

Italian Constitutional Court

Legal summary

Judgment No 63/2026

ECLI:IT:COST:2026:63

THE COURT UPHOLDS RETROACTIVE LIMITS ON *IUS SANGUINIS*, REJECTING CONSTITUTIONAL AND EU LAW CHALLENGES

In Judgment No 63/2026, the Constitutional Court examined Article 3-*bis* of Law No 91/1992 and found that it posed no constitutional challenge.

The Court upheld the new limits on Italian nationality by descent, established in new law, finding that Parliament could reasonably require a genuine connection with Italy even for people born before the 2025 reform.

It also found no conflict with EU law, because the rules did not take away an already established EU nationality status; while the international human rights challenges were rejected because the provisions relied on did not directly guarantee a right to obtain or retain Italian nationality.

Main proceedings

The Court of Turin (Civil Division – Immigration)¹ (the “referring court”) questioned the constitutionality of Article 3-*bis* of Law No 91/1992² (the “challenged provision”).

The challenged provision sets forth, by way of derogation from the previous rules on nationality, that a person born abroad, including before the provision entered into force, and holding another nationality is deemed **never to have acquired Italian nationality**, unless at least one of several conditions is met.³

The underlying case had been brought against the Ministry of the Interior by eight Venezuelan nationals. Their judicial application was lodged on 28 March 2025, one day after the statutory cut-off. They sought recognition of Italian nationality *iure sanguinis* through descent from P.M.D., an

¹ Specialised Division for Immigration, International Protection and Free Movement of EU Citizens of the Ordinary Court of Turin.

² Law No 91/1992 on citizenship.

³ The conditions are: 1) the person’s citizen status is recognised following the submission of an application to the competent consular or mayor’s office no later than 23:59, Rome time, on 27 March; 2) the person had received, by that deadline, an appointment from the competent authority for the submission of the application; 3) judicial proceedings for recognition had been commenced by the same deadline; 4) a parent or grandparent has, or had at the time of death, exclusively Italian citizenship; 5) a parent or adoptive parent had resided in Italy continuously for at least two continuous years after acquiring Italian citizenship and before the date of birth or adoption of the child.

Italian ancestor.⁴ Under the law in force before Decree-Law No 36/2025 (the reform)⁵ the referring court considered that their application would have been well founded. This remained the case despite the presence in the line of descent of a female ancestor who had married a foreign national and had a child before the Italian Constitution entered into force in 1948. The referring court also noted that other descendants of the same ancestor had already obtained recognition of Italian nationality in proceedings before the Rome Ordinary Court in 2023.

The challenged provision was nevertheless applicable on the following grounds: the applicants were Venezuelan citizens and therefore possessed another nationality; they had not previously submitted an administrative application; their judicial claim was filed on 28 March 2025, i.e. after the statutory deadline; their relevant ancestors had not possessed exclusively Italian nationality; the alternative requirement of two years' residence in Italy was not satisfied.

The effect of the challenged provision was therefore to prevent the recognition of nationality that would have been available under the previous statutory regime. The referring court was doubtful of the compliance with the Italian Constitution (IC).

Complaints

The referring court understood the challenged provision as producing an implicit and retroactive revocation of nationality. In its view, the applicants had acquired Italian nationality automatically at birth under the previous rules. The new provision retrospectively deprived them of that status by declaring that they were to be regarded as never having acquired it.

The court alleged violations of:

- **Articles 2 (Fundamental human rights) and 3 (Principle of equality and non-discrimination) IC;**
- **Article 117(1) (Compliance with international obligations) IC**, in conjunction with:
 - **The norms of nationality of the EU: Articles 9 Treaty European Union (TEU); 20 Treaty of the Functioning of the European Union (TFEU);**
 - Article 15(2) of the Universal Declaration of Human Rights (UDHR) (No arbitrary deprivation of nationality);
 - Article 3(2) of Protocol No 4 (P4) to the European Convention on Human Rights (ECHR) (No arbitrary deprivation of right to enter the state of nationality).

