judicial) filed *"no later than 11:59 p.m. (Rome time)"* on March 27, 2025; that is, the day before the entry into force of Decree-Law No. 36/2025.

4.1 This provision applies to the case at hand for the following reasons:

- The applicants represented that the Venezuelan citizenship in Venezuela can be acquired both *iure sanguinis* and *iure soli*;
- The applicants are all born in Venezuela, hence they (also) acquired Venezuelan citizenship;
- Pursuant to Article 34 of the Constitution of the Bolivarian Republic of Venezuela approved on December 20, 1999 *"Venezuelan nationality is not lost upon choosing or acquiring any other nationality"*, as Venezuela allows the dual citizenship status;
- According the new provision of Law, the applicants shall be deemed as having never acquired Italian citizenship since birth;
- Said applicants do not fall under the exemption clauses provided by Law, given that:
    - An application via administrative proceedings has not been filed (nor did it appear viable, due to the fact that the daughter of the ancestor who emigrated had a child prior to the entry into force of the 1948 Republican Constitution);
    - An application via administrative proceedings was filed on March 28, 2025, and, therefore, after 11:59 p.m. on March 27, 2025;

- There is no evidence that the appellants' ancestors had resided in Italy for two years prior to the birth of their son;
- The applicants' ancestors did not exclusively hold Italian citizenship.

5. In an authorized memorandum on June 11, 2025, the petitioners objected to the unconstitutionality of the aforementioned Art. 3-*bis* of Law No. 91/1992, claiming that such rule would violate several principles protected under the Italian Constitution, particularly Articles 3, 22, 77 and 117 paragraph 1.

5.1 That being said, the examination of admissibility and relevance of the issue of constitutional legitimacy requires the solution of an interpretative matter, which is deemed preliminary and dispositive: it is necessary to establish what is the effectiveness of Art. 3-*bis* of Law No. 91/1992 on the right of citizenship of the appellants. In other words, it is necessary to determine whether the new provision introduced with retroactive effect by Decree-Law No. 36/2025 affects *(i)* a citizenship right *jure sanguinis* already acquired as part of the applicants' legal entitlements, or *(ii)* a mere expectation regarding the recognition of Italian citizenship.

5.2 In fact, it appears that the provision introduced with Decree-Law No. 36/2025 entails a **limitation to the right of the recognition of Italian citizenship** provided by the previous legislation. In this regard, it is noted that the above-mentioned Art. 3-*bis* of Law No. 91/1992 begins with the following words: *"By way of derogation from Articles…"*; it thus constitutes a special provision that departs from the standard rules applicable to the recognition of Italian citizenship.

Nor can it be reasonably disputed that this legislation has **(at least partially) retroactive effect**, in the sense that it applies to all applications submitted after 11:59 p.m. on March 27, 2025. That is to say, it also applies to individuals who were already born and who would have unquestionably been entitled to the recognition of Italian citizenship under the previously applicable legal framework (which, as stated, was expressly derogated from by Decree-Law No. 36/2025).

The **explanatory report** accompanying Decree-Law No. 36/2025 states that the amended Article 3-*bis* of Law No. 91/1992 *"establishes a bar to the automatic acquisition of citizenship for persons born abroad who hold the citizenship of a foreign State"*, with the sole exceptions set forth under letters (c) and (d) of the same Article 3-*bis* (i.e., having a first- or second-degree ascendant who holds exclusively Italian citizenship, or a 'qualified' residence in Italy for at least two consecutive years). According to the same explanatory report

> *the provision does not introduce a new case of loss of citizenship (in addition to those already set forth in Article 13 of Law No. 91/1992), but rather a specific bar to the automatic acquisition of*

citizenship (with retrospective effect and, therefore, applicable to individuals born abroad before the entry into force of the provision itself), whether by descent, adoption, or other means.

In this context, as mentioned, it is therefore necessary to assess whether the derogation introduced by Decree-Law No. 36/2025 constitutes a new ground for loss (more precisely, revocation) of citizenship, or it merely introduces, as suggested in the explanatory report, a "procedural mechanism", and is therefore immediately applicable pursuant to the principle of *tempus regit actum* (meaning, "time governs the act"). In other words, and in good substance, it is necessary to assess whether the immediate applicability of the new regulatory provision of Art. 3-*bis* of Law No. 91/1992 is compatible with constitutional principles and, in particular, with the **principles of reasonability and reliance on legal certainty** repeatedly affirmed by constitutional jurisprudence (these principles can be derived from Articles 2 and 3 of the Italian Constitution and have been repeatedly affirmed by the Constitutional Court, particularly in the field of social security; see, among others, Judgment No. 69 of 2014 and Judgment No. 173 of 2016), as well as with constitutional and international principles that prevent an individual from being arbitrarily deprived of his or her citizenship (Art. 22 of Constitution, Art. 15 paragraph 2 of Universal Declaration of Human Rights dated December 10, 1948 and Art. 3 paragraph 2 of Protocol No. 4 to the European Convention on Human Rights (ECHR)).

6. For this purpose, it is necessary to briefly summarize the requirements for the recognition of Italian citizenship to individuals born abroad under the regime prior to the amendment in Decree-Law No. 36/2025.

