Ministero dell'Interno

DEPARTMENT OF CIVIL LIBERTIES AND IMMIGRATION
Central Directorate for Civil Rights, Citizenship and Minorities
Office of general affairs and planning

TO THE UNDERSIGNED PREFECTS — THEIR

TO MR. COMMISSIONER OF THE GOVERNMENT FOR THE AUTONOMOUS PROVINCE OF — SEOI

TO MR. COMMISSIONER OF THE GOVERNMENT FOR THE AUTONOMOUS PROVINCE OF — TRENTO

BOLZANO

TO MR. PRESIDENT OF THE AUTONOMOUS REGION OF VALLE D'AOSTA

AOSTA

And, for information,

TO THE MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL COOPERATION
D.G.I.E.P.M.

ROME

TO THE DEPARTMENT OF INTERNAL AND TERRITORIAL AFFAIRS
Central Directorate for Demographic Services

HEADQUARTERS

SUBJECT: Recognition of Italian citizenship *iure* sanguinis-New lines of interpretation dictated by recent decisions of the Supreme Court.

In relation to the procedure for the recognition of Italian citizenship *iure sanguinis,* it is deemed appropriate to represent to SS.LL below the new interpretative lines dictated by recent rulings of the Supreme Court of Cassation.

This is also in light of a number of queries received on the subject from Prefectures as well as directly from municipalities.

1. Relationship between Article 7 and Article 12 of law No. 555 of 1912.

As is well known, certain provisions of the former law No. 555/1912, although

repealed, are still relevant today for the purpose of clarifying the fate of citizenship that occurred prior to the enactment of law No. 91/1992, in order to ascertain whether it is possible to recognize

Ministero dell'Interno
DEPARTMENT OF CIVIL LIBERTIES AND IMMIGRATION
Central Directorate for Civil Rights, Citizenship and Minorities
Office of general affairs and planning

Italian citizenship *it/re sanguinis* - on the basis of the uninterrupted transmission of the same - to descendants of Italian citizens claiming our *status civitatis.*

In particular, the problem of the relationship between Article 7 of law No. 555/1912 (a provision that regulated cases of bipolidia for those born in countries that grant citizenship *iure solfj* and Article 12, second paragraph, of the same law, which provides: *"Unemancipated minor children of those who lose* their *citizenship shall become aliens, when they have common residence with the parent exercising parental authority or legal guardianship, and acquire the citizenship of a foreign state. However, the provisions of Articles 3 and 9 shall be applicable to them."*

In this regard, new lines of interpretation have recently emerged from the Supreme Court of Cassation (Cass. civ. Sec. I, Ord., no. 454/2024 and no. 17161/2023), which has expressed itself in the context of a series of appeals brought by foreign citizens who had brought actions before Italian jurisdictional authorities to have their *status civitatis* recognized by virtue of alleged descent from Italian ancestors.

In the cases in question, the ancestor had lost his Italian citizenship having chosen to naturalize as a foreign citizen, and so had his son (who was a minor at the time) who, at his birth in the state of residence, was both an Italian citizen *iure sanquinis* by paternal derivation and a foreign citizen *iure soli;* this, due to the fact that he had not expressed the will to reacquire Italian citizenship, pursuant to Art. 12 leqqe No. 555/1912, as the other conditions set forth in Art. 9 of the same leqqe do not apply.

Regarding the situations of bipolidia regulated by Law No. 555/1912, the Supreme Council stated, *"Ultimately, law no. 555/1912 ùconognizes(va) bipolidia in the following terms: i/ son of an Italian citizen born abroad could simultaneously acquire Italian citizenship* iure sanguinis *and the citizenship of the place of birth* iure soli, and *in that case he was entitled to retain dual citizenship, remaining to all intents and purposes an Italian citizen, unless he renounced it as an adult, unless - while he was under age - the cohabiting father lost his Italian citizenship, and specifically, in the case of naturalization, by an act of voluntary impulse, that is, by reason of a decision which, insofar as it was adopted by the "head of the family" holder of parental authority, also produced effects in the legal sphere of the children to minors subject to him. This is the only possible interpretation of the normative text, because of the literal criterion, but also having regard to its* ratio legis, *since it is clearly aimed at preserving the unity of citizenship within the same family, in the terms in which it was*

