

Italian Constitutional Court

Legal summary

Judgment No 142/2025

ECLI:IT:COST:2025:142

THE AUTOMATIC CONFERRAL OF CITIZENSHIP BY DESCENT (IN FORCE UNTIL 2025) WAS CONSTITUTIONAL

In Judgment No 142/2025, **the Constitutional Court declared that a set of referrals concerning the rule on Italian citizenship by descent, in force until 2025, was inadmissible.** It also held that the rule did not violate the constitutional principle of equality.

Until 2025, Italian law conferred Italian citizenship at birth on anyone with an Italian parent (and, through lineage, on descendants born and resident abroad). Effectively, this arrangement may extend the notion of “people” as embodied in the Constitution to individuals with no meaningful connection to Italy. Nonetheless, the Court held that it could not stipulate what might constitute a sufficient link. Doing so, given the number of variables involved, would entail a broad, policy-laden redesign of the citizenship regime, an exercise reserved to the legislature.

The Court also found no specific international or EU norm that constrained conferral of citizenship in the terms challenged. Finally, it rejected the discrimination claim: automatic acquisition at birth is not comparable to acquisition at a later stage under narrower conditions, so the differential treatment of these two scenarios is not discriminatory.

Main proceedings

In 2024, several nationals of Brazil and Uruguay applied to the competent Italian courts for the recognition of Italian citizenship. The applications were lodged with the Tribunals of Bologna, Florence, Milan and Rome (Civil Division – Immigration) (the “**referring courts**”). The applicants were born in and resident in Brazil and Uruguay, and claimed an uninterrupted line of descent from Italian citizens (born in Italy between 1843 and 1903).

Italian law confers citizenship primarily according to the *ius sanguinis* principle (citizenship by descent), irrespective of place of birth. In particular, Article 1(1)(a) of Law No 91/1992¹ provides that “the child of an Italian father or mother is Italian by birth” (the “**challenged provision**”). This provision follows the approach of earlier rules, namely Article 1(1) of Law No 555/1912 and Article 4 of the 1865 Civil Code (both now repealed), which conferred Italian citizenship on every “child of an Italian father” (together, the “**earlier citizenship rules**”).

¹ Law No 91/1992 on citizenship.

The referring courts stayed the proceedings and referred questions to the Constitutional Court (the “**Court**”), claiming that the challenged provision and the earlier citizenship rules violated the Italian Constitution (**IC**).

Complaints

The referring courts argued that the automatic conferral of citizenship at birth on all children of Italian nationals is inconsistent with the constitutional notion of “people” and is unreasonably wide-reaching. They also argued that the challenged provision breaches Italy’s international obligations and EU law.

Between 1870 and 1970 alone, more than 27 million Italian citizens migrated abroad, and roughly half never returned. Their descendants might therefore outnumber Italian citizens residing in Italy. In addition, applications to recognise Italian citizenship have increased sharply, facilitated by the digitalisation of lineage databases, thus overwhelming consular posts and increasingly reaching Italian courts. According to the referring courts, this situation undermines the identity between people and sovereignty expressed in Article 1(2) IC,² by conferring citizenship on tens of millions of individuals with no effective connection to Italy and Italian society. On that view, the challenged provision turns citizenship into an abstract individual privilege devoid of social content. The absence of any limit on citizenship by descent was said to be unreasonable and disproportionate.

The referring courts further contended that the conferral of nationality without a genuine link with the country is prohibited under customary international law. They also relied on EU law: since, under the Treaty on the EU (**TEU**) and Treaty on the Functioning of the EU (**TFEU**), nationality of a Member State entails EU citizenship, the challenged provision would – in their view, unreasonably – extend EU citizenship to the same broad pool of persons.

On these bases, the referring courts alleged breaches of **Articles 1(2) (Sovereignty of the people), 3 (Equality and non-discrimination, reasonableness and proportionality)**, and **117(1) IC (Compliance with international commitments)**, the latter in relation to **international law** and **Articles 9 TEU and 20 TFEU**.

Decision of the Court

The Court held that all referrals were inadmissible, except for the one alleging discrimination, which was rejected on the merits.

As regards the earlier citizenship rules (1865 and 1912), the Court declared the questions inadmissible for lack of relevance to the main proceedings.

The referral concerning the challenged provision under Articles 1(2) and 3 IC (Reasonableness and proportionality) was also inadmissible, because upholding it would require the Court to adopt a ruling with systemic, legislative implications – a task reserved to the legislature. The same applied to the referral based on EU law. By contrast, the referral grounded in international law was

² Which reads: “Sovereignty belongs to the people and is exercised by the people in the forms and within the limits of the Constitution”.

inadmissible because the referring courts failed to identify a specific international obligation that conflicts with the challenged provision.

Finally, the **referral under Article 3 IC (Equality and non-discrimination) was rejected on the merits, since the referring courts did not identify any valid comparators** to the situation governed by the challenged provision.

Reasons for the decision

The challenged provision reflects the long-standing approach of the Italian system: children acquire Italian citizenship at birth if they have an Italian parent.

