This document is a translation, from Italian to English, of the Italian Ministry of Foreign Affairs circular number 9 of July 4, 2001 on the subject of making Italian citizenship findings.

This translation was written for an educational purpose, to assist its readers in understanding Italian citizenship laws.

The translator disclaims any responsibility for any misunderstanding of Italian citizenship laws on the part of the reader of this document, whether because of a factual error, omission, mistranslation, or any other reason.

The translator does not reserve any interest in this document contrary to its general proliferation. This document is a translation of a circular from the government of Italy, wherein other legal or equitable interests may vest.

Some abbreviations are used here in citing laws, opinions, rulings, and circulars. If the reader finds the phrase "law 555/1912" it means "law number 555 enacted in year 1912". If the reader later finds "law 555", it should be understood as "law 555/1912".

Though most dates in the original document were printed in the dd.mm.yyyy format, dates are printed here in a format which is compatible with an international Anglophone readership:

e.g. 04.07.2001 translates to Jul-04-2001
13.6.1912 translates to Jun-13-1912

The reader is assisted in knowing the meanings of these phrases:

<table>
<thead>
<tr>
<th>jure soli</th>
<th>adjective phrase</th>
<th>effected by birth in a territory, according to its laws</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>nominal phrase</td>
<td>the attribution of jure soli rights or prejudices</td>
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<table>
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<tr>
<th>jure sanguinis</th>
<th>adjective phrase</th>
<th>effected by derivation from kin (parents), according to law</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>nominal phrase</td>
<td>the attribution of jure sanguinis rights or prejudices</td>
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<table>
<thead>
<tr>
<th>jure matrimonis</th>
<th>adjective phrase</th>
<th>effected by the marital bond, according to law</th>
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<tr>
<td></td>
<td>nominal phrase</td>
<td>the attribution of jure matrimonis rights or prejudices</td>
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<tr>
<th>communicatione juris</th>
<th></th>
<th>precise meaning unconfirmed, appears in Italian for instances where citizenship is derived based on a relationship to a parent but did not commence on the birth date</th>
</tr>
</thead>
</table>
Circular no. 9 of July 4, 2001

Highlights on enforcement and interpretation

As broadly known, the current law on citizenship, no. 91/1992, was entered into effect on Aug-16-1992. The consular offices still are held to applying the prior rules to all situations which prove to be true in the effective period of those rules. Considering that the application of the antecedent rules still gives rise to uncertainties, it is deemed useful to present in comprehensive form the pertinent discipline, taking into account the retroactive effectiveness imputed to some of the Constitutional Court's overrulings of statutes, and the opinions of the State Council coming after the issuance of circular 12 of Jun-29-1985.

It is reaffirmed that this circular shall outline the regulatory and interpretive picture between Apr-27-1983 (effective date of law no. 123/1983) and Aug-15-1992 (which date is the day before the effective date of law no. 91/1992); to which it is thus proper to refer for examining those situations arising within that time interval.

At the same time this circular shall replace the three previous circulars on the topic (no. 30/1975, no. 26/1976, and no. 12/1985) which, as stated at the foot, are repealed. (1)

As already done in circular no. 12/1985, it is underscored that "taking into account the general nature of the directions provided, special situations tied to the application of treaties or bilateral or multilateral Conventions are not considered." The reference is, in particular, to the Convention on reduction of cases of multiple citizenship signed at Strasbourg on May-06-1963 and to which many Countries of the Council of Europe are signatories.

Our Representations in such countries cannot depart from them, taking into account that the same citizenship law formerly in effect and considered here (law no. 555 of Jun-13-1912) recognized the effects of international conventions upon nationality (article 17).

The Director for Italians abroad and Migratory Policies

MARSILI

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1. On the occasion, it is arranged that items be incorporated into the fabric of the new circular - expanding where necessary, the contents, already long acquired, of circulars no. 30 of Jul-24-1975 (M/I/9: "Citizenship of the Italian woman who marries or has married a foreigner") and no. 26 of Sep-25-1976 (M/I/10: "Law of Mar-08-1975, no. 39 imparting majority to those eighteen years of age - consequences on the rules relating to Italian citizenship").

The three circulars mentioned (no. 30/1975, no. 26/1976, and no. 12/1985) are thus substituted by this one and should be removed from the yellow binder.
PART I

CITIZENSHIP BY PARENTAL BOND

As is broadly known, the comprehensive law on citizenship no. 555 dated Jun-13-1912 established - deriving the rule from the civil code (1865) of the new Kingdom of Italy - the principle of transmission of citizenship by way of the father, limiting transmission via the mother to a few scenarios provided solely to avoid cases of statelessness. In January of 1983, ruling no. 30 of the Constitutional Court, in consideration of the judicial equality of the sexes, recognized the woman's ability to transmit citizenship to her own offspring. This principle; which immediately began to modify the dictate of the law in force, then recognized, retroactively to Jan-01-1948; was after little time acknowledged in the body of the law no. 123 of April of the same year which arranged the transmission of jure sanguinis citizenship liberally and favorably for the child. The situation considered here is the one which prompted the enactment of the law cited as no. 123/1983.

