

Case C-816/26 * [Picuso]ⁱ

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

23 July 2026

Referring court:

Corte costituzionale (Italy)

Date of the decision to refer:

23 July 2026

Applicants:

M.C.S. and C.D.L., as persons exercising parental responsibility over the child A.V.D.L.

A.L.A.

J.L.A.

F.C.D.S.C.

Defendant

Presidente del Consiglio dei Ministri

Subject matter of the main proceedings

The civil division of the Tribunale ordinario di Mantova (District Court, Mantova, Italy), and the division specialising in immigration, international protection and free movement of citizens of the European Union of the Tribunale ordinario di Campobasso (District Court, Campobasso, Italy), referred questions of constitutionality to the Corte Costituzionale (Constitutional Court, Italy), which is the referring court, in relation to Article 3 *bis* of legge 5 febbraio 1992, n. 91 (Law No 91 of 5 February 1992), introduced by Article 1(1) of decreto-legge 28 marzo

* Language of the case: Italian.

ⁱ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

2025, n. 36 (Decree-Law No 36 of 28 March 2025), converted, with amendments, into legge 23 maggio 2025, n. 74 (Law No 74 of 23 May 2025), so far as concerns the wording ‘even before the entry into force of this article’, and the conditions laid down in points (a), (a *bis*) and (b) of that article. The new rules on nationality introduce a bar *ab initio* to the acquisition of Italian nationality for persons who were born abroad, even before the entry into force of that article, and who have another nationality, unless one of the conditions set out in points (a) to (d) of that article is satisfied.

Type and subject matter of the request for a preliminary ruling

The referring court asks whether Article 9 TEU and Article 20 TFEU preclude the national law resulting from Article 3 *bis* of Law No 91 of 5 February 1992, introduced by Article 1(1) of Decree-Law No 36 of 28 March 2025.

Questions referred for a preliminary ruling

Do Article 9 of the Treaty on European Union and Article 20 of the Treaty on the Functioning of the European Union preclude the adoption of a rule such as that laid down in Article 3 *bis* of Law No 91 of 5 February 1992 (New rules on nationality), introduced by Article 1(1) of Decree-Law No 36 of 28 March 2025 (Urgent provisions on nationality), converted, with amendments, into Law No 74 of 23 May 2025, in so far as it represents a bar *ab initio* to the acquisition of Italian nationality by a person who was born abroad, even before the entry into force of that Article 3 *bis*, and who has another nationality, unless one of the conditions set out subsequently in that Article is satisfied?

Relevant provisions of law

Provisions of national law

Articles 1, 2, 3, 22, 24, 56, 58 and the first paragraph of Article 117 of the Constitution, relating to compliance with the principle of non-discrimination enshrined in Article 14 of the ECHR and Article 26 of the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 16 December 1966.

Articles 1, 2 and 3 of Law No 91 of 1992.

Article 3 *bis* of Law No 91 of 5 February 1992 (New rules on nationality), introduced by Article 1(1) of Decree-Law No 36 of 28 March 2025 (Urgent provisions on nationality), converted, with amendments, into Law No 74 of 23 May 2025, provides:

‘by way of derogation from Articles 1, 2, 3, 14 and 20 of this Law, Article 5 of legge 21 aprile 1983, n. 123 (Law No 123 of 21 April 1983), Articles 1, 2, 7, 10, 12 and 19 of legge 13 giugno 1912, n. 555 (Law No 555 of 13 June 1912) and Articles 4, 5, 7, 8 and 9 of the codice civile (Italian Civil Code) approved by regio decreto 25 giugno 1865, n. 2358 (Royal Decree No 2358 of 25 June 1865), any person born abroad, even before the entry into force of this Article, and having another nationality shall be considered to have never acquired Italian nationality, unless one of the following conditions is met: (a) the person’s status as an Italian national is recognised, in accordance with the legislation applicable on 27 March 2025, following an application, accompanied by the necessary supporting documents, presented to the competent consular office or mayor no later than 23:59 (Rome time) on the same date; (a-bis) the person’s status as an Italian national is recognised, in accordance with the legislation applicable on 27 March 2025, following an application, accompanied by the necessary supporting documents, presented to the competent consular office or mayor on the date indicated in the appointment notice sent to the person concerned by the competent office no later than 23:59 (Rome time) on the same date of 27 March 2025; (b) the person’s status as an Italian national is established by a court, in compliance with the law applicable on 27 March 2025, following an application to the court lodged no later than 23:59 (Rome time) on the same date; (c) a first-or second-degree ascendant has, or had, at the time of death, exclusively Italian nationality; (d) a biological or adoptive parent resided in Italy for at least two continuous years after the acquisition of Italian nationality and before the date of birth or adoption of the child’.