Firstly, it is useful to recall what has recently been affirmed by the **Joint Sessions of the Supreme Court of Cassation** in the **Order No. 25318 of August 24, 2022** (concerning the juridical consequences of the Brazilian legislation in the Italian legal system; such legislation by Decree No. 58-A of 1889 introduced the so-called "great naturalization"): the Supreme Court of Cassation has retraced the fundamental principles provided by Law No. 91/1992 concerning the recognition of the right of Italian citizenship. For the sake of expository clarity, the aforementioned order of the United Sections is quoted insofar that reconstructs the principles attributing Italian citizenship in the normative regime in force until March 27, 2025:

*XIII. Essentially, **citizenship is a legal status, conferred by law**, that indicates an individual's membership in a State.*

Citizenship entails a variable set of rights and duties of a public and constitutional nature — a legal status, as it is commonly referred to.

In this regard, the Italian legal system has traditionally maintained a conservative approach, with no substantial changes to the prevailing criterion of acquisition based on jure sanguinis*, a*

principle that has remained virtually unchanged since the Civil Code of 1865 and was subsequently inherited by Law No. 555 of 1912 and, later, by the current Law No. 91 of 1992.
Citizenship is fundamentally acquired* ex lege *by birth, as an original entitlement.
Until 1992 this was equivalent to saying that an Italian citizen is one who is the child of a citizen father, or, when the father is unknown (or stateless), one who is the child of a citizen mother.
Such a framework has, in substance, characterized the national legislation throughout the historical evolution relevant to this matter — namely, Articles 4 and 7 of the Civil Code of 1865 and Article 1 of Law No. 555 of 1912.
The framework changed with Law No. 91 of 1992, as a result of a supervening constitutional maturity, but simply in the sense that a citizen by birth nowadays is the child of a citizen father or mother, or anyone born in the territory of the Republic if both parents are unknown or stateless (or if their citizenship does not follow according to the law of the state of their nationality).
Looking at the earliest manifestations of the legislative intent externalized by the pre-constitutional legislation, it cannot be doubted that the Italian legislator expressed itself in terms of substantial continuity of purpose and intent; it is, indeed, commonly accepted that Law No. 555 of 1912 constitutes a simple point of refinement of the discipline already inherent in the Civil Code of 1865.
It may be observed that the emphasis placed on blood ties — that is, iure sanguinis *— as opposed to other indicators of connection between the individual and the territory (such as* iure loci*, or as it is more commonly known,* iure soli*, whether or not subject to additional requirements or conditions), has historically justified — and still partly justifies, under Law No. 91 of 1992 — a significant restriction on the possibility of acquiring citizenship for those who do not have Italian ancestry. At the same time, and due to the inherent contradiction that such an approach would otherwise entail, it has also led to a correspondingly strict limitation on the possibility of establishing cases in which Italian citizens residing abroad may lose their citizenship.*
It is an absolutely obvious fact, from this last point of view, that the loss of Italian citizenship can depend only on national legislation, according to the provisions found therein pro tempore*, and never, on the other hand, on decisions implemented in a foreign legal framework.*
It is precisely from this rationale that the ***recognition of dual citizenship phenomena*** *has arisen: these developments that are, moreover, consistent with the evolution of international law. Such cases, in fact, are addressed by the current legal framework (as set forth in the aforementioned Law No. 91 of 1992), which seeks primarily to resolve any resulting conflicts that may arise from dual nationality.*
It is worth underlying that the significance of these phenomena was acknowledged even at the time, including — as often recalled — in the well-known 1907 judgment of the Court of Cassation sitting in Naples.
The possibility of having "a dual nationality" over time was already then considered an "inevitable consequence [...] *of the concept of sovereignty, which necessarily includes the notes of autonomy and independence of each of them in its own territory."*
The outcome of such a framework is quite straightforward.
Citizenship by birth is acquired* as *an original entitlement.
Citizenship status, once acquired, is permanent and imprescriptible.
It is justiciable at any time on the basis of simple proof of the acquisitive fact integrated by birth as an Italian citizen.
Hence the proof is in the transmission line.
Only extinction by waiver remains unaffected (see already Cass. Sec. U No. 4466-09).
It follows that, ***provided that there is no change in the legislation, where citizenship is claimed by a descendant, he is expected to prove only as follows: that he is indeed a descendant of an Italian citizen****. It is responsibility of the other party, who has taken exception*

to this, to prove the interruptive event of the transmission line. (So verbatim, Joint Sessions of the Supreme Court of Cassation, Order No. 25318 on August 24, 2022)

Similar conclusions had previously been drawn by the jurisprudence of legitimacy; hence it can be considered a consolidated orientation. For the sake of completeness, it is recalled – among many others – what was affirmed by the Joint Sections of the Supreme Court of Cassation in the previous ruling No. 4466 of February 25, 2009, which recognized the principles affirmed by the Constitutional Court in judgments No. 87 of 1975 and No. 30 of 1983, which had extended – as it is well known – the acquisition of citizenship as original title by birth also to children of Italian mothers:

By ordinary law, the child of a citizen father or mother or of unknown parents is entitled to citizenship if born in the national territory (Art. 1 of Law No. 91 of February 5, 1992), with reference to the principles of jus sanguinis *and* jus soli*; the Constitution prohibits that the status can be lost for political reasons (Art. 22 of Italian Constitution) and ordinary law specifies that only those who have it can renounce it (Art. 11 of Law No. 92 of 1991). The* ***normative structure of the institution highlights that every person has a subjective right to the personal condition constituted by the status of citizen****, and so are the international conventions relevant under Article 117 of Italian Constitution (from Article 15 of the Universal Declaration of Human Rights of 1948 to the Lisbon Treaty approved by the European Parliament on January 16, 2008).*

Law No. 92 of 1991 on citizenship reaffirms the existence of this right, which can only be recognized by the competent administrative authorities (Ministry of the Interior, Articles 7 and 8), exceptionally providing for acts granting it by the President of the Republic, with limited political discretion*, in relation to the special circumstances indicated by law, for which citizenship is granted (Article 9).* ***Citizenship status is permanent and has long-lasting effects that are manifested in the exercise of consequent rights****; as noted,* ***it can be lost only by renunciation****, as was also the case in the previous legislation (Art. 8, No. 2 of Law No. 555 of 1912).*

After the Convention on the Elimination of All Forms of Discrimination against Women, adopted in New York on December 18, 1979, and ratified in Italy by Law No. 132 of March 14, 1985, referred to in the present appeal, women are entitled to "rights equal to men in the matter of the acquisition, change and preservation of citizenship." In the Law of 1912, as construed by the Constitutional Court in the two aforementioned judgments, a woman's marital status as "married to a foreigner" and that of "filiation" only from a citizen father respectively entailed the loss or acquisition of citizenship, whereas it was not granted to a child of a woman who had lost it by marriage.

No exclusive reference to birth or mere jus sanguinis has ever justified, nor does it currently justify, the acquisition of citizenship status, which arises instead from filiation—including today through adoption. The idea of deriving citizenship solely from being born to a person with a specific nationality is now debatable and outdated, as it dangerously approaches the concept of 'race,' a notion that is incompatible with civilization itself, even before being incompatible with Article 3 of the Constitution. Citizenship, as exactly stated by the best doctrine, assumes its meaning and significance not only in the regulation of the vertical relations of its holder with the state that exercises sovereign powers over him, but also in the horizontal relations with other members of the society in which he participates, members that are also holders of the same status (Article 4 of the Constitution). Through the filial relationship that connects a person to the intermediate social formation constituted by the family, the so-called "natural society" (Articles 2 and 29 of the Constitution), the individual relates to the entire society and is entitled to the recognition of the status of citizen and the consequent rights and duties.

Therefore, it is correctly affirmed that ***the status of a citizen, as a result of the condition of a child, as in the present case, constitutes an essential quality of the person, characterized by absoluteness,***

originality, inalienability, and exemption from any statute of limitations, which renders it justiciable at any time and, as a rule, not subject to being considered exhausted or closed, except when it has been denied or recognized by a final and binding judgment.

This reconstruction of the concept of citizenship emerges from the same judgments on the pre-constitutional law that governed citizenship matters by the Constitutional Court, which hold that the loss and failure to acquire status imposed by illegitimate legislation is the effect of marriage, provided that it remains effective and has not been dissolved, and of being the child of a mother who suffered the loss of status against her will, without renouncing it. […] (So verbatim, Joint Sessions of the Supreme Court of Cassation, Order No. 25318 on August 24, 2022)

In application of the so-called "living law," therefore, it must be concluded that in the regime prior to Decree-Law No. 36/2025 foreign-born individuals who could prove their uninterrupted descent from an Italian citizen for this reason were only Italian citizens, as "Italian citizen" would mean an "***essential quality of the person, characterized by absoluteness, originality, inalienability, and exemption from any statute of limitations***" (Joint Sessions of the Supreme Court of Cassation, Order No. 4466/2009).

7. Therefore, in the opinion of this Court, the interpretative doubt raised earlier in paragraph 5.1 must be resolved in the sense that – under the legal regime in force prior to Decree Law No. 36/2025 – individuals born abroad to an Italian ancestor originally were Italian citizens. Indeed, the condition that they had, or had not, acted in court for the "formal" recognition of their status as citizens constituted a mere factual circumstance, irrelevant to the recognition of the right. In other words, it could not be considered a 'progressively formed' legal relationship, but rather a perfect subjective right that arose upon the person's birth.

The opposing interpretative hypothesis, under which citizenship status would not yet be 'complete' and would require formal judicial recognition, is inconsistent with the hermeneutic approach traditionally adopted by both the Constitutional Court and the Supreme Court of Cassation, as referenced above. Particularly, it contrasts with the **declaratory** (rather than constitutive) **nature** that is universally attributed to judgments establishing citizenship *jure sanguinis*. This proves that judicial (or administrative) intervention did not entail the constitution of any right to citizenship in the hands of the descendants of an Italian ancestor, but the simple recognition of a right already acquired by them. Otherwise opining, in fact, we would be dealing with a hypothesis of the acquisition of citizenship "by naturalization" (as is the case for foreign individuals who reside in Italy for a given period of time, upon the occurrence of the circumstances legislatively provided for) and not of the acquisition of citizenship "by birth," as was undoubtedly the case for citizens *iure sanguinis* in the regime prior to Decree-Law No. 36/2025.

