PUBLIC PROSECUTOR'S OFFICE

of the Court of Cassation

FIRST CIVIL SECTION

Closed session of March 6, 2025

Appeal in the General Registry (R.G.) No. 11785/2024

Reporting Judge: LAURA TRICOMI

Petitioners:

[redacted]

[redacted]

(ADRIANA MARIA RUGGERI as Defence Attorney; [redacted] as Process Agent)

Respondent:

MINISTRY OF THE INTERIOR

PUBLIC PROSECUTOR AT THE OFFICE OF THE COURT OF CASSATION

Memorandum containing the conclusions of the Public Prosecutor

Having considered the appeal in the matter of Case No. 11785/2024 of R.G.
and examined all the proceedings,
the Public Prosecutor makes the following observations:
1. In the original petition filed under Article 702-*bis* of the Italian Civil Procedure Code on April 28, 2021 [redacted] Ott applied to the Ministry of the Interior for the determination and recognition of their Italian citizenship *iure sanguinis* as descendants of their great-grandmother, Marianna [redacted].
However, pursuant to Article 702-*ter* of the Italian Civil Procedure Code (Rep. No. 4735/2022) dated March 8, 2022, the Court of Rome ordered the rejection of their application due to the naturalization of the above-named Italian ancestor, Marianna [redacted], during the minor age of her descendent, named James Errera, born in U.S.A., applying Art. 12 paragraph 2 of Law No. 555 of 1912 instead of Art. 7 of the afore-mentioned law concerning minor children born abroad.
Similarly, the Court of Appeal denied the petition for the recognition of Italian citizenship filed by the petitioners hereof based on the same legal grounds and stated the enforceability of Art. 12 of Law No. 555/1912 instead of Art. 7 of the same law.
As they retread their genealogy, the petitioners claim as follows:

- That they are descendants of their Italian great-grandmother Marianna [redacted], born on March 20, 1896 and married to Giovanni [redacted];
- That they are Italian citizens *iure sanguinis* under Articles 1(1) and 7 of Law No. 555/1912, as James [redacted] Ott have never renounced their Italian citizenship.

In particular, the petitioners recur to Art. 1(1) of the above-mentioned law stating that *"the son of a citizen shall be citizen by birth"* and the same principle should apply when the Italian nationality is derived from their maternal ancestor (Marianna [redacted]), as provided by the Italian Constitutional Court (Judgment No. 30/1983), which stated that Art. 1 was constitutionally unlawful for violation of Articles 3 and 29 of the Italian Constitution, as a section of Art. 1 provided that "*the citizenship wasn't acquired by birth to children born to female citizens*".

Furthermore, the fact that James [redacted], son of Marianna [redacted], was born before the enactment of the Italian Constitution has been superseded, as the Joint Sessions (Sezioni Unite) of the Court of Cassation have consistently upheld the principle that *"the right to Italian citizenship is a permanent and imprescriptible status at all times"* (see Sezioni Unite Judgment No. 4466 of February 25, 2009).

According to the petitioners, since James was born in the United States to Italian citizens, his case should be considered under Article 7 of Law No. 555/1912, which states: *"Unless otherwise provided by international treaties, an Italian citizen born and residing abroad, who is recognized as a citizen of that country by birth, retains Italian citizenship. However, upon reaching the age of majority or emancipation, they may renounce it."*; it shouldn't be considered under Article 12 of Law No. 555/1912, as erroneously established first by the trial judge and then by the court of appeal.

[redacted] Ott filed an appeal in cassation based on four grounds.

2. The basic legal issue concerning the acquisition of Italian citizenship by descent (specifically: the naturalization of Italian citizens during the minority age of their children born abroad), although already addressed by this Court of Cassation, still presents several problematic issues to be verified.

In the matter of this case, it is necessary to consider the scope of applicability respectively of Art. 7 and Art. 12 of Law No. 555/1912 in order to ascertain whether the children of Italian emigrants, born in countries where *jus soli* was in force, would remain Italian (at least until the age of majority and then make the choice whether or not to renounce their Italian citizenship) or whether they would lose their citizenship as a result of naturalization acquired.

Moreover, this matter concerns rights of individuals of constitutional importance.

3. According to this Office, the appeal is well-founded.

The first ground (Violation and misapplication of rules of law pursuant to Article 360, Paragraph one, number 3, of the Italian Civil Procedure Code in relation to Articles 7 and 12 of Law No. 555/1912) is pivotal and well-founded.

The petitioners well reconstruct the complex regulatory framework, pointing out the peculiarity of Article 7 of Law No. 555/1912 which states: *"Unless otherwise provided by international treaties, an Italian citizen born and residing abroad, who is recognized as a citizen of that country by birth, retains Italian citizenship. However, upon reaching the age of majority or emancipation, they may renounce it."*

Unlike the previous law dated 1865, this rule included in the new regulatory framework of Law No. 555/1912 aimed to claim the retention of Italian citizenship and to narrow down the cases of loss of Italian citizenship, thus protecting those who emigrated abroad.