Provisions of European Union law

Article 9 TEU, Article 20 TFEU and Articles 7 and 9 of the Charter of Fundamental Rights of the European Union.

Relevant case-law

Case-law of the national courts

Corte di cassazione (Supreme Court of Cassation, Italy), in relation to the acquisition of nationality: Joint Civil Chambers, judgments No 25318 of 24 August 2022 and No 4466 of 25 February 2009.

Constitutional Court: judgment No 87 of 1975, judgment No 30 of 1983, judgment No 142 of 2025 and judgment No 63 of 2026.

Case-law of the EU courts

Judgments of the Court of Justice in Case C-689/21, in Case C-181/23, in Joined Cases C-684/22 to C-686/22, in Case C-221/17, in Case C-118/20, in Case C-135/08 and in Case C-34/09.

Succinct presentation of the facts and procedure in the main proceedings

- 1 Proceedings were brought before the **District Court, Mantova** by the parents of a Brazilian child who was born in Brazil and resides there, against the refusal of the registrar of the municipality of Canneto sull'Oglio to transcribe the birth certificate of that child. They applied for a declaration that the child was an Italian national, in so far as his mother was recognised as an Italian national by judgment No 1532 of 11 April 2025 of the Tribunale ordinario di Brescia (District Court, Brescia, Italy). Under the earlier rules, that application for a declaration would have been well-founded. However, under the new rules, resulting from the introduction of Article 3 *bis* of Law No 91 of 1992, the child had never acquired Italian nationality, as his case did not fall within the exceptions referred to in points (a) to (d) of that Article 3 *bis*(1).
- 2 Proceedings were brought before the **District court, Campobasso** by two Argentinian nationals and two Brazilian nationals, by two separate applications. The applicants applied for a declaration that they were Italian nationals *jus sanguinis* (by descent), as descendants of two Italian nationals who emigrated to Argentina and Brazil, respectively, without ever being naturalised. That court challenges Article 3 *bis* in so far as it also applies to persons born before Decree-Law No 36 of 2025, as converted, on the ground that it would entail a 'material withdrawal of a right already acquired'.
- 3 The two courts mentioned above brought constitutionality proceedings before the Constitutional Court. Given that the orders for referral concerned the same provisions and raised questions overlapping in part, the Constitutional Court ordered that the actions be joined and dealt with together.
- 4 The **District Court, Mantova** refers to the case-law of the Supreme Court of Cassation on the acquisition of nationality (Joint Civil Chambers, judgments No 25318 of 24 August 2022 and No 4466 of 25 February 2009) and points out that the contested provision leads to the 'implicit revocation' of Italian nationality for all those who, as a result of being born before its entry into force, had already substantively acquired nationality on the basis that they had been born to an Italian national, even though it had not yet been formally acknowledged that they possessed that right.
- 5 In the opinion of that court, the contested provision infringes: **(a)** Article 22 of the Constitution, which precludes that the right of every national to retain his or her nationality may be sacrificed on grounds connected to the community's public interests; **(b)** Article 3 of the Constitution, in so far as the decision to take retroactive action as regards the recognition of nationality undermined the legitimate expectations of persons who had already acquired Italian nationality at birth; in addition, the difference in treatment between those who applied for a declaration before 28 March 2025 and those who applied after that date is completely arbitrary; **(c)** Article 2 of the Constitution, in so far as it arbitrarily and unreasonably affects an inviolable human right; **(d)** Article 24 of the Constitution,

in so far as the contested provision unreasonably limits, also from a temporal perspective, access by a person, who already acquired Italian nationality by descent at birth, to judicial protection of his or her subjective right to nationality; (e) the second paragraph of Article 1 and Articles 56 and 58 of the Constitution, in so far as Italian nationality, retroactively excluded by the contested provision, is an essential prerequisite to the exercise of active and passive political rights; (f) the first paragraph of Article 117 of the Constitution, in relation to compliance with the principle of non-discrimination enshrined in Article 14 ECHR and Article 26 of the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations on 16 December 1966.

