GROUNDBREAKING CHANGE IN ITALIAN CITIZENSHIP IURE SANGUINIS RECOGNITION

Explanatory article by Italian Atty. Pietro Derossi regarding the most recent developments in case law and practice on Italian Citizenship by blood

Abstract

As widely known, ever since the creation of the Italian Reign, the principle of *Iure Sanguinis* Citizenship, (citizenship by blood), has always been the main system of citizenship acquisition, as opposed to the *Ius Soli* principle, that is citizenship by being born on the national territory.

Citizenship by birth on the Italian territory, although often debated and proposed by various political parties, never came into existence in the Italian legal framework up to this day.

This paper aims to explain the reasons and the importance of a disruptive change of case law regarding Italian citizenship by ancestry.

The analysis will delve into a new interpretation of the Italian Citizenship Law n. 555 of 1912, and even before, the Civil Code of the Italian Reign, which established the loss of the Italian citizenship of dual citizens (e.g., Italian and American) who were minors when the father was naturalized in a foreign country through the voluntary acquisition of foreign citizenship.

The importance of this new case law of the Court of Cassation cannot be any greater, with effects that will probably be reflected in thousands of applications submitted daily to Italian Consulates, Municipalities, and Tribunals.

The Laws at the centre of the debate and case-law evolution

To understand the issue, it is fundamental to clarify, preliminarily, what are the laws that have been regulating Italian citizenship acquisition ever since the establishment of Italy itself up to this day.

From January 1865 until June 1912, the 1865 Civil Code of the Italian Reign was the law regulating the acquisition of Italian citizenship. Particularly, the norms regarding citizenship were the articles 1 to 15.

From July 1912 until the 15th of August, 1992, the law regulating the acquisition of Italian citizenship was Law n. 555 of 1912 (no longer the 1865 Civil Code).

Lastly, from the 16th of August 1992 onwards, the applicable piece of legislation concerning citizenship is Law n. 91 of 1992 (substituting the 1912 Law). This law introduced the general possibility of multiple nationalities, so that the acquisition of foreign citizenship from the 16th of August, 1992, does not entail the loss of Italian citizenship anymore.

On the contrary, both the aforementioned 1865 Civil Code and Law n. 555 of 1912, although with different wordings, provided that **a)** the adult citizen who was naturalized in a foreign state, by voluntarily acquiring foreign citizenship, would lose Italian citizenship (Art. 11 para. 1 n. 2, 1865 Civil Code; Art. 8 of Law n. 555, 1912), **b)** and, as a consequence, also their minor sons/daughters who were Italian and resided together with the father at the time of naturalization would lose Italian citizenship, as long as they were considered as citizens of the foreign State (Art. 11 para. 2, 1865 Civil Code; Art. 12 para. 2 of Law n. 555, 1912).

The consequence of these rules is that those minors who would lose Italian citizenship as an automatic effect of the father's naturalization could not pass the Italian citizenship on to their children.

The citizenship "chain" was therefore "broken" forever and the descendants living nowadays cannot claim recognition of Italian citizenship.

In examining the applicability of these provisions to any specific case, it is important to highlight that, up until 1975, the Italian legal system considered a person a minor until he/she was 20 years old. Whereas, since 1976, a person is considered a minor until he/she is 17 years old.

The following paragraphs will investigate the more or less extensive application of the abovementioned rules foreclosing the transfer of citizenship to the following generations. More specifically, the article will examine the dominant legal interpretation of the rules until 2023, as well as what seems to be a new and more stringent stance of the Italian Court of Cassation.

The interpretation applied until 2023 by the Public Authorities and the prevailing case law

As is widely known, Italian Consulates and Municipalities, with regard to the recognition of Italian citizenship "by blood", require that the Italian ancestor was *not* naturalized (with consequent loss of Italian citizenship) before the birth of the descendant. Up to this day, however, they had never required that the Italian ancestor was not naturalized before the descendant reached the adult age.

Why Italian Consulates and Municipalities have always applied the abovementioned rule on the loss of Italian citizenship for foreign naturalization just to the father and not also to his minor son/daughter? In other words, why these authorities have always preserved the Italian citizenship of the minor even in case of naturalization of the father, and, therefore, recognized the transfer of citizenship up until the applicant?

The answer is that both the Ministry of Foreign Affairs and the Ministry of Interiors, with two different interpretation guidelines[1], have so far claimed that the preclusive rule under discussion was not applicable to those who were born with dual citizenship: Italian *Iure Sanguinis* (by blood) but also foreigner (for example by birth on the foreign territory or through a foreign parent).

The reason for this was that the latter case, according to the Council of State, did *not* fall under the scope of Art. 12 para. 2 of Law n. 555 of 1912, or, even before, of Art. 11 para. 2 of the Italian Reign's Civil Code, both determining the loss of citizenship of the minor child in case of naturalization of the father. On the contrary, this scenario had to be regulated by Art. 7 of Law n. 555 of 1912, according to which the Italian citizen who was born and resident in a foreign country of which he was equally considered a citizen by birth, would *keep* the Italian citizenship.