7.1 Reading Article 1 of Decree-Law No. 36/2025 in light of these principles, the following considerations are still required.

The new norm entails a limitation of citizen status, already acquired originally by foreign-born individuals with Italian ancestors.

As repeatedly mentioned, the 'living law' (most recently the subject of the nomophylactic interpretation by the Joint Sections of the Supreme Court of Cassation in the aforementioned judgment No. 25318/22) attributes relevance - for the purposes of the recognition of the status of Italian citizen - to the sole circumstance of being a direct descendant of an Italian ancestor (provided that the line of transmission of citizenship is not interrupted by a voluntary act of revocation, a circumstance to be excluded in the present case at hand), without any relevance being assumed by the circumstance of whether or not the applicant's ascendants have, or have not, exercised their right to 'formal' recognition of citizenship.

In other words, citizenship status is part of a person's legal patrimony and is acquired at birth by original title. This right, which is not subject to any statute of limitations, may be judicially ascertained at any time; however, the absence of judicial recognition of this subjective right does not negate the existence of the right itself. In this regard, reference is made to what was affirmed by the Supreme Court of Cassation in its Joint Sections judgment No. 29459 of November 13, 2019: in that case, The Supreme Court, called upon to rule on the applicability of the restrictive provisions on humanitarian protection introduced by the 2020 legislative amendment, had ruled out their retroactive application - that is, to applications submitted prior to the introduction of the aforementioned legislative amendment - observing that:

> *the general principle of non-retroactivity, which does not enjoy constitutional protection in the matter in question,* […] *is still established, unless there are derogations, by Article 11 of the Preliminary Provisions* (Preleggi) *to the Civil Code. Apart from distinctions that are primarily descriptive in nature—such as those between strict retroactivity and quasi-retroactivity—its purpose is to protect not acts, but rights. What the prohibition of retroactivity guarantees is the prohibition against altering the legal relevance of facts that have already fully occurred (in the case of instantaneous events) or of facts constituting a legal situation that has not yet been completed (in the case of ongoing situations not concluded at the time of repeal).*

Once it has been clarified that, in the present case, the appellants were born Italian citizens, it must consequently be concluded that the regulations set forth in Decree-Law No. 36/2025 introduce a case of "**implicit revocation**" of citizenship. Furthermore, it constitutes a case of "**retroactive revocation**" insofar as the new rules apply to all cases that are not pending as of 11:59 p.m. on March 27, 2025 (the day before the entry into force of Decree-Law No. 36/2025).

*** *** ***

That being said, it should be noted the presence of **serious doubts as to the compatibility of the aforementioned Article 3-*bis* of Law No. 91 of February 5, 1991**, introduced by Article 1, paragraph 1 of Decree- Law No. 36 of March 28, 2025, converted with amendments by Law No. 74 of May 23, 2025, with the constitutional parameters inferred from Articles 2, 3, 22, and Article 117, paragraph 1, of the Constitution.

I. – On the violation of Articles 2 and 3 of the Constitution.

First, the violation of Articles 2 and 3 of the Constitution (violation of the principle of equality) must be challenged.

From this perspective, there is an absolute arbitrariness in the differential treatment of people who had filed a judicial application before March 28, 2025 and those who filed after this date, with the variation in applicable law not being linked to any other objectively relevant factor.

In this regard, constitutional case law has derived from Articles 2 and 3 of the Constitution the existence of a general principle of reasonableness of regulations, which must respect an equally general principle of 'reliance on legal certainty'. These principles have mostly been affirmed in social security matters, where legislative interventions have most frequently occurred: in order to meet contingent budgetary needs, such interventions have attempted to affect to affect pension benefits already being paid out. Hence the doctrinal definition according to which, in pension matters, the ordinary legislator is faced with the insurmountable constitutional limit of so-called '**vested rights**'.

However, the principle of 'reliance on legal certainty' and the protection of 'vested rights' are believed to have a broader scope, which cannot be limited to social security matters alone. The reliance on legal certainty constitutes a principle immanent in the constitutional system, underlying the 'social pact' on which the republican order is founded. Indeed, an ordinary legislator not bound to respect vested rights could infringe not only upon established rights in matters such as pensions or citizenship, but also upon any other constitutionally protected right, such as, by way of example, the right to property or the right to savings.