- 6 In the opinion of the **District Court, Campobasso**, the contested provision infringes Article 2 and 3 of the Constitution in so far as, (a) the decision to make the change on recognition of nationality retroactive undermines the legitimate expectations of a person who had already acquired Italian nationality at birth; (b) the difference in treatment between those who applied for a declaration before 28 March 2025 and those who applied after that date is completely arbitrary; (c) it is contrary to the principle of proportionality, as the same purposes may be pursued by means that are less intrusive on the rights of the addressees. In addition, it is of the view that the contested provision infringes the first paragraph of Article 117 of the Constitution, in relation to Article 9 TEU and Article 20 TFEU, which confer Union citizenship on any person who is a national of a Member State, and Article 22 of the Constitution, which excludes any form of deprivation of citizenship when it results from discretionary political choices, including those justified by general public interests.
- 7 As regards the question relating to the first paragraph of Article 117 of the Constitution, in relation to Article 9 TEU and Article 20 TFEU, that court observes that the contested provision also leads to the ‘automatic, generalised loss’ of Union citizenship and therefore comes within the scope of EU law. In those cases, Member States should respect the principle of proportionality. It refers to the case-law of the Court of Justice (in particular the judgment of 5 September 2023, Case C-689/21), according to which national legislation should permit an individual examination of the consequences of losing nationality for the persons concerned and ensure that Union citizenship can be retained or recovered.
- 8 In conclusion, according to the District Court, Campobasso, by retroactively imposing new conditions for the acquisition of Italian nationality, the contested provision leads to the revocation *ex tunc* of an acquired right, without providing a reasonable period of time for an application to be made for recognition of citizenship.

The essential arguments of the parties to the main proceedings

- 9 The child A.V.D.L., represented by his parents, entered an appearance and argued, in particular, that the questions relating, in particular, to Articles 3 and 22 of the

Constitution were well founded. All the applicants in the main proceedings request a preliminary ruling from the Court of Justice on incompatibility with Article 9 TEU, Article 20 TFEU, freedom of movement and Articles 7 and 9 of the Charter of Fundamental Rights of the European Union, from the points of view of proportionality, the effectiveness of protection and the prohibition of unreasonable restrictions on access to Union citizenship status. The Italian State failed to have regard to the relationship of solidarity that binds it to Italians with dual nationality born and resident abroad.

- 10 The Presidente del Consiglio dei ministri (President of the Council of Ministers), represented and defended by the Avvocatura generale dello Stato (State Attorney General's Office, Italy), intervened in the proceedings brought by the District Court, Mantova and in the two cases brought by the District Court, Campobasso. According to the State Attorney General's Office, the contested provision does not entail any loss of rights already acquired, but only affects the mechanisms used to pass on Italian nationality, by introducing an obstacle to the acquisition of nationality. It argues that the questions raised are unfounded. As regards the question relating to the first paragraph of Article 117 of the Constitution, raised by the District Court, Campobasso, it observes that the decisions of the Court of Justice on the obligations which the States must fulfil when they revoke nationality concern different situations, as they relate to cases in which the persons concerned had been identified as nationals of the Member State, had enjoyed the rights and fulfilled the obligations linked to the status of national and had subsequently been the subject of individual decisions involving the loss or revocation of nationality. The judgment of the Court of Justice of 29 April 2025 in Case C-181/23 indicates not only that the contested legislation complies with EU law, but also that it makes the necessary corrections to a legislative system which might otherwise be contrary to EU law itself. Indeed, the previous legal framework allowed persons who have no genuine link with the European Union to enjoy the rights provided by the European legal system, potentially introducing millions of people to the European Union area, without any form of control, with consequences, moreover, for public security, not only at a national level, and the provision of social benefits.