The referring court suggested the challenged provision should be declared unconstitutional insofar as it applied to persons already born when the reform entered into force. According to the referring court, the reform should consequently apply only to persons born after the reform. Alternatively, the Court could issue a manipulative judgment introducing a transitional period within which persons already born could apply for recognition of Italian nationality.

⁴ Born in Turin in 1837; subsequently emigrated to Venezuela; never naturalised as a Venezuelan citizen; regarded as having acquired Italian nationality following Italian unification in 1861.

⁵ Decree-Law No 36/2025, new requirements on the nationality by descent.

Decision of the Court

The Constitutional Court (the “**Court**”) declared the complaint based on **Article 117 IC in conjunction with Article 15(2) UDHR and Article 3(2) P4 ECHR inadmissible**. The former is not a binding obligation; the latter regulates the territorial rights of those who are nationals, but not *who* is entitled to be national – and is therefore inapplicable.

The Court declared the challenge based on **Articles 2 and 3 IC admissible but unfounded**, since it found that the provision under scrutiny did not violate acquired rights and legitimate expectations. It also found **Article 117(1) IC in conjunction with Article 9 TEU and Article 20 TFEU to be unfounded**. These provisions relate to those who had been formally recognised as nationals, whereas the challenged provision restricted the qualifying criteria. The Court did not deem it necessary to lodge a reference for preliminary ruling to the Court of Justice of the EU.

Reasons for the decision

Before addressing the individual challenges, the Court reconstructed the development of Italian nationality by descent.

Nationality is a constitutionally protected legal status carrying private, public and political rights. Under Articles 1, 2 and 3 of Law No 91/1992, its principal basis is filiation. Before the 2025 reform, nationality could be transmitted *iure sanguinis* without temporal or generational limits. The Court of Cassation therefore described nationality by descent as permanent, unalienable, and enforceable at any time through proof of birth from an Italian citizen.⁶

That model originated in the Civil Code of 1865, when nationality and democratic participation were largely separate. Although the Code showed disfavour towards dual nationality, loss of nationality was interpreted as applying only to voluntary naturalisation. Acquisition of a foreign nationality *iure soli* therefore did not interrupt transmission. Law No 555/1912 preserved this system and adopted an opting-out model. An Italian born and resident abroad who automatically acquired the nationality of the state of birth retained Italian nationality unless, after reaching majority, they expressly renounced it.

The consequences were magnified by mass emigration. Between 1876 and 1925, more than 16.5 million Italians emigrated, about 8.9 million of whom to the Americas, where *iur soli* was widespread. This created a vast population of foreign nationals who potentially also possessed Italian nationality, although that status had usually never been formally ascertained.

The result was a peculiarly Italian phenomenon: millions of persons possessed what the Court calls virtual nationality (“*cittadinanza virtuale*”), never formally recognised but capable of being activated at any time, even without an effective connection with Italy. Technical reports estimated more than 60 million potential descendants. Italy had also become an international outlier, since France, Germany, the United Kingdom and Spain had introduced limits on transmission to later generations born and resident abroad.

⁶ Joint Civil Divisions, Judgments Nos 25317/2022 and 25318/2022.

The republican Constitution of 1948 transformed the meaning of this inherited system. Universal suffrage merged *status civitatis* (citizen status) with *status activae civitatis* (active citizen status). Under several provision of the IC, citizens collectively hold and exercise sovereignty and form a community of political destinies, participating in decisions whose benefits, burdens and sacrifices they share. This conception presupposes an effective link with the national community.⁷ Nationality therefore entails reciprocal rights and duties and participation in common political life, not merely genealogical descent.

The people are constitutionally plural but must also act as a unified political subject. Recalling Judgment No [142/2025](#),⁸ the Court linked nationality with the territory as the place reflecting a common cultural milieu and shared constitutional principles. This common belonging also legitimises majority rule, because majorities and minorities accept one another's decisions as members of the same political community. Although Article 22 IC is the Constitution's only express provision on nationality, Parliament's broad discretion remains reviewable. The constitutional model requires democratic participation, an effective relationship with the state and people, solidarity and adherence to common civic principles.

The pre-2025 regime had increasingly diverged from that model. It allowed persons with no effective connection with Italy to acquire political membership and potentially influence elections or referendums without participating in the community or sharing the consequences of its decisions.