Article 5 of that law referred exclusively to those who were minors on the enactment date of the same law (Apr-27-1983). The citizenship position of Italian citizens who were adults (1) on that date continued to be governed by prior rules (law 555/1912, and ruling no. 30/1983 of the Constitutional Court effective since Jan-01-1948).

A. Application of principles contained in the Constitutional Court's ruling no. 30 of 1983 toward those who were adults when Law 123/1983 (Apr-27-1983) became effective

1. The children born beginning Jan-01-1948 to a mother in possession of Italian citizenship at the moment of their birth are Italian citizens by birth and since birth.

Following the Constitutional Court ruling no. 30 of 1983, which declared article 1 of law 555/1912 unconstitutional in the part where it did not foresee the acquisition of jure sanguinis Italian citizenship also by maternal descent, the attribution of Italian citizenship to children born of Italian mothers since Jan-01-1948 (2) happens in the same manner as for the children of Italian fathers.

2. The ruling no. 30 has not affected situations governed by article 12. Thus whomever, Italian by birth, has lost Italian citizenship during minor age as a consequence of a change in the father's citizenship, according to the dispositions in the 2nd paragraph of article 12 of law 555/1912, cannot have Italian citizenship reattributed based upon ruling no. 30 even if the mother was Italian at the time of the child's birth and even if she remained Italian at the moment of her husband's naturalization.

In fact, the sanction of unconstitutionality has not touched the aforementioned article 12, and its application in the sense of the predominance of the father's status has been reasserted by the State Council in its opinion no. 719/79 of Oct-24-1980. Such predominance remained effective until the effective date of law 123/1983, taking effect on Apr-27-1983. Only since that date, in fact, are the extra conditions of said article 12 expunged in the evaluation of the citizenship events of the child – (where article 12 linked the child's citizenship to the parent exercising the fatherhood powers, by law namely the father).

3. The children of a citizen mother and alien father, born since Jan-01-1948 – Italian citizens by birth based upon ruling no. 30 – follow the events of the sole Italian citizen parent (namely the mother), by the effect of article 12 of the law 555/1912 and in line with the principles inspiring the law.
The exception to this rule found in article 7 of the law 555/1912 remained intact.

Thus the child born since Jan-01-1948 to an alien father and a mother possessing Italian citizenship on the birth date is to be considered a current Italian citizen (unless precluded by possible events having occurred during the child's minor age) by the application of ruling 30 and in realization of the general principles of the law 555/1912; and such citizenship is considered maintained throughout the minor age of the same child.

In conclusion, it appears timely to underscore that the acknowledgments of citizenship which were requested by children of an Italian mother born since Jan-01-1948 should follow the regular investigations and procedures followed for the children of an Italian father. (3)(4)

B. Application of article 5 of law 123/1983 and of ruling no. 30/1983 toward those who were minors when Law 123/1983 (Apr-27-1983) became effective

1. In regards to the effects of ruling no. 30/1983, the principles established by articles 1 and 3 of law 123/1983 also apply to minor children as of its date of enactment.

2. In reference to the situations regulated by article 12, on the other hand, the minor child of an Italian citizen father or mother, either of whom was a holder on the entry date of law 123, which child, on the basis of prior rules did not possess Italian citizenship, has reacquired Italian citizenship effective on the aforesaid date, based upon the provision of article 5 of said law 123.

Thus the child, if minor as of the entry date of law 123/1983, though having lost the citizenship under article 12 in depending upon the the events of the parent exercising the paternal powers, reacquired Italian citizenship where this citizenship was possessed by the other parent on the effective entry date of law 123.

Likewise, an Italian citizen minor as of Apr-27-1983 is to be so deemed, which child had not previously acquired our citizenship, owing to the preventative conditions in article 12 of the law 555/1912 (domicile abroad and maintenance of the foreign citizenship).

The reacquisition and acquisition of the citizenship took effect, in restatement, on the effective entry date of law 123.

3. Minors on the effective entry date of law 123/1983 who found themselves in possession of one or more foreign citizenships acquired by derivation from their parents have been held – until May-17-1986 – to the option foreseen in the second paragraph of article 5 of the same law, to be used during the 19th year of age.

The unused option had entailed the loss of citizenship upon the ending of the 19th year of age.

