THE CONSEQUENCES OF THE 1947 PARIS PEACE TREATY ON CITIZENSHIP ITALIAN LAW

AS CONSEQUÊNCIAS DO TRATADO DE PAZ DE PARIS NA LEI ITALIANA DA CIDADANIA

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Abstract:
Following the signing of the Paris Peace Treaty between Italy and the victorious powers in 1947, Italian law entered a long period of transition. After the abolition of a large part of the Fascist legal system, the question of citizenship remained anchored in the principles established by Law 555/1912. The study presented here attempts to reconstruct the elements of continuity and change in Italian citizenship law in this difficult transition. In particular, the research focuses on the issues related to the attribution, loss and re-acquisition of Italian citizenship and its practical consequences on individuals and families. The research was carried out on the basis of legislative documents, parliamentary debates found in the archives of the Chamber of Deputies in Rome and judgments handed down by various local courts, together with doctrinal debates dating mainly from the 1940s and 1950s. The analysis of this material leads to the conclusion that the Italian legal transition, in which the right to citizenship must be included, was very slow and incapable of dealing with issues that were partly new at the time and that the historical research of juridical nature has largely ignored.
Keywords*:*
Dual Citizenship; Constituent Assembly; Legal Transition; Ius Sanguinis.

Resumo:
Em seguida à assinatura do Tratado de Paz de Paris entre Itália e as potências vitoriosas em 1947, a lei italiana entrou numa longa fase de transição. Depois da abolição de larga parte do sistema legal fascista, a questão da cidadania permaneceu ancorada aos princípios estabelecidos pela Lei 555/1912. O estudo aqui apresentado procura reconstruir os elementos de continuidade e mudança na lei italiana da cidadania ao longo desta difícil transição. Em particular, a pesquisa se concentra no tema relacionado com a atribuição, perda e reaquisição da cidadania italiana e nas suas consequências práticas sobre indivíduos e famílias. A investigação foi levada a cabo contando com uma base de documentos legislativos, atas de debates parlamentares encontrados nos arquivos da Câmara dos Deputados em Roma, assim como em sentenças emitidas por vários tribunais locais, juntamente com debates doutrinais, em particular entre os anos de 1940 e 1950. A análise destes materiais levou à conclusão de que a transição jurídica italiana, em que o direito de cidadania deve estar incluído, foi muito demorada e incapaz de lidar com questões em parte novas naquela época, e que a pesquisa histórica do direito tem largamente ignorado.
Palavras-chave*:*
Dupla Cidadania; Assembleia Constituinte; Transição Jurídica; Ius Sanguinis.

1 INTRODUCTION

"At this World Assembly I feel that everything is against me except your personal courtesy. And especially my qualification as a former enemy, which makes you consider me as an accused person" (De Gasperi, 1947). These famous words, uttered by De Gasperi on 29

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August 1946 at the Paris Peace Conference, reveal the Italian Prime Minister's personal state of mind, mixed with political deception.

The provisions of the 1947 Peace Treaty were heavily influenced by the political situation of Italy in relation to international events. Italy was considered as a defeated power, which had become a co-belligerent in 1943, but whose status was not recognised by the victorious powers (De Gasperi, 1977; Togliatti, 1973; Cialdea & Vismara, 1947; Cialdea, 1967; Barbagallo, 1994).

As Cialdea recalled (Cialdea, 1967), the only issue really up for discussion in the peace negotiations was Italy. A first agreement was reached with Austria on South Tyrol. The De Gasperi-Gruber Agreement was signed on September 5, 1946 in Paris, and was annexed to the Peace Treaty dated October 3, 1947 also in Paris. In this case, the territory in question remained Italian, but the problem of the protection of the German-speaking minorities of Italian nationality arose. The agreement between the two governments established equal rights for this type of citizens in relation to the Italian-speaking population, with the introduction for the German-speaking population - both in the provinces of Bolzano and Trento - of primary and secondary education in German, bilingualism in all public offices and in typographical designations, and equal access for both groups to public offices. In more recent years, some have spoken, with regard to the bilingualism introduced by the Treaty of Paris, of "asymmetrical bilingualism" and of a "dominant minority" (Del Negro, 2018).

After the signing of the treaty with Austria, even the most complex issue - the Julian question - was resolved. On the territorial level, Italy ceded to Yugoslavia parts of Venezia Giulia, Istria, the territory of Rijeka and Dalmatia, and the islands of the Adriatic, despite the fact that the commission responsible for determining the ethno-linguistic character of the disputed territories at the time had decided, especially in the case of Istria, that it was predominantly Italian. This entailed the need for a series of reciprocal guarantees for the minorities, which the peace treaty did not always respect in terms of the balance between the clauses imposed on Yugoslavia and those imposed on Italy.