This provision regulated dual nationality scenarios, recognizing that children born to Italian parents (Italians by birth through filiation) retained their Italian citizenship despite acquiring foreign nationality at birth (*jus soli*).
In determination of this case, the Court improperly referred to the order of the Court of Cassation (Civ. Cass., sect. 1, order 17161/2023 which transposed Cass., sect. 1, No. 9377 of 2011); however, it is hereby pointed out that the matter of this case concerns the birth from an Italian parent (mother) in a country where foreign citizenship was acquired as a result of the *jus soli* at birth.
The condition was that of being at the same time an Italian citizen and a foreign citizen, and the naturalization through the mother, which occurred after birth, could not have affected the dual citizenship acquired both by birth from an Italian parent and by *jus soli* in a foreign country.
In this context, the considerations made by the petitioners are entirely appropriate, as they recite: *"At the time of birth, the foreign-born child referred to in Article 7 already possessed two citizenships: one transmitted* iure sanguinis *and one acquired* ius soli*. This condition was maintained until the age of majority, with no exceptions unless arising from international agreements."*
Such a legal interpretation is correct and takes into account the principle of the Reorganization Act of 1912, which proved from the beginning to incorporate ideals aimed at protecting Italian emigrants abroad.
The Law of 1912, in fact, was inspired by the need to preserve the emigrants' link with the Kingdom of Italy through the recognition of Italian citizenship in a greater number of cases.
After all, as well-stated by the petitioners, since the late 1800s *"the States of the Americas had applied aggressive policies towards the populations immigrating there by providing automatic naturalization mechanisms (see the so-called Great Naturalization in Brazil). The regulations subsequently enacted in Italy were thus intended to affirm the maintenance and preservation of Italian citizenship by narrowly construing the hypotheses of loss of citizenship."*
Furthermore, the Court of Appeal erroneously claimed: *"In other words, the aforementioned provision (Article 7), as noted by the local Court, refers to the different case of dual citizenship, which does not apply in the current case since the appellant, as mentioned, was the son of a U.S. citizen at the time of his birth"*.
In the current case, the appellant at birth was an American citizen (*jus soli*) but also Italian citizen (*jus sanguinis*) as the son of an Italian citizen.
It follows that Italian citizenship on the maternal side could not have been obliterated, thus applying Art. 12 of Law No. 555 of 1912 and not considering that Art. 7 was the special rule aimed at specifically regulating cases of dual citizenship, as it recognized the minor's possibility of retaining citizenship subject to the possibility of renounce it after reaching the age of majority.
Moreover, such a solution complies with what has been affirmed by the Court of Cassation in Joint Sessions (see Judgment No. 25317 of August 24, 2022), which preached an interpretation of the rules on citizenship in light of constitutional principles (supra), stating that the right of citizenship can be counted among the fundamental rights.
This Office also notes that the interpretation of rules shall not be guided by the need to regulate the phenomenon in a restrictive way for reasons not strictly related to the law so as to penalize those who – even if they have always lived abroad – prove that they have not lost their connection with the so-called *jus sanguinis*.
The effect of such an interpretation would be to nullify the provision of Article 7 of the above-mentioned Law for the benefit of Article 12, but without explaining a real and effective distinction between the two rules.

Nor can it be forgotten that Law No. 555 of 1912 profoundly innovated from the former discipline (Art. 11, Paragraph 3, Law 1865), which expressly provided the status of aliens for the wife and minor children of one who lost citizenship, unless the same had continued to hold their residence in the kingdom.
In conclusion, this Office claims that Article 12 is of doubtful application to the current case for all the reasons considered above, as the provision cannot usefully refer to minors born in foreign countries where jus soli is in force: as a result, the ones that are already foreigners by birth cannot become foreigners.
A constitutionally-oriented interpretation of the norms is therefore construed, enhancing Article 7, herein repeatedly referred to as to avoid the possible conflict of Article 12, Paragraph 2 of the mentioned Law with Articles 2, 3 and 31 of the Constitution in the part in which the latter norm links the effect of the loss of citizenship to the minor age without considering the will in cases where a real capacity for discernment exists.
As per the second ground (violation of Articles 3 and 9 of Law 555 of 1912), the decision is criticized in the part where it highlights the failure to submit evidence of a subsequent reacquisition of citizenship pursuant to Articles 3 and 9 of the aforementioned law.
However, the petitioners could not have actually relied on these norms since only upon the decision of the Court of Cassation in Joint Sessions dated February 25, 2009 the possibility of transmission and acquisition of citizenship was established through the maternal line, even before the entry into force of the Constitution.
As underlined by the petitioners, it follows that the terms set forth by the legal provisions had all expired at the time the right was exercised and it was necessary for the parties to initiate the judicial process.
Therefore, the Court of Appeal referred to a procedure of reacquisition that was not practically applicable, except as a result of a judicial determination aimed at eliminating the discriminatory scope of the provisions declared unconstitutional.
The exception of inconstitutionality at point 3 of the appeal, as stated earlier, is unfounded if the interpretation of the provisions is made with regard to the constitutional respect of the will and self-determination of the minor.
Finally, the fourth ground can be considered absorbed by the conclusions that precede.

AND NOW

This office requests that the Court of Cassation grant the appeal with the legal consequences provided by law.

Rome, February 6, 2025

For the General Prosecutor
Luisa De Renzis, Esq.