Law no. 180 of May-15-1986, entering effect May-18-1986, has delayed the deadline for the option, effective upon the entry of this new general citizenship law. Contextually it has conferred the possibility, to whom had lost the citizenship by the unused option, to reacquire it with a special declaration. The interpretation of the State Council (opinion no. 1060/90 of Nov-07-1990) has extended this possibility also to those who had lost the citizenship by opting for the foreign citizenship which they possessed.
Therefore, affected by the loss of citizenship are all dual citizens by jure sanguinis or communicatione juris (5), born between Apr-27-1965 and May-17-1967 (6), who, not having used the option within the limit of the end of the 19th year or having opted in favor of the foreign citizenship, have not reacquired it with a special declaration under article 1, paragraph 2 of the said law no. 180/1986 or under article 17, paragraph 1 of the current law no. 91/1992.

C. Article 5 of law 123/1983 in relation to article 12 of law 555/1912

1. The provisions of these two articles of law are not considered mutually incompatible.

According to article 12 of law no. 555, where one single parent changed citizenship, the predominating condition recognized in determining the status of the unemancipated minor children was the status of the parent exercising the paternal power, who in the time of promulgation of the law was, as a rule, the father. It seems timely to underscore that, following the reform of family law effectuated in law 151/1975, the power is exercised jointly by the father and mother. Still, the already cited opinion of the State Council no. 719/79 of Oct-24-1980, in the absence of an explicit provision modifying the matter, had confirmed the predominance of the father's citizenship status in the determination of that of the minor. Only after Apr-27-1983; the effective date of entry of law no. 123/1983, which, receiving the spirit of ruling no. 30/1983 of the Constitutional Court has introduced the principle of equal relevance of filiation from both father and mother in matters of citizenship; is the principle of the predominance of the status of the father no longer applicable. (In the case where only one of the parents had exercised the power in an exclusive way, the child followed, for purposes of article 12, the citizenship events of the same parent.)

In addition the effects of the acquisition and the loss of citizenship on the part of a minor in subordination to that of the parent were, upon the operation of article 5 of law no. 123, released from other conditioning factors, being: – for purposes of acquisition – the acquisition or prior holding of another citizenship and domicile abroad; – for purposes of loss – the fact of residing with the parent who lost the citizenship.

As for the implications in particular of the effect of loss, the opinion of the State Council no. 1060/90 of Nov-07-1990 has clarified in an unmistakeable way, what should be the new reading of the 2nd paragraph of article 12: "the minor unemancipated children of whomever loses the citizenship become aliens, should they acquire the citizenship of a foreign State", keeping effective that "the acquisition" included the situation of prior possession (unless by jure soli, in which case it fell into the purview of the application of article 7) and that the loss of citizenship should concern both of the parents.

In conclusion, then, article 12 of law 555/1912 has remained partially in force and operation, even for situations happening after Apr-24-1983 and for all of the effective period of law no. 555/1912.

D. Recognition of judicial declaration of filiation in bastardy

1. The second paragraph of article 2 of law 555/1912 (according to which, for purposes of determining the citizenship of the child in bastardy, the citizenship status of the father predominated, even if the father became known later than the mother) was declared unconstitutional in ruling no. 30/1983 from the Constitutional Court, inasmuch as it was contrary to the constitutional principle of judicial parity between man and woman. Therefore, also to be considered Italian citizens, in line with article 2, are the children of an Italian mother born beginning Jan-01-1948 (see note 2) who are recognized or judicially declared such.
2. In the general scheme, it is recalled that the recognition or judicial declaration of filiation in bastardy, which happened during the minor age of the child, determined the attribution of the status of Italian citizenship with retroactive effect, namely to the birth event.

If instead, the recognition of paternity or maternity or the judicial declaration were to happen during the adult age of the child, the effects related to citizenship were produced, according to article 2 and article 13 of the same law 555, commencing the day after the declaration of citizenship choice. The declaration of choice was submitted within a year of the recognition or sentence; in the case of a foreign sentence recognized by Italy within one year of the recognition (see opinion no, 1/9-1-4 (81) 827 of the Ministry of Justice on Dec-01-1981 and telexpress circular no. 2327 of Jun-23-1982 of this Ministry).

In the scenario where an interested male party, Italian by electing Italian citizenship following recognition or judicial declaration of paternity or maternity, had contracted marriage with a foreign woman, the consequences of the citizenship acquisition on the part of the husband upon the citizenship status of the wife could be summarized as follows: If the date of acquisition of citizenship on the part of the husband were prior to the entry into effect of law 123/1983, the acquisition of Italian citizenship on the part of the woman was caused by law 555 (article 10). If the acquisition should happen after the entry into effect of law 123/1983, the position of citizenship of the spouse would be governed by and subordinate to the conditions and procedures foreseen by this aforesaid law until Aug-15-1992 and by law 91/1992 after said date.