Ministero dell'Interno
DEPARTMENT OF CIVIL LIBERTIES AND IMMIGRATION
Central Directorate for Civil Rights, Citizenship and Minorities
Office of general affairs and planning

understood in both 1865 and 1912, namely, as a community in which there was identifiable a "head of the family" who had parental authority over minors, assumed responsibility for protecting the minus habens *(wife and children) and made decisions that bound everyone; and provided that the family unit was effective, by reason of common residence."* (Cass. civ. Sec. I, Ord., No. 454/2024).

It follows, therefore, that following the voluntary naturalization (during the minor age of the bipolar child at birth) of the parent cohabiting with him or her, the lines of **transmission are to be considered interrupted where the ascendant in question has not reacquired Italian citizenship once he or she comes of age.** In such cases, in fact, failure to regain Italian citizenship prevents the ability to transmit our *status civitatis* to one's line of descendants.

In order to promptly adjust administrative action to the aforementioned clear jurisprudential indications, it is believed that, within the framework of the analysis of applications for *iure sanguinis* citizenship, the new orientation and the consequent lines of interpretation can be taken into account as of now.

Therefore, during the preliminary analysis of applications for citizenship *iure sanguinis* potentially affected by the interruptive event in question, the applicant must produce evidence of the reacquisition of Italian citizenship by the ancestor who lost Italian citizenship as a minor due to the voluntary naturalization of the genitor, even if he or she already held foreign citizenship for having been born in a country where the criterion for the granting of citizenship *iure soli is* in force.

The "non-naturalization" document, issued by the competent Authorities of the foreign State of emigration (with an official translation into Italian language as per point 5) of Circular K.28.1/1991) must therefore certify that the Italian ancestor who emigrated from Italy did not voluntarily acquire the citizenship of the foreign State of emigration. Conversely, if the ancestor voluntarily acquired foreign citizenship, the document will have to certify the date of his or her naturalization in order to ascertain that the naturalization itself occurred during the descendant's minor age (and no longer only prior to the descendant's birth).

In case there is a loss of Italian citizenship under Article 12, second paragraph, of Law No. 555/1912 of one of the ascendants of the claimant of Italian *status civitatis*, in order to be able to recognize this status it will be necessary for the claimant to produce the

Ministero dell'Interno
DEPARTMENT OF CIVIL LIBERTIES AND IMMIGRATION
Central Directorate for Civil Rights, Citizenship and Minorities
Office of general affairs and planning

documentation proving the reacquisition of Italian citizenship in accordance with Articles 3 or 9 of Law No. 555/1912 at the Civil Status Offices in Italy or abroad of the place to which the ascendant transferred his or her residence, provided that the reacquisition of Italian citizenship by the ascendant occurred before the birth of his or her descendants in the direct line.

However, rights already acquired by third parties are not affected.

2. Effective date of acquisition of citizenship by those who have been recognized by an Italian citizen or **whose filiation has** been **judicially declared in the course of ltheir majority**.

Regarding the effective date of acquisition of Italian citizenship for one who is recognized or judicially declared the child of a parent of Italian during the age of majority and has made, within the terms of legislation, the election of Italian citizenship, the following should be represented.

As is well known, this hypothesis of the acquisition of citizenship, hitherto counted among those by way of derivation, is currently regulated by Article 2, paragraph 2, of law No. 91/1992.

In the silence of the law, the acquisition of Italian citizenship in taìi cases has always been understood as taking effect from the day following the manifestation of the interested party's willingness to become an Italian citizen, considering applicable, also to the aforementioned cases, art. 15 of leqqe n. 91/1992, according to which *"The acquisition or reacquisition of citizenship takes effect, except as established in art. 13, paragraph 3, from the day following the day in which the conditions and* forma/ifà ùrequests *are fulfilled."*

On this point, the Supreme Court in Decision No. 5518/2024 came to a different interpretation, relying on the absolute equality of the status of children recognized at the time of birth and those who become so after reaching the age of majority.

