

Italian citizenship by descent and Order No. 147/2026

The Constitutional Court refers the reform to the Court of Justice of the EU

What happened, why the decision matters and what scenarios may now unfold

On 23 July 2026, the Italian Constitutional Court issued Order No. 147/2026, referring to the Court of Justice of the European Union a decisive question concerning the 2025 reform of Italian citizenship by descent (*iure sanguinis*).

The Constitutional Court did not declare Article 3-bis of Law No. 91/1992 unconstitutional, nor did it suspend its operation generally. It did, however, recognise that, before ruling on the constitutional issues, it is necessary to establish whether the new rules are compatible with Article 9 of the Treaty on European Union and Article 20 of the Treaty on the Functioning of the European Union, which confer Union citizenship on every person holding the nationality of a Member State.

The news, therefore, is not that the reform has been annulled. It is that the matter can no longer be regarded as definitively settled within the Italian legal system and that the possible incompatibility of the Italian legislation with EU law will now be examined in Luxembourg.

What Article 3-bis provides

Article 3-bis of Law No. 91/1992, introduced by Decree-Law No. 36/2025 and converted, with amendments, by Law No. 74/2025, provides that a person born abroad, including before the reform entered into force, who holds another nationality and does not fall within one of the statutory safeguards is deemed never to have acquired Italian citizenship.

In summary, the safeguards cover: a complete administrative application filed by 11:59 p.m. on 27 March 2025; an application filed on the date of an appointment notified before that deadline; judicial proceedings commenced by that deadline; a first- or second-degree ascendant holding Italian citizenship exclusively; or a parent's or adoptive parent's residence in Italy for at least two continuous years after acquiring Italian citizenship and before the child's birth or adoption.

The constitutional proceedings concern, in particular, the words "including before the date of entry into force of this Article" and the conditions laid down in letters a), a-bis) and b). At the heart of the case is therefore the application of the new rules to persons born under the former legislation who had not filed an administrative application or commenced judicial proceedings by 27 March 2025.

The cases that gave rise to the decision

Order No. 147/2026 joins three incidental constitutional challenges: one raised by the Court of Mantua and entered in the register of orders under No. 4/2026, and two raised by the Court of Campobasso and registered under Nos. 40 and 41/2026.

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The Mantua case

The Mantua proceedings concern a minor born and resident in Brazil. His parents challenged the refusal of the Civil Registrar of the Municipality of Canneto sull'Oglio to register his birth certificate and sought a declaration that their son was an Italian citizen, since his mother had been recognised as an Italian citizen by Judgment No. 1532 of the Court of Brescia, delivered on 11 April 2025.

According to the Court of Mantua, the claim would have been well founded under the legislation preceding the reform. The new Article 3-bis, by contrast, prevents recognition because the minor, born abroad and holding another nationality, does not fall within any statutory exception. The referring court considered that applying the reform to a person already born was, in substance, equivalent to revoking citizenship acquired at birth, even though it had not yet been formally recognised.

The two Campobasso cases

Following Mantua, the two separate proceedings referred by the Court of Campobasso assume particular importance.

The first, registered under No. 40/2026, concerns two Argentine citizens descended from an Italian citizen who emigrated to Argentina and never naturalised there. The claim against the Ministry of the Interior, brought under Article 281-decies of the Italian Code of Civil Procedure, was filed on 28 May 2025, after the 27 March 2025 deadline established by the safeguard clause for judicial proceedings.

The second, registered under No. 41/2026, concerns two Brazilian citizens descended from an Italian citizen who emigrated to Brazil and never naturalised there. Their claim was filed on 26 August 2025. The line of descent included a woman who had a child before 1 January 1948. It was therefore a case commonly described as a “pre-1948 maternal-line case”, for which administrative practice did not permit consular recognition and made court proceedings necessary.

In both cases, the Court of Campobasso considered that the claims would have been well founded under the former legislation, but were subject to the new Article 3-bis because they had been filed after 27 March 2025 and none of the safeguards applied. The court ruled out a conforming interpretation and criticised the retrospective effect of the provision: a “substantial revocation of an already acquired right”, without any reasonable period in which to seek its recognition.