PART II

CITIZENSHIP IN RELATION TO MARRIAGE

A. Law of Apr-21-1983 no. 123

1. Article 1 of law 123/1983, in furtherance of the constitutional principle of the moral and legal parity between spouses, and in respect of the will of the persons, had established for the foreign or stateless spouse (man or woman) of an Italian citizen, the possibility of acquiring the Italian citizenship, not in automatic form, but by application and with a Decree of the President of the Republic.

The provisions of law 123/1983 in respect to the acquisition of Italian citizenship referred naturally also to the spouse of an Italian citizen having the citizenship by naturalization after the effective entry date of law 123, or who after such date had acquired or reacquired the Italian citizenship.

With a provision later renewed in law 91/1992, the foreign or stateless spouse of an Italian citizen, with the effective entry of law no. 123/1983, could present an application for acquiring the Italian citizenship after six months since the celebration of marriage if the spouse had, in that span of time, resided in Italy; or in the case of domicile abroad, after three years since the marriage; provided, in both cases, there were no arising causes of dissolution, annulment, cessation of the civil effects, or legal separation to interrupt the marital rapport before the completion of the terms aforesaid.

B. Compatibility between law 123/1983 and law 555/1912
1. Also, for the concerns of citizenship in relation to marriage, there is the problem of the connection and the effectiveness of rules under law 555/1912 in relation to the provisions belonging to law 123/1983. (7)

Into the concern goes the premise that the rules belonging to pertinent articles 10 and 11 of law 555 refer exclusively to the citizenship position of the woman in relation to marriage. To that, there was always reserved a special character.

2. The 1st paragraph of article 10 of law 555/1912 in the interpretation of the opinion of the State Council no. 199/97.

In the system of law 555/1912 the married woman could not assume a different citizenship from that of her husband, even if there was a personal separation between the spouses, as the provision of article 10 paragraph 1 impeded it. As a consequence, it was without doubt that the female Italian citizen by origin or jure matrimonis who spontaneously acquired a foreign citizenship did not lose the Italian citizenship, such naturalization having no effect inside our own constructs as long as there existed a valid conjugal bond with an Italian citizen. (The conditions causing the retention came unless due to the dissolution of the conjugal bond, by death or divorce, or the loss of Italian citizenship on the part of the husband.)

Following the effective entry of the said law 123, the first paragraph of article 10 of law 555/1912 should be held void; forasmuch as it took inspiration from the principle of oneness of citizenship of the family unit and subordinated the citizenship events of the wife to the citizenship status of the husband; this countervailed the constitutional principle of parity between the spouses, already legislated in the family law reform (law no. 151/1975) and in fact acknowledged in law 123.

Nevertheless the opinion of the State Council no. 199/97 of Mar-05-1997 has held that the first paragraph of article 10 was abrogated only in the sense which stipulated that the woman lost Italian citizenship contrarily to her own will, and that this paragraph was instead held in force until the effective entry of the new general law on citizenship (no. 91/1992), in the sense which caused retention of the citizenship. From this it follows that the woman, Italian by birth or jure matrimonis, married to an Italian citizen; who happened to find herself, after the effective entry of law 123, within personal conditions which could void the possession of Italian citizenship according to article 8 of law 555; retained our citizenship as long as the Italian husband retained it. (8)

3. Abrogation of the 2nd paragraph of article 10 and the 2nd paragraph of article 11 of law 555/1912

Article 1 of law 123 introduced, as illustrated above, a mechanism different from that foreseen by articles 10 and 11 mentioned above, a mechanism that excluded every automatism in the acquisition of Italian citizenship by jure matrimonis.

Consequently, also abrogated by law 123/1983 were the 2nd paragraph of article 10 and the 2nd paragraph of article 11 of law 555/1912, which governed the automatic acquisition of the citizenship on the part of the foreign woman by matrimony with an Italian citizen (article 10) or by the Italian naturalization of the foreign husband (article 11).

4. Effects of dissolution of marriage, following the abrogation of the 2nd paragraph of article 10 of law 555/1912.
The second part of the 2nd paragraph of article 10 dealt with the consequences of the dissolution of the matrimonial bond upon the citizenship of the Italian woman by marriage. In the system of law no. 555/1912 the foreign woman being Italian by marriage who, following dissolution of the conjugal bond (by widowhood or divorce), had "maintained" or "transferred" abroad her own domicile and "reacquired" or maintained (according to established interpretation) her own citizenship of origin, lost the Italian citizenship. (9) (10)

Regarding this point the competent Authorities held, for interpretive and enforcement purposes of the subject being considered, that such provisions were contrary to the rules contained in law 123, which eliminated every automatic effect of the matrimonial bond upon citizenship and introduced the principle of willingness; and it therefore was held that the nonexistent declaration of renunciation under article 7 implied a willingness to maintain the status of Italian citizenship.