Among the numerous Constitutional Court judgments that state the constitutional illegitimacy of ordinary legislation retroactively affecting rights already acquired in the legal patrimony of the individual (in this sense, see Constitutional Court No. 169 of 2022), the central argumentative passage of Judgment No. 69 of 2014 is hereby recalled as follows:

> *In this regard, this Court has further, and repeatedly, clarified how the **retroactive effect of the law finds, in particular, a limit in "the principle of legitimate expectations of individuals in the certainty and stability of the legal system"**. The failure to comply with it results in unreasonableness and entails,*

as a consequence, the illegitimacy of the retroactive rule (Judgments No. 170 and No. 103 of 2013, No. 271 and No. 71 of 2011, No. 236 and No. 206 of 2009, for all).
And, in line with this orientation, it has also pointed out that the principle of reliance also applies to procedural matters and is violated when faced with interpretative, or at least retroactive, solutions adopted by the legislator with respect to those established in practice (Judgments No. 525 of 2000 and No. 111 of 1998).
With even more punctual regard to procedural provisions on the terms of action, this Court has, in any event, ***ruled out the possibility that the institution of forfeiture*** **(decadenza)** ***can, by its very nature, tolerate retroactive applications, as "it is logically inconceivable to envisage the extinguishment of a right*** **[…]** ***due to the holder's failure to exercise it in the absence of a prior determination of the time limit within which such right*** **[…]** ***must be exercised."*** *(judgment no. 191 of 2005)* (so verbatim Constitutional Court, judgment no. 69 of 2014)

In the opinion of the referring judge, these principles must be applied in the case at hand. It must be borne in mind, in particular, that the case law regarding *jure sanguinis* citizenship is especially well-settled, consisting of an innumerable number of decisions which, in cases identical or similar to the present one, have consistently recognized the right to citizenship. On this point, see Constitutional Court judgment No. 70 of 2024, insofar as it states that *"it should be considered the degree of consolidation of the subjective situation originally recognized and then swept away by the retroactive intervention (Judgments No. 89 of 2018, No. 250 of 2017, No. 108 of 2016, No. 216 and No. 56 of 2015)."*

Another argument supporting the view that the mechanism introduced by Decree-Law No. 36/2025 is arbitrary and unreasonable – namely, the implicit revocation of citizenship with retroactive effect and without any provision governing intertemporal law – can be drawn from the comparative experience of similar legal systems.

The case of the German legal system is particularly significant. The federal legislative framework for citizenship is primarily contained in the Citizenship Act (*Staatsangehörigkeitsgesetz - StAG*) of July 22, 1913, which has undergone various reforms over the years. For the purposes here, it is necessary to consider the reform that was implemented by the law of July 15, 1999, which came into force on January 1, 2000, which introduced an additional condition for the acquisition of German citizenship – the principle of place of birth (*jus soli* or *Geburtsortsprinzip*), in addition to the principle of filiation (*jus sanguinis* or *Abstammungsprinzip*). From this perspective, Art. 4(4) of StAG states that *"German citizenship is not acquired at birth abroad according to paragraph 1, if the German parent was born abroad after December 31, 1999 and is habitually resident there, unless the child is stateless.* […] *".* This means that the German legislator of 1999 wanted to make the new (and more restrictive) citizenship legislation applicable only to those born after January 1, 2000 – that is, without providing for any retroactive application (to the detriment of the individual). In the opinion of the referring judge, such comparative experience constitutes further evidence of the untenability of the legislative

choice made by Decree-Law No. 36/2025, which sets aside the legislation on the acquisition of Italian citizenship by birth that has been in force since 1912, through a decree-law with immediate effectiveness and retroactive effect.

II. – On the violation of Article 117, paragraph 1 of Constitution.

The unreasonableness of legislation that restricts citizenship rights already forming part of an individual's legal patrimony, without the person having renounced them or committed any culpable act incompatible with such status (as in the cases set forth in Articles 10-*bis* and 12 of Law No. 91/1992), is in conflict not only with the aforementioned principles of reasonableness and legitimate expectations derived from Articles 2 and 3 of the Constitution, but also with the international obligations undertaken by Italy pursuant to Article 117, paragraph 1, of the Constitution.

With regard to the justiciability of violations of treaty-based international law before the Constitutional Court, reference is made to the well-established line of case law summarized in Judgments Nos. 348 and 349 of 2007. According to the Constitutional Court:

> *in the event of any question arising from alleged contrasts between interposed norms and internal legislative norms, it is necessary to jointly verify the conformity with the Constitution of both and precisely the compatibility of the interposed norm with the Constitution and the legitimacy of the norm censured with respect to the interposed norm itself.*

Specifically, with regard to the need to raise a constitutional question whenever domestic legislation is in irreconcilable conflict with treaty provisions, the Constitutional Court has held that

> *It is for the ordinary courts to interpret domestic law in a manner consistent with international provisions, within the limits permitted by the texts of the respective norms. Where such an interpretation is not possible, or where the judge doubts the compatibility of the domestic provision with the 'interposed' convention provision, the judge must refer the relevant question of constitutional legitimacy to this Court, with Article 117, paragraph 1, serving as the parameter for review.* (Constitutional Court No. 349 of 2007).

With specific reference to the violation of Art. 117 paragraph 1 of the Constitution in relation to norms of European Union law – as such also justifiable through the proposition of a preliminary reference to the Court of Justice under Article 267 TFEU – it is noted that Italian constitutional jurisprudence has now been consolidated in the sense of the so-called 'mutual exclusivity of remedies'. On this subject, reference is made to the recent **Constitutional Court judgment No. 7 of 2025**, which effectively reconstructed the terms of the issue as follow:

> *The Referring Chamber was therefore faced with the choice of either deciding directly on the incompatibility of Article 2641 of the Civil Code with Article 49, paragraph 3 of the Charter of Fundamental Rights of the European Union (CFREU) – and consequently confirming or annulling the*

ruling of the Court of Appeal on this matter – potentially after making a preliminary reference to the Court of Justice (as suggested by the appellant Prosecutor General); or of referring the question to this Constitutional Court for an assessment of the constitutionality of the same Article 2641 of the Civil Code, both in light of the national constitutional parameters underpinning the principle of proportionality of penalties, and of Article 49, paragraph 3 CFREU itself (as well as Article 17 CFREU, which protects the right to property under EU law), through Articles 11 and 117, paragraph 1 of the Constitution.