That principle has recently been adjusted by Decree-Law No 36/2025, which entered into force on 27 March 2025 and modified the conditions for acquiring Italian citizenship for persons residing abroad. In particular, citizenship by descent is now recognised only if: (a) the parent or grandparent has (or had) only Italian citizenship; or (b) the parent, after acquiring Italian citizenship and before the child's birth, has resided continuously in Italy for two years. Importantly, **Decree-Law No 36/2025 did not apply to the applications in the main proceedings**, which were lodged before its entry into force.

The Court deemed the questions concerning the earlier citizenship rules (of 1865 and 1912) inadmissible because those rules, too, were not applicable to the applicants' legal position in the pending cases. The applicants' citizenship was governed by the challenged provision; at most, the earlier rules could have been relevant to their ancestors.

As to **the challenged provision**, the Court recalled that, although the legislature enjoys wide discretion in regulating citizenship,³ the relevant rules are not immune from constitutional review for proportionality and non-manifest irrationality.⁴ The Constitution does not define "people"; however, read as a whole, it links citizenship to a community with shared linguistic and cultural roots, open to pluralism and protective of minorities, as well as to the territory of the State. Within that framework, **it is for the legislature to define the requirements and substantive content of citizenship**; the Court's role is to verify that those choices are not manifestly unreasonable or disproportionate.

The Court noted a broadly similar approach in the case law of the Court of Justice of the EU on the limits that EU law places on Member States' citizenship rules. While Member States remain competent (within the framework of international law) to regulate acquisition and loss of nationality, they must do so consistently with EU law. For example, rules on loss of nationality that completely disregard the consequences for EU-citizenship rights are incompatible with EU law.⁵ As regards acquisition, Member States' powers are not unlimited:⁶ the very notion of EU citizenship

³ Constitutional Court, Judgment No 25/2025.

⁴ Constitutional Court, Judgments Nos 25/2025 and 195/2022.

⁵ CJEU, Grand Chamber, judgment of 17 March 2019 in Case C-221/17, *Tjebbes et al.*

⁶ CJEU, Grand Chamber, judgment of 29 April 2025 in Case C-181/23, *Commission v Malta*, paragraphs 42, 95 and 98.

and the rights flowing from it (e.g. freedom of movement and residence, certain political rights) are incompatible with purely commercial “citizenship-for-investment” schemes.⁷

In the present case, the referring courts did not challenge the principle that Italian citizenship can be inherited from an Italian parent. Rather, they argued that where a person has strong links with a foreign country and only a weak link with Italy, mere descent may be insufficient to transmit genuine membership of the Italian community. The Court held that, if it upheld the challenge, it would be forced to design a new and detailed regime from scratch, balancing variables such as place of birth, residence abroad of the child and/or parent, timing and duration of residence, and the relevance of dual nationality. Those numerous policy choices are interdependent and require a comprehensive legislative framework. **Accepting the referrals would therefore require the Court to introduce a systemic innovation (*intervento di sistema*) through a judgment with legislative effects**, an exercise it considered incompatible with its role. The questions were consequently inadmissible.

The Court also found the complaint regarding international law inadmissible because the referring courts did not identify a specific rule of international law that prohibits acquisition of nationality as provided by the challenged provision. Their main reference was to the *Nottebohm* judgment of the International Court of Justice, which mentions the requirement of a genuine link between the individual and the State of nationality.⁸ The Court observed that *Nottebohm* did not concern the conditions for an individual to acquire nationality, but rather the conditions for a State to espouse a national’s claim in an inter-State dispute. As that point was irrelevant to the constitutional questions raised, the Court dismissed this limb as inadmissible.

The only admissible complaint concerned discrimination under Article 3 IC. The referring courts alleged unequal treatment between the automatic attribution of citizenship at birth under the challenged provision and stricter routes to citizenship for children of parents who are no longer Italian citizens (subject to conditions such as military service, public employment, or two years’ residence in Italy before turning 18), as well as stricter criteria for acquiring citizenship through marriage. **The Court held that these situations are not valid comparators.** The challenged provision governs citizenship at birth, whereas the other regimes concern acquisition by other means. In the absence of comparability, the discrimination claim could not succeed; accordingly, **the challenged provision did not violate Article 3 IC.**

For these reasons, all the issues raised concerning the challenged provision and the earlier citizenship rules were rejected as inadmissible, with the exception of the **referral invoking discrimination, which was examined and rejected on the merits.**

Type of proceedings	Constitutional review by referral order
President of the Court	Giovanni Amoroso

⁷ CJEU, Grand Chamber, judgment of 29 April 2025 in Case C-181/23, *Commission v Malta*, para. 100.

⁸ International Court of Justice, *Nottebohm case (Liechtenstein v. Guatemala)* [1955] ICJ 1, judgment of 6 April 1955.

Judge rapporteur	Emanuela Navarretta
Composition of the Court	Giovanni Amoroso (President), Francesco Viganò, Luca Antonini, Stefano Petitti, Angelo Buscema, Emanuela Navarretta, Maria Rosaria San Giorgio, Filippo Patroni Griffi, Marco D'Alberti, Giovanni Pitruzzella, Antonella Sciarrone Alibrandi, Massimo Luciani, Maria Alessandra Sandulli, Roberto Nicola Cassinelli, Francesco Saverio Marini
Delivery of the judgment	24 June 2025
Challenged provisions	Article 4 of the Civil Code of 1865; Article 1 of Law No 555/1912; Article 1(1)(a) of Law No 91/1992