In favor of the retention of citizenship under such circumstances, the opinion no. 1060/90 of Nov-07-1990 of the State Council was also expressed, concluding that "in the 1983 system the dissolution of marriage is inconsequential upon the citizenship status of the spouse now foreign".

So, where the combined causes of loss belonging to article 10 (dissolution of marriage, maintenance or reacquisition of the citizenship of origin and maintenance or transfer of domicile abroad) had occurred after Apr-27-1983, the effective date of entry of law 123, the woman made a citizen jure matrimonis, who had not availed herself (by Apr-26-1985) of the renunciation belonging to article 7 of law 123/1983, kept the Italian citizenship. (11)

C. Ruling of the Constitutional Court no. 87/1975 and law of May-19-1975, no. 151

1. Problems posed by the 3rd paragraph of article 10 of law 555/1912.

The 3rd paragraph of the stated article 10, as broadly known, was declared unconstitutional with ruling no. 87 of Apr-09-1975 from the Constitutional Court in the part which foresaw the loss of Italian citizenship independently from the will of the woman. That therefore has no longer, in fact, found application from Apr-24-1975, the day after the publication of the ruling of unconstitutionality in the Official Gazette.

Acknowledging such a position, the law of May-19-1975 no. 151 pertaining to the "reform of family law" changed, with articles 25, 218 and 219, the governance of the citizenship status of the Italian woman who should marry or had married, before the effective entry of the law, a foreign citizen, acquiring thus his citizenship by jure matrimonis. In particular article 25 inserted article 143.3 into the civil code (today superseded by law no. 91/1992), having the following meaning: "Citizenship of the wife. The wife retains the Italian citizenship, unless expressly renounced by her, even if by effect of marriage or change of citizenship on the part of the husband, she assumes a foreign citizenship." For the women who had contracted marriage prior to the effective entry of the law, the possibility was provided for reacquisition by means of an expressed manifestation of willingness (article 219).

Still, in keeping with the current orientation of Italian jurisprudence, the Ministry of the Interior, with circular no. K.60.1/5 of Jan-08-2001, has confirmed the retroactivity to Jan-01-1948 of the effects of ruling no. 87/1975 of the Constitutional Court. From this it follows that, by effect of such ruling, the Italian woman who, commencing Jan-01-1948, had married a foreigner, has retained the Italian citizenship, even if, based on the foreign law, she had automatically assumed a foreign citizenship by
effect of the marriage.

Analogously, hypothesizing that the Italian citizen husband had lost this citizenship by having acquired a foreign one, the wife has retained the Italian citizenship even in the case that she automatically acquired the new citizenship of the husband. (The case in point was governed until then by the 1st paragraph of article 11 of law 555/1912, which promoted the loss of citizenship on the part of the woman.)

In both cases explained above, she could have otherwise renounced (see the above mentioned article 143.3 of the Civil Code) the Italian citizenship. For the exercise of this right, terms of forfeiture were not provided.

Like the already cited article 25 of law 151/1975, also the retroactive effects of the ruling of the Constitutional Court should be understood as directed toward, without any distinction at all, the female Italian citizens who had this condition not only by birth but by some other quality, including by marriage to an Italian citizen, according to what is expressed by the State Council with opinion no. 719/79 of Oct-24-1980. Therefore, even the Italian woman by jure matrimonis kept the Italian citizenship, whether in the scenario of a change in her husband’s citizenship; or in a scenario where – with a first marriage bond terminated without the causes of loss under article 10, 2nd paragraph of law 555/1912 having occurred (see above: topic B/4) –; the same woman automatically acquired the citizenship of her next husband.

Such a conclusion found, after all, comparison also in the spirit motivating the rule, which was of attributing exclusive relevance, for purposes of the acquisition or loss of citizenship, to the will expressed freely from whom the direct interest was held, eliminating every form of automatism or conditioning on marriage.

The State Council has furthermore maintained that the woman who had renounced the Italian citizenship returning the declaration proper to article 143.3 of the Civil Code could reacquire it under a method provided in the last part of article 10, 3rd paragraph, of law 555, which stayed in effect until the introduction of the new regulatory framework (law no. 91/1992).

2. Recourse to the declaration provided in article 219 of law 151/1975 remains possible (as established in article 17, 2nd paragraph, of law 91/1992) for the Italian woman who, prior to Jan-01-1948 (12), has lost the citizenship as a consequence of automatically acquiring a foreign citizenship by marriage to a foreigner or as a consequence of the acquisition on the part of the Italian husband of another citizenship which was automatically communicated to her. Such a declaration is not subject to terms of forfeiture.