2.2.2. - The decision of the Referring Chamber to walk the latter path is in accordance with the principles now repeatedly enunciated by the constitutional jurisprudence (starting with Judgment No. 269 of 2017, point 5.2. of the Legal Reasoning) for the hypothesis in which the court detects an incompatibility between a national law and a rule of Union law with direct effect.

Where the issue also has "a 'constitutional tone', due to the connection with interests or principles of constitutional relevance (judgment No. 181 of 2024, point 6.3. of the Legal Reasoning), beyond the possibility of disapplying, in the concrete case, the national law, after a preliminary reference to the Court of Justice in case of doubt on the interpretation or validity of the relevant rule of the Union, the Italian court always has the further possibility of soliciting the intervention of this Court, so that it removes the national law deemed incompatible with Union law (in the same sense, recently, judgment no. 1 of 2025, paragraph 3.1. of the Legal Reasoning).

The two possibilities – constituting a 'concurrence of judicial remedies [which] enriches the instruments available for the protection of fundamental rights and, by definition, excludes any preclusion' (Judgment No. 20 of 2019, paragraph 2.3. of the Legal Reasoning) – are both based on the principle of the primacy of Union law, the protection of which can be ensured in an 'increasingly integrated' manner (Judgment No. 15 of 2024, paragraph 7.3.3. of the Legal Reasoning), either by each court through the remedy of disapplying the national law incompatible in the specific case, or by this Court through a declaration of its constitutional unlawfulness due to conflict with Union law.

This latter remedy, as already emphasized in Judgment No. 20 of 2019, is of particular significance precisely in the area of the protection of fundamental rights, where it is essential that national constitutional and supreme courts can 'contribute, for their part, to making effective the possibility, referred to in Article 6 of the Treaty on European Union (TEU) […] *that the corresponding fundamental rights guaranteed by European law, and in particular by the CFREU, are interpreted in harmony with the constitutional traditions common to the Member States, which are also referred to by Article 52(4) of the CFREU as relevant sources' (para. 2.3. of the Legal Reasoning).*

It is therefore incumbent upon the ordinary courts to identify, case by case, the most appropriate remedy.

II-1. That being said, it is first noted that there is a violation of Article 117 paragraph 1 of the Constitution in relation to Articles 9 TEU and 20 TFEU, which establish and regulate European citizenship as a status in addition to that of a citizen of a member state.

Such a challenge is admissible in view of the impact that Italian citizenship has on the holding of European Union citizenship. It is also relevant because the situation of loss of Italian citizenship introduced by Decree-Law No. 36/2025 undoubtedly affects norms of Union law that have direct effect in our legal system, since the norms of the Treaties establishing European citizenship cannot be qualified otherwise *("A citizen of the Union is anyone who holds the nationality of a Member State",* Article 9 TEU; *"A citizenship of the Union is established. Every person holding the nationality of a Member State shall be a citizen of the Union"*, Article 20 TFEU).

In this regard, it is noted that in its judgment of September 5, 2023, C-689/21, Case *X v. Udlændinge- og Integrationsministeriet*, the CJEU was called upon to rule on Danish legislation which, for Danish nationals born abroad, prescribed the *ipso jure* loss of nationality on reaching the age of 22, if there was no actual link with Denmark. In that case, the Court stated verbatim that

> ***The situation of citizens of the Union who* […] *possess the nationality of only one Member State and who, with the loss of that nationality, find themselves without the status conferred by Article 20 TFEU and the rights attached to it falls, by its nature and by its consequences, within the sphere of Union law***. *Therefore, when exercising their competence in the field of citizenship, Member States must respect Union law and, in particular, the principle of proportionality [Judgments of March 2, 2010, Rottmann, C-135/08, EU:C:2010:104, paragraphs 42 and 45; of March 12, 2019, Tjebbes and Others, C-221/17, EU:C:2019:189, paragraph 32; and of January 18, 2022, Wiener Landesregierung (Revocation of a naturalization guarantee), C-118/20, EU:C:2022:34, paragraph 51].*

In particular, the Court of Justice had occasion to point out that

> *the* ipso jure *loss of the nationality of a Member State would be incompatible with the principle of proportionality if the relevant national rules did not allow, at any time, an individual examination of the consequences brought about by that loss, for the individuals concerned, from the point of view of Union law.*

In the aforementioned judgment, in accordance with its earlier case law (see judgment March 3, 2019, C-221/17, *Tjebbes*, paragraph 41, as well as, more recently, judgment April 25, 2024, C-684/22, S.O. v. Stadt *Duisburg*, paragraph 43), the Court has also clearly ruled that **the State must guarantee the possibility of making a request for the preservation or recovery of citizenship with retroactive effect within reasonable time limits**, which can only begin to run after each individual – who is subject to a possible forfeiture – has been specifically notified of the imminence of such an event, thereby being granted the opportunity to submit a request aimed at preventing the occurrence of the extinguishing event (CJEU, judgment September 5, 2023, C-689/21, paragraphs 50-52).