The Campobasso orders also placed the principle of proportionality at the centre of the debate. In the referring court's view, the rules produce a severe and definitive impact on the legal position of those concerned, while the objectives pursued could have been achieved through less intrusive measures. Hence the reference to Article 9 TEU and Article 20 TFEU and to EU case law requiring an assessment of the individual consequences whenever a national decision results in the loss of Union citizenship.

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The position already taken by the Constitutional Court

In Judgment No. 63/2026, the Constitutional Court had already declared unfounded some of the principal constitutional challenges to the reform, within the limits in which they had been raised in the proceedings then before it.

The Constitutional Court characterises Article 3-bis as an “original exclusion from acquisition”, rather than the revocation or loss of citizenship already acquired. On its interpretation, the formula under which the person concerned is deemed “never to have acquired” citizenship operates *ex tunc* in relation to persons whose status had not yet been recognised. Before administrative or judicial recognition, the status would not have been legally certain and would not have allowed the effective exercise of rights associated with Italian and Union citizenship.

The Court also emphasises the genuine link, meaning the effective connection between the individual and the national community. Citizenship is not described as a merely genealogical relationship, but as membership of a community founded on solidarity, reciprocal rights and duties, democratic participation and a shared destiny. From this perspective, the legislature may limit a potentially unlimited transmission of citizenship by descent through generations born and resident abroad.

The Constitutional Court considers this approach consistent with EU case law on the special relationship of solidarity and good faith between a State and its nationals, citing, among other authorities, the judgment of the Court of Justice of 29 April 2025 in Case C-181/23, *European Commission v Malta*.

The competing arguments

The argument supporting the reform begins from the proposition that, without official recognition, there was no status capable of effective exercise and no EU rights already being enjoyed. The rule would therefore govern the acquisition of citizenship, not its loss. A genuine link would justify limits designed to prevent access to Union citizenship based on purely genealogical or instrumental grounds; moreover, the safeguards protect those who had already filed an application, obtained an appointment or commenced judicial proceedings by the deadline.

The opposing argument is that, according to the traditionally declaratory nature of recognition *iure sanguinis*, citizenship was acquired directly at birth and its formal determination did not create the status. The words “never acquired” could not therefore remove the matter from EU scrutiny where the substantive result is to extinguish *ex tunc* a status arising under the former legislation. Even if the genuine-link objective is legitimate, the proportionality of a general, retrospective and automatic measure, with no individual assessment, remains to be established. The 27 March 2025 cut-off and the malfunctioning of consular appointment systems may also have created distinctions based on fortuitous circumstances beyond applicants’ control.

Why, then, a reference to the Court of Justice?

This tension is precisely what makes the Order especially important. Although the Constitutional Court continues to regard the approach adopted in Judgment No. 63/2026 as correct, it acknowledges that the

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definitive interpretation of Article 9 TEU and Article 20 TFEU belongs to the Court of Justice. Nationality remains within the competence of the Member States, but that competence must be exercised in accordance with EU law where it also affects the status of Union citizen.

The question may be expressed as follows: does EU law permit a Member State, by means of subsequent legislation, to provide that a broad category of persons born abroad, including before the reform, and holding another nationality must be regarded as never having acquired national citizenship and therefore Union citizenship, save for rigidly predetermined exceptions?

The issue is not merely terminological. The Court of Justice must clarify whether the classification as an “original exclusion” is sufficient to distinguish this situation from EU cases concerning loss of citizenship, or whether the substantive effects of the rule must prevail. In other words, does the label chosen by the legislature matter, or the actual effect on a status which, under the traditional conception of *iure sanguinis*, arose directly at birth?

The reference does not foreshadow a finding that the reform is unconstitutional, but neither is it a merely formal step. Under the principle of sincere cooperation between national and EU courts, the Court of Justice’s answer will be binding as to the interpretation of EU law and must be applied by the Constitutional Court and all other national courts.

Issues outside the scope of the EU question

The question is broad, but it does not encompass every disputed aspect of the reform. First, it excludes the specific position of persons who had begun the administrative process before 28 March 2025 but had not received notification of an appointment by 11:59 p.m. on 27 March. Judgment No. 63/2026 had left the issue unresolved; in Order No. 147/2026, the Court noted that the Court of Campobasso had not raised it specifically and that it was irrelevant to the proceedings concerned. In the pre-1948 Brazilian case, the administrative route had not been pursued because established practice made it unavailable.