The Court considered this interpretation consistent with EU law. Nationality remains a Member State competence but must be exercised consistently with EU nationality.⁹ In *Commission v. Malta*, the Court of Justice of the European Union (CJEU) described nationality as founded on solidarity, loyalty and reciprocity of rights and duties.¹⁰ The requirement of an effective civic relationship is therefore compatible with Articles 20 TFEU and 2 TEU.

The challenged provision operates *ex tunc*, treating persons born abroad who possess another nationality as never having acquired Italian nationality. The Court rejected both the State's claim that the provision is non-retroactive and the referring court's characterisation of it as revocation. It is genuinely retroactive because it attaches new consequences to past events, but it creates an original impediment to acquisition, rather than withdrawing an officially recognised status.¹¹

The challenge under Articles 2 and 3 IC concerned the distinction between those who applied before and after 28 March 2025 and the alleged interference with acquired rights. The complaint is unfounded. Transitional provisions frequently preserve the former law for proceedings already commenced, and Parliament enjoys broad discretion in defining their temporal reach.¹² A person who had submitted an application or received an appointment had taken a concrete step in reliance on the previous regime and could reasonably be distinguished from someone who had remained

⁷ Article 1 IC connects people, territory and sovereignty; Article 4(2) IC requires citizens to contribute to social progress; Articles 2 and 3(2) IC connect nationality with solidarity and participation; and Article 54 imposes loyalty to the Republic.

⁸ Constitutional Court, Judgment No [142/2025](#).

⁹ CJEU, judgment of 25 April 2024 in Joined Cases C-684/22 to C-686/22, *Stadt Duisburg*.

¹⁰ CJEU, Grand Chamber, judgment of 29 April 2025 in Case C-181/23, *Commission v. Malta*.

¹¹ Revocation ordinarily operates *ex nunc* and affects an established individual status; the challenged provision operates *ex tunc* upon persons whose nationality has never been legally ascertained.

¹² Constitutional Court, Judgments Nos 376/2008 and 246/1992.

inactive. The Court left open the position of persons who had begun the process but had not yet received an appointment.

The challenge concerning legitimate expectations is also unfounded. Although legitimate expectations are protected under Article 3 IC, they must be balanced against competing constitutional interests.¹³ The Court considered the importance of the legislative purpose, the strength of the expectation and the compensatory measures accompanying the reform.

The reform pursues the effectiveness of nationality, and refers to effective links (“*vincoli effettivi*”) with the Republic.¹⁴ It preserves recognised nationality and pending proceedings but applies the new criteria to persons already born because date of birth does not demonstrate a genuine connection with Italy. The genuine-link criterion is supported by Article 7(1)(e) of the 1997 European Convention on Nationality,¹⁵ CJEU judgment in *Tjebbes*,¹⁶ Italian Court of Cassation case law and decisions of the French, Portuguese and German constitutional courts. These authorities recognise that nationality may legitimately depend on an effective bond between the person and the national community.

Retroactivity was necessary because a prospective reform would have left untouched the millions already born abroad who potentially possessed unrecognised nationality.¹⁷ Restricting the reform to future births would therefore have largely defeated its purpose.

The affected expectation was comparatively weak. The challenged provision did not disturb recognised citizens, pending applicants or persons who had received appointments. Although nationality by descent was previously regarded as acquired at birth, persons born abroad could not concretely exercise the rights or bear the duties deriving from it without administrative or judicial recognition. Their position was therefore potential rather than legally certain and operative. The reform was also corrective, removing the effects of an exceptionally favourable regime that perpetuated an increasingly fictitious connection across generations. The Court’s case law accepts that restoring equity and eliminating incongruities may outweigh reliance on favourable legislation.¹⁸ The change was also not entirely unforeseeable. Italy’s system was unusually permissive; legislative proposals restricting nationality by descent had been introduced in October 2024; and the 2025 Budget Law had to be increased court fees for nationality proceedings.