For the reasons already amply stated, it must therefore be concluded that the Italian legislation introduced by Decree-Law No. 36/2025 violates the rules of the Treaties establishing European citizenship, resulting in the loss of Italian citizenship to the detriment of individuals who – aside from the merely formal fact of not yet having initiated judicial or administrative proceedings to have their right recognized – were unquestionably to be considered Italian citizens by birth, without any intertemporal legal mechanism being provided to allow them to retain their citizenship within a reasonable period (for example, by establishing a 'time window' within which they could file an administrative or judicial application for recognition of their citizenship).

II-2. There is also a violation of Art. 117 paragraph 1 of the Constitution in relation to Art. 15 paragraph 2 of the Universal Declaration of Human Rights of December 10, 1948, according to which

"no individual shall be arbitrarily deprived of their citizenship, nor of the right to change citizenship".
In the present case, it is inferred precisely the arbitrariness of the criteria of "implicit revocation" introduced by Art. 1 paragraph 1 lett. a) and b) of Decree-Law No. 36/2025, insofar as they make the "revocation" (i.e., the impossibility of asserting in court one's original right to the recognition of Italian citizenship) retroactive to 11:59 p.m. of the day before the entry into force of the same Decree-Law.

On this point, it is noted substantial difference between Article 15 paragraph 2 of the Universal Declaration of Human Rights and Article 22 of the Constitution: indeed, the international provision employs the adverb '*arbitrarily*,' whose scope is lexically and structurally broader than the phrase '*for political reasons*' as adopted by the Italian constitutional provision. If 'political reasons' must mean 'essentially political' motives (see the revocation of citizenship to the detriment of an ethnic minority or the members of a given political, philosophical, religious or cultural movement), the adverb 'arbitrarily', on the other hand, contemplates any hypothesis of deprivation of citizenship that, beyond its 'political' or 'common' motives, is found to be unjust, unjustified, unreasonable; that is, arbitrary.

In the case of the aforementioned Article 3-*bis*, for all the reasons extensively set forth above in paragraph I, it must therefore be held that the indiscriminate and retroactive loss of citizenship imposed on all Italian citizens born abroad, solely on account of their failure to manifest (through administrative or judicial proceedings) their intention to avail themselves of their citizenship right (which, it bears repeating, was attributed to them from birth *iure sanguinis* and at a historical moment when reliance on the continuation of the established legislative and jurisprudential framework on citizenship was at its highest), constitutes a case of arbitrary deprivation of citizenship, resulting in a violation of the precept set forth in Article 15(2) of the Universal Declaration of Human Rights, which is protected within our legal system through Article 117(1) of the Constitution, as interpreted by constitutional jurisprudence (see Constitutional Court, Judgments No. 348 and No. 349 of 2007, cited above).

II-3. Finally, it is believed that Art. 3-*bis* of Law No. 91/1992 violates Art. 117 paragraph 1 of the Constitution, also in relation to Art. 3 paragraph 2 of the Fourth Additional Protocol to the European Convention on Human Rights, pursuant to which *"no one shall be deprived of the right to enter the territory of the State of which he is a national"*. In the present case, we would find ourselves in the presence of subjects who have held Italian citizenship since birth (i.e., a subjective right), who would be deprived of their right to enter Italian territory for the mere fact of not having requested – administratively or judicially – the recognition of their right by 11:59 p.m. of the day before the Decree-Law No. 36/2025 entered into force.

III – <u>Conclusions</u>

Therefore, it must be concluded that the ordinary legislation introduced by Decree Law No. 36/2025 is constitutionally illegitimate to the extent that it retroactively applies the restrictive effects of the citizenship status to a time before the law itself came into effect.

In other words, it is constitutionally illegitimate for the ordinary legislator to establish in Art. 3-*bis* Law No. 91/1992 that *"as an exception"* to the applicable regulations *"a person who was born abroad <u>even before the effective date of this article</u> and holds another citizenship is considered never to have acquired Italian citizenship",* limiting to the Subsequent letters (a) to (d) the right to ascertain Italian citizenship 'by birth' to compliance with certain conditions inserted *ex novo* by the same Decree-Law No. 36/2025.

That is, for the aforementioned reasons and according to the parameters of Articles 2, 3 and 117 paragraph 1 Constitution, it is doubted whether it is constitutionally legitimate to backdate the limitations to a citizenship status that has already been acquired in its original title by the foreign-born descendant of an Italian citizen, in deference to the legislation in force until March 27, 2025.