Grounds for the question referred for a preliminary ruling

- 11 The referring court is called upon to rule, among others, on whether that Article 3 *bis* infringes the first paragraph of Article 117 of the Constitution, in relation to Article 9 TEU and Article 20 TFEU.
- 12 The referring court refers to judgement No 63 of 2026 of the Constitutional Court. In that judgment, the Constitutional Court dismissed the parties' request for a reference for a preliminary ruling on the compatibility of the Article 3 *bis* at issue with Article 9 TEU and Article 20 TFEU, on the ground that the conditions which, according to the Court of Justice, relieve the court or tribunal of the obligation to make a reference for a preliminary ruling were satisfied (judgments of the Court

of Justice, Grand Chamber, of 24 March 2026, Case C-767/23, and of 6 October 2021, Case C-561/19, *Consorzio Italian Management and Catania Multiservizi*; judgment of 6 October 1982, Case C-283/81). It declared that the question referred by the Tribunale ordinario di Torino (District Court, Turin, Italy), concerning infringement of the first paragraph of Article 117 of the Constitution, in relation to Article 9 TEU and Article 20 TFEU, was unfounded.

- 13 In that judgment No 63, in point 8.3, the Constitutional Court stated that the contested provision constitutes, for those subject to it, an exclusion *ab initio* from the acquisition of Italian nationality, and not a revocation. It also noted that the failure to use the institution of revocation is consistent with the content of the legislation at issue, which produces effects to which revocation is conceptually unrelated. Revocation is an institution that operates *ex nunc*, linked to circumstances that have arisen, whereas Article 3 *bis* produces effects *ex tunc*, in order to deal with a long-standing situation (which however has worsened over the decades). In addition, the Constitutional Court observed that revocation (as well as the loss of nationality governed by Article 12 of Law No 91 of 1992 and the ex officio annulment of the decision granting nationality) affects a status which has already been officially acquired by an individual, whereas the provisions at issue affect the not officially recognised status of a multitude of persons, and that this is probably due to the particular wording used by the legislature ('considered never to have acquired Italian nationality'): the use of the presumptive formula is appropriate given that the status of Italian national was not legally certain for any of the persons subject to the provisions.
- 14 In the same judgment, the Constitutional Court also provided a historical overview of the legislation on transmission of Italian nationality, examining the impact of the entry into force of the Constitution and the gradual distancing of legislation on nationality from it. In Italy, the basic criterion for the acquisition of nationality is the parent-child relationship, in accordance with Articles 1, 2 and 3 of Law No 91 of 1992. Prior to Decree-Law No 36 of 2025, as converted, the transmission of nationality to descendants had no limitations in time. Over the fifty-year period from 1876 to 1925, more than 16.5 million Italian nationals emigrated to various destinations around the world, the majority of whom (approximately 8.9 million people) headed for North or South America, to countries where *jus soli* (the principle that nationality by birth is determined by the territory where the birth takes place) was in force. This resulted in the formation of an enormous number of people of foreign nationality who also retained Italian nationality, which had hardly ever been officially recognised. Over the years, the scale of the phenomenon of dual nationality has increased considerably, partly due to legal factors. First, by judgments No 87 of 1975 and No 30 of 1983, the Constitutional Court held to be unconstitutional laws (i) on the basis of which an Italian woman, who had acquired the nationality of her foreign spouse on the basis of marriage, lost her nationality (third paragraph of Article 10 of legge 13 giugno 1912, n. 555 (Law No 555 of 13 June 1912) entitled 'On Italian nationality'), and (ii) which failed to attribute nationality by birth to the child of an Italian mother (Article 1 (1) of Law No 555 of 1912). Second, the Supreme Court of Cassation held that

provisions that were declared unconstitutional were also inapplicable to situations arising before the entry into force of the Republican Constitution (see judgment No 4466 of 2009, cited above).