More specifically, the Court had occasion to specify that: "// *an adult or recognized or declared child of an Italian citizen does not acquire a different status from that of the child of an Italian citizen duly married and born in constancy of marriage. He is Italian because he is the child of an Italian citizen* iure sanguinis *and in his original capacity."* According to the Supreme Council, therefore*, "there is therefore no need for* ad hoc *regulation*

Ministero dell'Interno
DEPARTMENT OF CIVIL LIBERTIES AND IMMIGRATION
Central Directorate for Civil Rights, Citizenship and Minorities
Office of General Affairs// and *Planning*

Of the commencement of the effect, already regulated by art. 1 in general [...) Ad. 2*, paragraph* 2, *introduces a potestative condition precedent, which, if realized, produces the same effect as the acquisition* iure sanguinis*, as is the case for the recognized minor child or the child born in constancy of marriage."*

Therefore, the act of election, rather than having a constitutive character in the matter of the acquisition of citizenship, has the function of protecting the self-determination of the individual, who could decide whether or not to be invested with our *status civitatis* as a result of the recognition of filiation.

Henceforth, therefore, the aforementioned act of election-which obviously remains a condition for the attribution of citizenship *iure sanguinis* in these cases-shall no longer be taken as a reference for the purposes of the starting date of the acquisition of Italian citizenship, having rather to consider that said acquisition (also in the case history under consideration) retroactive to birth, thus affecting any descendants.

In light of the above, it is therefore necessary to specify that for the purpose of reconstructing the line of transmission of citizenship *iure sanguinis,* in all cases of filiation out of wedlock, the deed or judicial declaration of recognition of the filiation relationship between the interested party or ascendant and the parent who is already an Italian citizen who transmits such citizenship iure *sanguinis* must be acquired*,* ascertaining the possible occurrence of the conditions of Art. 2 of law No. 91/1992 (nonshé of Art. 2 of Law No. 555/1912, in case the case under consideration concerns an ascendant recipient of the provisions of the former law).

3. Uninterrupted possession of child status.

Finally, it is considered appropriate to clarify the scope of application of the principles enunciated by the Court of Cassation in Judgment No. 14194 of May 22, 2024 regarding a *iure sanguinis* case that had been rejected by the civil status office due to the inability of the petitioners to produce a birth certificate of their Italian ancestor, i.e., of the ancestor in the direct line whose citizenship they claimed. In the aforementioned ruling, it was affirmed that posthumous recognition, made in the marriage act, is in itself foundational to the continuous possession of child status and suitable for proving paternity and the consequent transmission of Italian citizenship.

The Supreme Court has made it clear that it is possible to make up for the lack of and/or defect in the birth certificate or related indications of paternity and maternity in it

Ministero dell'Interno

DEPARTMENT OF CIVIL LIBERTIES AND IMMIGRATION
Central Directorate for Civil Rights, Citizenship and Minorities
Office of general affairs and planning

Through Article 237 of the Civil Code, according to which: "// *possession of status results from a series of facts which together serve to prove the relations of filiation and kinship between a person and the family to which he or she claims to belong. In each case the following facts must concur: that the parent has treated the person as a child and has provided in that capacity for the maintenance, upbringing and placement of the person; that the person has been consistently regarded as such in social relations; and that the person has been recognized in that capacity by the family."*

As is well known, this rule can be applied only as a subsidiary to Article 236, first paragraph, of the Civil Code, in the mind of which filiation is proved by the birth certificate entered in the civil status registers; pursuant to the second paragraph of the same article, only in the absence of the birth certificate may recourse be had to the continuous possession of child status.

In any case, the awiso is expressed that the application of this provision does not appear to be extensible to proceedings of an administrative nature as well, since the administrative authority is not responsible for the substantive recognition of the *status civitatis personae* (the responsibility of the ordinary judiciary) because it has only certifying powers regarding the possession of citizenship *iure sanguinis,* to be attested through documents that unequivocally prove ownership without interruption between generations.

In light of the above, it is believed that this principle can only be enforced in the courts.

SS.LL. is requested to represent the above to the mayors and registrars of municipalities in their respective provinces in order to bring administrative action in line with the most recent guidelines of the Supreme Court.

THE DIRECTOR CENTRAL
(Orano)