The questions relating to freedom of movement and Articles 7 and 9 of the Charter of Fundamental Rights of the European Union, linked to the condition in letter c) of Article 3-bis, were likewise excluded because that provision was not at issue in the referring orders.

The Court also considered the reference to Order No. 13818/2026 of the Court of Cassation, regarding it as confirming the view that, without recognition, neither the status nor the corresponding rights can be effectively enjoyed. The same order of the Court of Cassation nevertheless specified that failure to notify an appointment, where this prevents the filing of an application, may establish a legal interest in bringing judicial proceedings.

Nor did the Court accept the request to await the decision of the Joint Divisions of the Court of Cassation concerning Order No. 20122/2025 on naturalisation. According to the Constitutional Court, the question referred to the Joint Divisions concerns the interpretation of Articles 7, 8, 9 and 12 of Law No. 555/1912, not the temporal application of the 2025 reform.

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Why Order No. 147/2026 matters

First, the decision is important because it reopens at EU level an issue that, following Judgment No. 63/2026, appeared settled under domestic constitutional law. The Court does not abandon its position, but recognises that it must be tested against the binding interpretation of the Court of Justice.

Second, it places proportionality at the centre of the proceedings. Limiting the indefinite transmission of citizenship may be a legitimate aim; it must nevertheless be determined whether it is proportionate to pursue that aim through a general and automatic measure, applying also to persons born before the reform, without an adequate transitional period and without examining individual consequences.

Third, the European answer may affect not only the three proceedings that gave rise to the Order, but the wider body of litigation concerning claims filed after 27 March 2025 by persons born under the former legislation who do not fall within the safeguards.

What changes immediately

For the time being, Article 3-bis remains in force. The Order stayed the three joined constitutional proceedings pending the European ruling; it did not automatically stay all citizenship proceedings pending before Italian courts.

Each court must therefore decide in the individual case whether to rule, adjourn a hearing or stay the proceedings. It is nevertheless foreseeable that parties will rely on the preliminary reference and that many courts will consider it appropriate to await a decision capable of directly affecting the interpretation and application of the reform.

The Order does not prevent new claims from being filed, and the Court of Justice will not itself recognise the claimants' citizenship. It will interpret EU law, while the Constitutional Court and the national courts will draw the consequences in their respective proceedings. Admissibility, legal interest, strategy and practical advisability must be assessed case by case, also taking account of the possibility of a lengthy stay.

It remains essential to preserve all evidence of steps taken before the reform: appointment requests, bookings, emails, certified electronic communications (PEC), receipts, consular communications, administrative applications, judicial claims and complete genealogical documentation. These may prove decisive both under the safeguards and in relation to matters not covered by the reference, particularly for persons who attempted to begin the process in good time but were prevented by the operation of administrative systems.

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The role of the parties in the proceedings before the Court of Justice

Those formally identified as parties to the main proceedings in the information sent by the Constitutional Court to the Registry of the Court of Justice may take part in the European proceedings. They will receive notice through their lawyers and may lodge written observations. Once the case is registered, the Registry will notify the request for a preliminary ruling to the parties to the main proceedings, the Member States, the European Commission and the other entitled participants. The period specified by the Registry, normally two months plus a fixed ten days on account of distance, will run from notification. The Court of Justice will therefore not examine only the Constitutional Court's Order and the documents transmitted by the national court. The parties' lawyers may develop the EU-law issues already encompassed by the reference, including the consequences of the reform for persons born before it entered into force, acquisition of Italian citizenship at birth and resulting Union citizenship, legitimate expectations created by the former rules, the absence of an adequate transitional period, proportionality, automatic operation and the lack of an individual assessment of a genuine link with Italy. The parties may not, however, alter the question formulated by the Constitutional Court or independently extend the scope of the reference. The Court of Justice will not recognise Italian citizenship in individual cases, but will determine how EU law must be interpreted and whether it is compatible with national legislation having the characteristics of Article 3-bis. The Constitutional Court will then apply the principles established in Luxembourg, and the ordinary courts will decide the individual proceedings.