It remains, in this matter, to specify that a declaration thus made can be received only if the loss of the Italian citizenship had taken place based on the rules belonging to the 3rd paragraph of article 10, and to the 1st paragraph of article 11 of law 555; that is to say automatically by the effect of matrimony or the change of citizenship of the husband, while it should be dismissed if the citizenship were lost owing to cases belonging to article 8 of the same law. (13)

**PART III**

**LOSS AND REACQUISITION OF CITIZENSHIP**
A. General causes of the loss of citizenship

It helps in this place to recall the interpretive highlights of the already cited article 8 of law 555/1912, which foresaw the general causes of loss of Italian citizenship.

1. The 1st division of article 8 connected the loss of our citizenship status to the happening of two indispensable conditions. The first was that the Italian citizen obtained a foreign citizenship "spontaneously" and that is to say after a manifestation of willingness: Such a manifestation became relevant in our legal institution with the acquisition of the citizenship status of another Country, independently - for the most part - from the motives which induced the interested person to request the new citizenship. (14)

The second condition whereby the loss of Italian citizenship confronted a compatriate was the transfer of domicile abroad.

It seems timely to recall that the loss was automatic, no declaration of renunciation or transcript being requested for this purpose, which in our system generally has a mere declarative capacity and not a substantive one.

As already recalled (see note 3), whenever the acquisition of a foreign citizenship happened during the age of minority, whether by a manifestation of the minor's own willingness or by request of the parent, the interested person did not lose Italian citizenship stemming from the 1st division of article 8. The loss in that case owed to all of the conditions belonging to the 2nd paragraph of article 12, and in that case, thus, was governed by article 12. According to the Italian system, in fact, no relevance can be imputed to the manifestation of the minor's will: He could have expressed it (submitting, under the conditions provided, the declaration of renunciation belonging to the 2nd division of article 8) only when he had reached the age of majority and thus had the full capacity to act.

2. The 2nd division of article 8 provided for, though, the general possibility of acquiring a foreign citizenship without the accompaniment of one's own will, for example, in the case of the acquisition of foreign citizenship on the part of a minor, without the conditions belonging to the 2nd paragraph of article 12 having occurred, thus without the loss happening; or in the case of the constitution of a new State attended by the consequent attribution of citizenship to the residents of the territory over which the same State extended its sovereignty. The loss of Italian citizenship happened, under the 2nd division of article 8 in question, only with domicile abroad and the expressed renunciation of the interested person.

3. As far as the 3rd division of article 8 is concerned, it is underscored that the loss of Italian citizenship happened only in the cases where an Italian citizen has accepted employment with a foreign Government or was rendering military service to a foreign Power, and the Italian Government has demanded the abandonment of said employment or military service within a fixed period of time, and he persisted in it beyond the said deadline. It was thus necessary that this case was also attended, beyond the employment or military service with a foreign State, by an explicit injunction from the Italian Government in the manner elaborated, and by the Italian citizen's non-compliance with this injunction. It followed that employment or military service rendered to a foreign State could not, per se, entail the loss of Italian citizenship under the 3rd division of article 8 of law 555/1912.
B. Reacquisition of the citizenship

1. For the case of loss belonging to the 1st division of article 8, all of the scenarios of reacquisition of Italian citizenship provided within article 9 of law 555/1912 found application. On the other hand, the scenario of reacquisition contemplated in the 3rd division of the 1st paragraph of article 9 was limited to situations belonging to the 1st division of article 8; and could not be extended to cases of loss under article 7 and under the 2nd division of article 8 (both being ascribed to renunciation). In these cases, the scenarios of reacquisition under the 1st and 2nd divisions of the 1st paragraph of article 9 remained applicable.

2. Article 9, 1st paragraph, law 555/1912

Besides the special scenarios belonging to the 1st division (military service and employment with the State)\(^{(15)}\); the reacquisition of Italian citizenship on the part of foreign-naturalized ex-compatriates happened under division 2 when the interested person renounced the foreign citizenship and had established, or established within the succeeding year, his or her own domicile in Italy; or else under the 3rd division after two years of residence in Italy.

Only a possible measure of prevention, adoptable within the terms of the law and for serious reasons, could have rendered void the eventual reacquisition, which otherwise would have been well established.

In the scenario where ex Italian citizens, after having submitted the renunciation of foreign citizenship, had not established a domicile in Italy within the period of a year provided in the cited division 2 of article 9; it should be maintained that the renunciation in discussion has remained without legal effect for not having met the provided conditions. Interested persons could be allowed to submit another declaration.

Such a declaration of renunciation was effected before the competent Italian Authorities and its merit was essentially the intent to reacquire; for its voluntary nature, the Italian system thus disregarded its results within another system. The Italian law did not request that the declaration of renunciation of foreign citizenship be communicated to the Authorities of the foreign State, unless stipulated in such a manner in bilateral or international accords.