The Court also considered the compensatory measures. Amended Article 4 of Law No 91/1992 facilitates acquisition by certain descendants and minors, with transitional declarations possible in some cases until 31 May 2029. The reform permits eligible descendants to enter Italy for employed work outside ordinary immigration quotas and reduces from three to two years the residence period required for naturalisation.

¹³ Constitutional Court, Judgments Nos 134/2025, 216/2023, 169/2022, 182/2022 and 108/2019.

¹⁴ Decree-Law No 36/2025, new requirements on the nationality by descent.

¹⁵ European Convention on Nationality, signed in 1997, unratified (ETS No 166).

¹⁶ CJEU, Grand Chamber, judgment of 17 March 2019 in Case C-221/17, *Tjebbes et al.*

¹⁷ The number of Italian citizens resident abroad rose from 4,482,115 in 2013 to 6,412,752 in 2024, while those born abroad increased from 2,974,488 to 4,496,297.

¹⁸ Judgments Nos 70/2024, 182/2022, 145/2022, 136/2022, 108/2019 and 56/1989.

Taken together, **these elements establish a reasonable balance**. The challenged provision requires a sufficient link with Italy, protects those whose status or reliance was already concrete and preserves alternative routes for descendants willing to establish an effective connection with the country. The challenges under Articles 2 and 3 IC are therefore unfounded.

The challenge based on Article 117(1), read in conjunction with Articles 9 TEU and 20 TFEU, is also unfounded. The Court accepted that measures withdrawing recognised nationality, and therefore EU citizenship, must comply with the principle of proportionality. It referred to extensive CJEU case law,¹⁹ which also recognises the legitimacy of protecting the relationship of solidarity and loyalty between a State and its citizens. The decisive distinction, however, is that those cases concerned persons whose national and EU citizenship had already been formally established and whose corresponding rights were subsequently removed. Because the challenged provision does not remove recognised citizenship, the EU requirement of an individual proportionality assessment does not apply. The Court also refused to submit a reference for preliminary ruling, considering the distinction sufficiently clear.

The challenge based on Article 15(2) of the UDHR is inadmissible. The Declaration was adopted through UN General Assembly Resolution 217A and is not a binding treaty. It therefore cannot automatically serve as an interposed standard under Article 117(1) IC, which refers to binding international obligations.²⁰ Since the referring court relied on Article 117 IC rather than Article 10(1) IC – and did not identify a corresponding customary rule –, the Court left open whether the provision reflects customary international law.

The challenge based on Article 3(2) of AP4 ECHR is likewise inadmissible. The Convention does not guarantee a general right to acquire or retain nationality. Article 3 protects citizens against expulsion from, and guarantees their entry into, their own State; it does not determine who is entitled to nationality. The ECtHR has held that there is no autonomous Convention right to acquire or retain nationality;²¹ the right of entry under Article 3(2), however, belongs only to citizens.²²

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

¹⁹ The CJEU itself requires concrete consequences: *Tjebbes*, paragraph 40; *Stadt Duisburg*, paragraph 50; Grand Chamber, judgment of 5 September 2023 in Case C-689/21, *X v. Udlændinge-og Integrationsministeriet*, paragraph 54; and Grand Chamber, judgment of 18 January 2022 in Case C-118/20, *JY v. Wiener Landesregierung*, paragraph 59.

²⁰ Constitutional Court, Judgments Nos 185/2025, 95/2025, [142/2025](#) and [194/2018](#).

²¹ ECtHR, judgments of 21 May 2013, *Fehrer and Dolnik v. Slovakia* (Applications Nos 14927/12 and 30415/12), paragraph 18. An arbitrary denial may in some circumstances affect private life under Article 8: ECtHR, judgment of 22 December 2020, *Usmanov v. Russia* (Application No 43936/18); judgment of 17 September 2024, *Abo v. Estonia* (Application No 29295/22).

²² ECtHR, Grand Chamber, judgment of 14 September 2022, *H.F. and Others v. France* (Applications Nos 24384/19 and 44234/20).

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, Maria Alessandra Sandulli, Roberto Nicola Cassinelli, Francesco Saverio Marini
Delivery of the judgment	30 April 2026
Challenged provisions	Article 3- <i>bis</i> of Law No 91/1992, introduced by Decree-Law No 36/2025