The Court may also hold a public hearing, at which lawyers may present oral submissions and answer questions from the judges and, where applicable, the Advocate General. A hearing is not automatic and may be omitted if the Court considers that the case file and written observations provide sufficient material for a decision.

Parties to other proceedings pending in Italy concerning the same reform may not intervene directly in the preliminary-ruling proceedings arising from the Mantua and Campobasso cases. Participation is reserved for the parties formally recognised in the main proceedings, the Member States, the European Commission and the other participants expressly identified in Article 23 of the Statute of the Court. Claimants in similar cases therefore have no right of voluntary intervention and their lawyers cannot independently file submissions in the European case already commenced. Other national proceedings remain relevant: their courts may stay them pending the Court of Justice's ruling or make a separate preliminary reference if the case raises additional matters or questions not fully covered by Order No. 147/2026. Closely connected references reaching Luxembourg may be joined, in which case the parties to the new main proceedings could also participate and submit observations.

This possibility may be particularly important in placing before the Court cases different from Mantua and Campobasso, including those concerning other safeguards, applications made before the reform, or families in which some members of the same line of descent have already been recognised as Italian citizens.

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The possible scenarios

The first scenario is full compatibility. If the Court of Justice holds that Article 9 TEU and Article 20 TFEU do not preclude the Italian rules, the Constitutional Court will resume its proceedings and, as regards the EU-law parameter, may confirm the approach already expressed in Judgment No. 63/2026. The proceedings and any other admissible issues would still require formal determination.

The second scenario is incompatibility. If the Court of Justice holds that the retrospective exclusion conflicts with Union citizenship, the Constitutional Court must comply with that binding interpretation and identify the consequence for Italian law, potentially declaring the provision unconstitutional within the scope examined, with repercussions for pending proceedings.

The third scenario, probably the most complex and, in our view, also the most plausible, is conditional compatibility. The Court of Justice might recognise the legitimacy of limiting the generational transmission of citizenship or requiring a genuine link with Italy, while finding fault with one or more features of the legislation: its automatic operation, its application to persons born before the reform, the absence of an adequate transitional period, the rigidity of the exceptions or the lack of an individual assessment. In that event, the Constitutional Court would have to reshape the outcome of the case and the scope of the national legislation in accordance with the principles and criteria laid down by the Court of Justice of the European Union.

The fourth scenario is a procedural or more limited answer. The Court of Justice may confine the scope of its ruling, reformulate the question or focus on the specific circumstances of the main proceedings. Some issues raised by the reform would then remain open and might require further interpretation or new preliminary references.

How long will it take?

No definite date can be given today. After the case is registered in Luxembourg, the request will be translated and notified to the Member States, the European Commission and the other entitled participants. Written observations will then be lodged and there may be a hearing, an Opinion of the Advocate General and, finally, judgment.

According to the Court of Justice's official statistics, in 2025 the average duration of preliminary-ruling proceedings was approximately 16.9 months. This is a statistical average, not a deadline. The constitutional complexity of the case, its possible assignment to the Grand Chamber and a decision to seek an Advocate General's Opinion may significantly affect its duration.

Article 105 of the Rules of Procedure permits an expedited procedure where the nature of the case requires it to be dealt with within a short time, at the request of the referring court or, exceptionally, of the Court's own motion. Order No. 147/2026 does not contain an express request for expedited treatment.

Without an expedited procedure, a ruling between late 2027 and sometime in 2028 appears to be a prudent estimate, but cannot be guaranteed. Further time will then be required for the Constitutional Court to resume and determine its own proceedings.

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A question that remains open

Order No. 147/2026 neither predicts a favourable outcome nor neutralises the reform. It does, however, mark a highly significant step: the compatibility of the new rules with Union citizenship will be submitted to the court having the final word on the interpretation of EU law.

The question is no longer simply whether Italy may impose limits on citizenship by descent. It is how it may do so without disproportionately impairing the safeguards attached to Union citizenship and without retrospectively extinguishing, through a legislative classification, legal situations established under the former legislation.

The reform remains in force, but the matter remains open. The next decisive step will take place in Luxembourg.

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