In contrast to the scenarios belonging to division 2 of article 9, the reacquisition of Italian citizenship by effect of the provision in division 3 of article 9 was automatic and came independently and even counter to the intention of the citizen, already foreign naturalized, by the sole fact of his or her return and domicile in Italy for a two year period, unless, as mentioned, a measure taken by the Government prohibited the the reacquisition.

In regards to the concept of "domicile", it has been acknowledged in the position of the State Council, and still held valid, that the domicile should be uninterrupted and understood according to its specific meaning in article 43 of the civil code, which is to say the habitual place where the person has an abode; thus not even the continued inscription in the anagrafe (civil registry) of a Commune was – or now is – per se admissible as sufficient evidence of the same domicile.

In agreement in this matter, is the jurisprudence of the Court of Cassation (highest court of appeals), according to which a person's domicile is established by his or her habitual and voluntary residence in a
particular place; and that is to say by the subjective element of intending to have a stable residence there, revealed by the habits of life and by the development of normal social relations (Court of Cassation rulings no. 1727 of Jun-09-1959 and no. 2865 of Aug-26-1953), as a rule, incident to the fact of habitually abiding in a particular place, by which it should be presumed, in the absence of contrary evidence, that whoever habitually abides in a place wants to have his or her residence there.

3. Article 9, last paragraph, law 555/1912

Certain particular aspects belong to the last paragraph of article 9, which provided for the reacquisition of Italian citizenship without the obligation of domicile in Italy, in favor of whom had in the two years prior ceased to reside in the State to which they belonged, to move to another foreign State where its citizenship was not assumed, subject to a decree of permission by the Ministry of the Interior.

To this regard, it is pointed out that, for purposes of reacquisition of the Italian citizenship, the ex compatriate should have preemptively lost the foreign citizenship possessed and, at the moment of reacquisition, produced the related documentation sourced from the Authorities of the State concerned.

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NOTES:

(1) The law that moved the becoming of the age of majority from 21 to 18 years is law no. 39 of Mar-08-1975, entered into effect Mar-10-1975. From that date, where in law 555/1912 the explicit mentions of the 21st and 22nd year of age were made (2nd and 3rd divisions of article 3), these are to be understood as modified to 18th and 19th year of age respectively. (See in this matter the opinion of the State Council no. 678/75 of November 28, 1975.)

(2) The State Council, in the opinion of Apr-15-1983, has maintained that the ruling of unconstitutionality cannot retroact beyond the moment of occurrence of the contrast between the rule declared illegitimate, before the effective entry of the Constitution, and the rule or principle of the Constitution. The ruling, in other words, cannot retroact beyond Jan-01-1948, the effective entry date of the same Constitution.

For what pertains in particular to the retroactivity of ruling no. 30/1983 to Jan-01-1948, this position has been reasserted by the Court of Cassation in full session with ruling no. 12061 of Jun-26-1998. (See ministerial telegram no. 483 of Mar-15-1999.)

(3) In regard to the dependence of the citizenship of the minor upon that of the parent, it helps to recapitulate the opinion expressed by the State Council on Oct-24-1975 (no. 1820/1975) with which the advisory body has established that the 2nd paragraph of article 12 found application also in the following cases:

   a) when the foreign citizenship acquisition on the part of the minor happened by virtue of a separate fact or act, not contextually by the one which determined the acquisition of citizenship on the part of the parents;
   b) when the foreign citizenship acquired by the minor was different, possibly, from the one acquired by the parent;
   c) when the acquisition of the foreign citizenship on the minor's part entailed a voluntary participation of the same minor.
Regarding this last point, it is observed that, in our system, there is no relevance in the minor's manifestation of will toward obtaining a foreign citizenship by which a possible declaration executed in that way could take the relevance of a manifestation of will under division 1 of article 8; but it is an element of the case in point elaborated here, contemplated in the 2nd paragraph of article 12.

It can, then, be concluded that the minor lost the citizenship by the application of article 12 only with the occurrence of all of the following conditions:

* acquisition or previous holding (except by jure soli) a foreign citizenship;
* loss of the citizenship of the parent exercising paternal powers or of the sole Italian parent (until Apr-26-1983), or of both parents or of the sole Italian parent (since Apr-27-1983);
* residence with such parent (until Apr-26-1983).