- 15 The provision that sovereignty belongs to the people and is exercised by the people in the forms and within the limits of the Constitution (second paragraph of Article 1 of the Constitution) is given concrete expression in the provisions which confer upon nationals rights of democratic participation, in particular the right to vote and to stand for election (Articles 48 and 51 of the Constitution), the right to contribute to determining national policies through political parties (Article 49 of the Constitution) and the right to vote in a referendum (Articles 75 and 138 of the Constitution). Nationals are closely linked to the life of the democratic State, which they form and support, giving rise to a shared political future. Through democratic cooperation with decisions that affect the community, they are jointly responsible for what happens to that community and are affected, at least to a certain extent, by both the beneficial consequences and those that entail burdens and sacrifices.
- 16 Democratic participation which gives rise to a shared political future is based on a genuine link between nationals and the national community. The need for such a link is clear from Article 1 and the second paragraph of Article 4 of the Constitution and other constitutional principles, as set out in Judgment No 63 of 2026. Those principles intertwine to transform the population into a community bound by genuine links between its members, consisting of solidarity, reciprocity of rights and duties, commitment to the progress of society and the sharing of common ends. In its judgment No 142 of 2025, the Constitutional Court had already pointed out that the constitutional rules referred to a correlation between nationality and the territory of the State, as a place that reflects a shared cultural background and the sharing of constitutional principles (paragraph 11.2 of judgment No 63 of 2026).
- 17 In its judgment No 63 of 2026, the Constitutional Court also explained the meaning of the link between the nationality of a Member State and Union citizenship. The fact that a matter – such as nationality – falls within the competence of the Member States does not alter the fact that, in situations covered by EU law, the national rules concerned must have due regard to the latter (Court of Justice, judgment of 25 April 2024, Joined Cases C-684/22 to C-686/22, paragraph 34). Thus, first, the regulation of the conditions for the acquisition of national citizenship must take account of the effect of conferring Union citizenship and, therefore, cannot undermine the legal and constitutional meaning of that citizenship; second, the revocation of national citizenship has an immediate impact on European citizenship and on the enjoyment of the rights deriving from it, with the result that certain principles of EU law must be complied with, such as the principle of proportionality.
- 18 The constitutional structure of national citizenship must therefore be aligned with the Union citizenship system. The reconstruction of nationality in the democratic

order made in the previous paragraph seems to be aligned with the requirements of Union citizenship. Indeed, as stated by the Grand Chamber of the Court of Justice, judgment of 29 April 2025, Case C-181/23, a genuine relationship of solidarity and good faith between a Member State and its nationals is required, as well as the reciprocity of rights and duties. In addition, that reconstruction ensures the connection between national citizenship and Union citizenship based on the sharing of certain civic values, which underlie both the Italian Republic and the European Union. Constitutional principles, which contribute to the creation of a genuine link between the national and the national community, overlap to a large extent and, in any event, are consistent with the values listed in Article 2 TEU, which form the basis of ‘European society’.

- 19 Also in its judgment No 63 of 2026, the Constitutional Court noted that the judgment of the Court of Justice in Case C-181/23 represents a coherent development in the case-law, which has regarded national rules providing for the loss of nationality to be justified, though open to discussion on the grounds of proportionality, in so far as they seek to protect the special relationship of solidarity and good faith between the Member State and its nationals and the reciprocity of rights and duties, which form the bedrock of the bond of nationality (judgment in *Rottmann*, C-135/08, paragraph 51; to the same effect, judgment in *Stadt Duisburg*, Joined Cases C-684/22 to C-686/22, paragraph 37; *Tjebbes*, C-221/17, and *Wiener Landesregierung*, C-118/20, paragraph 52), and to ensure the continued existence of a genuine link with the Member State: ‘it is legitimate for a Member State to take the view that nationality is the expression of a genuine link between it and its nationals, and therefore to prescribe that the absence, or the loss, of any such genuine link entails the loss of nationality’ (judgment in *Tjebbes*, C-221/17, paragraph 35). However, ‘having regard to the importance which primary EU law attaches to citizenship of the Union which, as has been pointed out in paragraph 29 above, constitutes the fundamental status of nationals of the Member States, it is for the competent national authorities and the national courts to determine whether the loss of the nationality of the Member State concerned, when it entails the loss of citizenship of the Union and the rights attaching thereto, has due regard to the principle of proportionality so far as concerns the consequences of that loss for the situation of the person concerned and, if relevant, for that of the members of his or her family, from the point of view of EU law’ (judgment in *Udlaendinge-og Integrationsministeriet*, C-689/21, paragraph 38).’
- 20 Also in its judgment No 63 of 2026, the Constitutional Court held that the case-law of the Court of Justice, which, in the light of national rules specifically affecting the rights attaching to EU citizenship, considers it necessary to carry out an individual assessment of the consequences for the lives of the persons concerned, in accordance with the principle of proportionality, is irrelevant with respect to Article 3 *bis*. In Judgment No 63 of 2026 the Constitutional Court noted that that case-law concerns cases in which a Member State has deprived a person of an established status (national citizenship and, therefore, EU citizenship), thus affecting rights actually exercisable by that person. According to the Court of Justice, provisions giving rise to deprivation of nationality come within the scope