The legislative choice introduced by Article 3-*bis* of Law No. 91/1992 is, as stated, comparable to an 'implicit revocation'; this finding should have, at the very least, necessitated the provision of a reasonable period for the submission of an application for recognition of Italian citizenship (for example, *"within one year of the entry into force of this decree-law"*), thereby linking the loss of Italian citizenship to the failure to timely submit an application (whether administrative or judicial) for recognition of such citizenship. Having provided for a retroactive limitation of the right to apply for the recognition of Italian citizenship, in the head of individuals who under the application of the previous legislation were unquestionably considered Italian citizens in their original capacity from birth (even if born abroad and in possession of another citizenship), therefore constitutes - in the opinion of this Court - a violation of the aforementioned principles of reasonableness and reliance on legal security in violation of Articles 2, 3 and 117 paragraph 1 of the Constitution.

The provision of Article 3-*bis* of Law No. 91 of February 5, 1992, introduced by Decree-Law No. No. 36 of March 28, 2025, thus presents profiles of possible incompatibility with the above-mentioned parameters in the part in which it establishes in paragraph 1, first sentence, the applicability of the new legislation to those born abroad *"even before the date of entry into force of this article,"* as well as with reference to the conditions introduced in letters a) a-*bis*) and b), in that it thereby introduces a case of automatic revocation with immediate effect of Italian citizenship for all those persons born abroad and in possession of other citizenship who do not meet the subjective features introduced by the same decree law in Art. 1(c) and (d) (existence of the so-called 'genuine link'). In other words, the partial unconstitutionality of aforementioned Art. 3-*bis* derives from the fact that it

would have been possible to provide for an intertemporal regulation such that the individuals concerned (i.e., Italians born abroad, in possession of other citizenship and lacking a 'genuine link' with Italy) would have been duly informed of the normative changes that have occurred, in order to be able to submit - within a reasonable time the application (administrative or judicial) for the recognition of citizenship *iure sanguinis*.

The declaration of partial unconstitutionality of Art. 3-*bis* Law No. 91/1992 in the terms outlined above would also make it possible to preserve the useful effect of the legislative reform, which pursues the intention of giving concrete implementation in our legal system to the international principle of the *'legame affettivo'* (or "genuine link," most recently reaffirmed by the EU Court of Justice in its judgment of April 29, 2025, Case C-181/23) by eliminating only the detrimental consequences arising from the retroactive application of the new legislation (i.e., to all persons already born). Given the derogatory nature of Art. 3-*bis* Law No. 91/1992, in fact, once the periods expressly providing for its retroactive application are eliminated, only one constitutionally oriented interpretation of the new legislation on citizenship would remain: that of the applicability of Art. 3-*bis* only to persons born after the entry into force of Decree-Law No. 36/2025, the general rule in Article 11 of the Preliminary Provisions, according to which *"the law only provides for the future"* applies, in the absence of an express provision for retroactivity.

In this perspective, the declaration of partial unconstitutionality of Article 3-bis cit. could also be accompanied by a manipulative-additive type of intervention by the Constitutional Court, with provision for an intertemporal law mechanism that would guarantee – to all persons already born on the date of the entry into force of Decree-Law No. 36/2025 – the possibility of submitting an application for the recognition of citizenship within reasonable time limits, pursuant to the principles affirmed by the Court of Justice of the EU in the aforementioned judgment of September 5, 2023, C-689/21.

For all the foregoing reasons, the issue of unconstitutionality of Article 3-*bis* of Law No. 91 of February 5, 1992 (New Regulations on Citizenship), introduced by Decree-Law No. 36 of March 28, 2025 (Urgent provisions on citizenship), insofar as it states *"even prior the date of entry into force of this article"* and establishes the conditions set forth in letters a), a-*bis*) and b), in reference to the parameters set forth in Articles 2, 3 and 117 of the Constitution, having regard for the latter to the principles derived from the international law and, in particular, from Art. 9 of the Treaty on European Union, Article 20 of the Treaty on the Functioning of the European Union, Article 15 paragraph 2 of the Universal Declaration of Human Rights of December 10, 1948 and Article 3 paragraph 2 of the Fourth Additional Protocol to the European Convention on Human Rights.

FOR THESE REASONS

Having regard to Article 134 of the Constitution, 1 Constitutional Law No. 1/1948 and 23 Law No. 87 of 1953,

Having found the issue of the constitutional legitimacy of Article 3-*bis* – limited to the words *"even prior to the date of entry into force of this article"* and to the conditions set forth in letters a), a-*bis*), and b) – of Law No. 91 of February 5, 1992, as introduced by Decree-Law No. 36 of March 28, 2025, converted with amendments by Law No. 74 of May 23, 2025, to be relevant and not manifestly unfounded, with reference to Articles 2, 3, and 117 paragraph 1 of the Constitution, the latter in relation to principles derived from international law and, in particular, from Article 9 of the Treaty on European Union, Article 20 of the Treaty on the Functioning of the European Union, Article 15 paragraph 2 of the Universal Declaration of Human Rights of December 10, 1948, and Article 3 paragraph 2 of Protocol No. 4 to the European Convention on Human Rights.

ESTABLISHES

The transmission of the case files to the Constitutional Court and the suspension of the proceedings.

ORDERS

That this order be notified to the parties and the Prime Minister and communicated to the Presidents of the Senate of the Republic and the Chamber of Deputies.

Turin, June 25, 2025

Judge Fabrizio Alessandria