(4) Recalled here is the well-established interpretation adopted for article 7 of law 555/1912, by which naturalization abroad on the part of the Italian parent after the birth of the child did not entail the loss of our citizenship on the part of the same child who was a dual citizen, born and resident in a foreign State in which he was retained as a proper citizen by birth (jure soli). This interpretation; based on the premise that such a rule was of a special character inside the overall context of the provisions belonging to law 555/1912; entailed then, the non application of the 2nd paragraph of article 12 against the dual Italian citizens considered in article 7 of law 555/1912. For what regards the interpretation of the expression "proper citizen by birth", to clarify the delimitation came the opinion of the State Council no. 1060/90 of Nov-07-1990. In fact, in delimiting the scope of application of the requirement to make an option, given to dual citizens upon the becoming of adult age, prior to the entry into effect of law 180/1986, the Council confirmed the standing of article 7 of law 555/1912 (which at a prior time was maintained to be abrogated by article 5 of law 123/1983) and at the same time created a distinction between the persons addressed by said article 7 (foreign citizens by jure soli) and the persons addressed by article 5 of law 123/1983 (foreign citizens by jure sanguinis).

See also on this topic:

- the Ministry of the Interior circular K 39.1 of May-27-1991, point 1) letter A): "... those who are addressed by the regulation of article 7 of the same law no. 555/1912, it merits saying, those; born abroad to a parent who was Italian or became Italian during their age of minority; who are considered proper citizens by the State of birth, by the fact of birth in the State's territory, according to the principle of jure soli".

- Zampaglione-Guglielman, vol. III, the Citizenship, page 326, note 8: "The dual citizens considered by this rule [article 7 law 555] were not held to opting for a single citizenship under law no. 123/1983 article 5. This rule governed a different scenario of dual citizenship from the one controlled by article 7 of Law 555/1912. The former citizenship was derived jure sanguinis from one of the parents to the interested person; the latter from being born in a State that had attributed it to him or her jure soli."

(5) The minor child of a foreigner who acquired Italian citizenship acquired the citizenship by communicatione juris (according to article 12 of law 555/1912 or article 5 of law 123/1983).

(6) The problem related to those who have become 18 years of age on Apr-27-1983, effective date of entry of law no 123, was resolved by the Ministry of Justice in the way of considering the youths in question minors until midnight of that day and thus subject to the burden of declaring, under pain of forfeiture, before midnight of Apr-27-1984 if they intended to keep the Italian citizenship.
(7) Law 555/1912, as widely known, foresaw, according to article 10, the automatic acquisition of Italian citizenship for the foreign woman who married a citizen, while, for the foreign man married to an Italian citizen woman, article 4 foresaw an eased naturalization.

This rule naturally found application also for foreign women married, before the effective entry of law 123/1983, to an Italian citizen recognized on the basis of ruling no. 30 of the Constitutional Court.

(8) For a close examination of the matter, refer to ministerial telexpress circular 098/1354 of Sep-11-1997, with which the Council of State issued its cited opinion and the related explanatory note from the Ministry of the Interior.

(9) The non possession of the original citizenship was proven by the interested women with suitable documentation. When the provisions for the loss occurred, the situation could not not be addressed with belated renunciations of the original citizenship.

(10) For the women who had lost the Italian citizenship under the 2nd paragraph of article 10 there was not provided, neither in the body of law no. 123/1983, nor elsewhere, a specific provision making reacquisition possible. It remained possible for them to resort to naturalization.

(11) The woman who availed herself of the ability to renounce could have, if desiring, been able to reacquire the Italian citizenship, for all of the period of effect of law 555/1912, through recourse to naturalization. Today she can avail herself of the provisions related to reacquisition.

(12) The applicability of paragraph 1 of article 10 to situations arisen prior to Jan-01-1948 is not put in discussion.

(13) The declaration of reacquisition of Italian citizenship under article 219 of law no. 151/1975 should also be welcomed, if submitted by a female Italian citizen by origin, who after the occurrence of a loss of Italian citizenship jure matrimonis, had acquired another foreign citizenship. Such an acquisition, happening when the interested woman was already a foreign citizen, did not produce within our legal system any effect at all.

(14) The expression "spontaneously" came to assume a relevance in every particular in the cases in which the foreign citizenship was conferred, by operation of law and without express renunciation, by the foreign Country of domicile owing to particular situations (as for example in 1953 in Israel following the State constitution or in 1984 in South Africa for the youth between ages 15 and 25 years). In similar cases in point the State Council maintained that – even in the absence of expressed renunciation on the part of the Italian citizen of the citizenship that came conferred, then as a recognition of an expression of a choice was due, even if in the form of abstention – the loss of the Italian citizenship was not produced. That, insomuch, would have come to lack an element of liberty (the "spontaneity" of which the law spoke) and the same tacit manifestation of will would not be understood as directed toward obtaining the citizenship of that Country, but instead toward maintenance of the facts and situations which might become subordinate to the possession of local citizenship, as in the case of South Africa, the right of residence.

(15) In the case or rendering military service the reacquisition happened with the inscription in the army. For what instead pertains to the acceptance of employ with the State, the reacquisition commenced from the date of its assumption.