of EU law where they entail the loss of a recognised status and the rights attaching thereto (Case C-135/08, *Rottmann*, paragraph 49; *Stadt Duisburg*, Joined Cases C-684/22 to C-686/22, paragraph 36; *Tjebbes*, C-221/17, paragraph 32; *Udlaendinge-og Integrationsministeriet*, C-689/21, paragraph 30; *Wiener Landesregierung*, C-118/20, paragraphs 39 to 41 and 48; see also Grand Chamber, *Gerardo Ruiz Zambrano*, C-34/09, paragraph 42: ‘Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union’). The Court of Justice underlines that the consequences of legislation giving rise to deprivation of nationality cannot be hypothetical or merely a possibility (judgments in *Tjebbes*, C-221/17; to the same effect, Joined Cases C-684/22 to C-686/22, *Stadt Duisburg*, paragraph 50; *Udlaendinge-og Integrationsministeriet*, C-689/21, paragraph 54; *Wiener Landesregierung*, C-118/20, paragraph 59).

- 21 The Constitutional Court goes on to state that it is precisely because the national rules specifically affect the rights attaching to Union citizenship that it is necessary, in the view of the Court of Justice, to carry out an individual assessment of the consequences for the lives of the persons concerned, in accordance with the principle of proportionality. Such an assessment is not conceivable if the status of Union citizen has not been established and, consequently, the persons concerned cannot actually exercise any right. The purpose of EU case-law is to protect citizenship of the Union as a fundamental status of nationals of the Member States: that purpose does not apply in the present case as the status of Union citizen was not legally certain for any of the persons subject to the contested provision. In short, the judgments of the Court of Justice relied on by the referring party are not relevant because the contested provisions do not provide for the loss of Italian nationality.
- 22 The Constitutional Court takes the view that, in its judgment No 63 of 2026, it followed the guidelines provided in the judgments of the Court of Justice, in so far as Article 3 *bis* had no effect on the rights attached to the status of Union citizen, due to the fact that that status was not legally certain for any of the persons subject to article 3 *bis*, and no right inherent in that status could actually be exercised. In the case at hand, an assessment of the consequences of Article 3 *bis* for the ‘private life’ of the persons concerned (Article 7 of the Charter of Fundamental Rights of the European Union) cannot be made, in accordance with the principle of proportionality, since none of the persons subject to article 3 *bis* actually led their private lives within the scope of EU law.
- 23 Article 3 *bis*, in implementing the ‘genuine link’ principle, is in fact consistent with the vision of nationality (of the Member State and of the European Union) outlined by the Court of Justice in its judgment in Case C-181/23 (paragraph 96: ‘the bedrock of the bond of nationality of a Member State is formed by the special relationship of solidarity and good faith between that State and its nationals and the reciprocity of rights and duties’). It ensures that persons born abroad, who have another nationality and do not have a significant link with Italy, are not

entitled to apply for a declaration that they have Italian nationality and thereby acquire the right to move within the countries of the European Union. The need for a genuine link does not only infer mutual solidarity between the State and the national, but also implies a sharing of principles, which are the expression of values, and 'Union citizenship is based on the common values contained in Article 2 TEU' (paragraph 95 of the judgment in Case C-181/23).

- 24 The referring court accepts the requests made by the parties to the case in hand for a reference to the Court of Justice for a preliminary ruling.

WORKING DOCUMENT