The reason underpinning the applicability of Art. 7 instead of the different aforementioned provisions above is that, according to the interpretation of the abovementioned Ministerial Guidelines, Art. 7 regulated the case of the minor who was both Italian citizen *iure sanguinis* (by Italian law) and foreign citizen (by foreign law) *at birth*, while Art. 12 para. 2 (1912 Law) and, before, Art. 11 para. 2 (1865 Civil Code), provided for the different case of the minor who was born just

[1] Circular of the Ministry of Foreign Affairs n. 9, July 4th, 2001;
Circular of the Ministry of Interiors n. K28.1, April 8th, 1991.

Italian citizen and *did not have already* foreign citizenship when the father was naturalized, but *acquired* it solely because of the father's naturalization.

In countries where the *Ius Soli* rule (citizenship by birth on the country's territory) has been applied for centuries, just as the United States, South American countries, and Canada, it is clear that those who were born from an Italian parent on foreign territory would be born with dual citizenship: *Iure Sanguinis* Italian citizenship and *Ius Soli* foreign citizenship. As a consequence, according to the dominant interpretation up until very recent times, the loss of Italian citizenship of the minor child due to the naturalization of the father would never occur, given that Art. 7 of Law n. 555 of 1912 allowed the child to maintain the Italian citizen status.

For these reasons, the direct descendants of the minor were so far allowed to reclaim Italian citizenship nowadays.

The new disruptive interpretation of the Italian Court of Cassation

The new judgment that disrupts the prevalent interpretation so far embraced regarding the scope of applicability of Art. 7 of the 1912 Law on Citizenship is the *Ruling of January 8th, 2024, n. 454, Section 1 of the Court of Cassation*.

The ruling handles the issue with commendable attention and historical-juridical awareness, but it is definitely very complicated for someone who is not a jurist. This section will try to summarize and simplify the arguments presented in this Judgment to make them understandable to whoever is interested in the matter.

The legal interpretation argued by the Court of Cassation is that, although Art. 7 of the 1912 Law does allow dual citizenship to those persons who were born Italian citizens *Iure Sanguinis* by Italian law, and at the same time foreign citizens by foreign law (for example due to the *Ius Soli* rule), the same people would lose Italian citizenship if they resided abroad and their father, when they were still minors, was naturalized by the foreign State. This is because the abovementioned legal provisions, Art. 11 para. 2 of the Civil Code of the Italian Reign and the subsequent Art. 12 para. 2 of Law n. 555 of 1912, applied not only to the minor child who would be naturalized together with the father (as per the long-lasting prevailing interpretation) but also to the minor child who was already a foreign citizen at birth.

There are two main reasons presented by the Court of Cassation to come to this conclusion.

1. The first reason concerns the *"ratio legis"* of the laws, namely the aim pursued by the Law.

At the time it was unimaginable that a person would be faithful to two different Reigns / States. Therefore, by voluntarily pledging allegiance to a foreign authority to obtain foreign citizenship, the consequence was the loss of Italian citizenship (Art. 11 para. 2 of the 1865 Civil Code; Art. 8 of Law n. 555 of 1912).

According to the culture of that time, it was normal that the head of the household, normally the father, was responsible for protecting his wife and children; and he was therefore allowed to make binding decisions for them. Thus, it comes naturally that the consequences of the father's decision to obtain foreign citizenship by spontaneously taking an oath of allegiance to a foreign State (the loss of Italian citizenship) would have effects on his wife and minor children

2. The second argument presented by the Court of Cassation in support of the loss of citizenship by the minor is that, on the one hand, the Italian legal framework pays attention not to revoking citizenship from someone who does not hold a foreign nationality already to prevent cases of statelessness; on the other hand, it is absolutely immaterial for Italian Law whether the minor child already has a foreign nationality when the father is naturalized or he/she acquired the foreign citizenship at the same time of the father. This is because the Italian State, in order to prevent the risk of statelessness, is solely interested in whether the minor child is also a foreign citizen or not, whereas the ways and timing of the acquisition of foreign citizenship by the minor child (or any other person) according to foreign regulations are irrelevant and do not fall under its scope of interest and action.

The landslide effects that will come

As illustrated above, the interpretative stance of the Ministry of the Interior and the Ministry of Foreign Affairs, which has been applied up to this day by all Consulates and Municipalities, is different than the one affirmed by the Court of Cassation in January 2024.

The more favourable approach of the two competent Ministries is laid out in their two respective "Circulars" (guidelines), already mentioned above. These Circulars will continue to regulate the actions of the public officials of Municipalities and Consulates until more recent Circulars are issued to amend the past guidelines.

We can conclude that, in case the two Ministries welcome the last and more recent interpretation of the Law laid down by the Court of Cassation, thousands of citizenship applications, even if they were submitted at the competent Municipality or Consulate, and even if they are still under evaluation, will be rejected.

Considering the authority of the Court of Cassation and its function to give a uniform interpretation of the Law at a national level, it is not unlikely that this will happen in the short or medium term.

If you are interested in receiving further clarifications on the content of this article, understanding if it applies to your case and/or considering the possibility of legal assistance, do not hesitate to contact Atty. Pietro Derossi, author of this Article and Head of the Global Mobility & Immigration Law Team in LEXIA Avvocati, one of the most renowned Italian law firms for legal assistance to foreign citizens.

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