Italy had to cede to France Petit St Bernard, Mont Cenis, Tabor-Chaberton, the upper valley of the Tinea, Vesubio and Roia - whose annexation had to be confirmed by a referendum organised by the French state - while Trieste became a Free Territory (De Castro, 1981; De Robertis, 1983).

Finally, Italy also had to cede to Greece the islands of Rhodes and the Dodecanese, as well as to Albania the island of Saseno (Basciani, 2022). Italy also renounced (art. 23) to "any right and title to the Italian territorial possessions in Africa, namely Libya, Eritrea and Somalia",

to the concession granted by the Chinese government in 1901 at Tientsin, recognising the Albanian and Ethiopian governments.

In Italy, the signing of the Peace Treaty was seen as an unconditional surrender, as the local press pointed out.[2] And the ratification process was difficult and controversial. In Italy, the only institution that could legitimately approve the treaty was the Constituent Assembly, since the first general elections had not yet taken place; once approved, the treaty had to be signed by the President of the Republic, De Nicola. The Italian government was still a government of national unity, including the socialist and communist parties. Italy's international position was therefore not yet clearly defined. As De Gasperi pointed out in response to the interventions of Togliatti (secretary of the Italian Communist Party) and Nenni (secretary of the Socialist Party), his aim was not to isolate Russia, and even less to join a particular bloc; his idea was to maintain good economic relations with the Soviet Union, even though "our relations with the United States are more intense" (Assemblea Costituente, 1947). Another issue that De Gasperi only touched on during the debate on the ratification of the peace treaty - that of Italy's African colonies - was also approached with an outdated vision. There was no reference – including in De Gasperi's speech - to principles such as the self-determination and autonomy of colonial peoples, already established by the Atlantic Charter approved in 1941 and the United Nations Charter of 1945 (Brown, 2020).

This atmosphere of discouragement and confusion induced the deputies of the Constituent Assembly to ignore other practical issues, such as the consequences of the Treaty's clauses on the legal status of Italian citizens living in the border areas - or in the former Italian African colonies - who were interested in territorial changes. And this disinterest led to consequences for several categories of citizens as significant as they are mostly forgotten by historical critics.

The aim of this study is to analyse the effects of the 1947 Peace Treaty on the Italian citizenship law. To this end, the research has been carried out using a historical approach, based on the analysis of the clauses of the Treaty, the Italian laws on citizenship and some of the debates relating to them within the Italian parliament, as well as some jurisprudential documents, in particular the judgments of various Italian courts and tribunals, and the comments of legal experts of the period. As it will be shown, what the treaty established had a terrible impact on the citizenship rights of many people, showing a series of backwardness that will

[2] For instance, "Alle 11.35 firmata la nostra dura condanna", *Corriere d'informazione,* 10/02/1947; "Abbiamo firmato, chiediamo giustizia per l'Italia", *Corriere della Sera,* 11/02/1947.

find a partial solution only with a revision of the Italian citizenship law, in the 1980s, and the approval of an organic, new law in 1992 (Bussotti, 2002).

The scant attention paid to citizenship issues by historiography must be seen in the context of a much more complex process than cannot be explored here. This is the process of legal transition from an authoritarian and monarchical regime to a democratic and republican one. In short, two transitions in one, of which the members of the Constituent Assembly had only a very partial and limited knowledge, at least at the legal level. As recalled in a recent work, transitional legal processes or justice can be applied to different moments in contemporary history (Caroli, 2017). One of these moments was the transition after the end of the Second World War, with the central role of international law and the International Tribunals of Nuremberg and for the Far East. The characteristic feature of political and legal transitions is that national law is confronted and clashes with norms of international law, especially human rights and humanitarian law, as well as international criminal law. (Bell, 2009). Legal and legislative conflicts, as well as political conflicts, are common in these transitions.

In the case of the Second World War, countries like German and Italy had to face a juridical revolution (Cau, 2018). As a matter of fact, their legal systems had to be completely changed in relation to their previous, nazi-fascist systems. Thus, the transitional justice was (or had to be) wider than that restricted to the punishment of the war criminals or their collaborators. Transitional justice includes the adoption of other measures, as a Truth Commission, economic reparation for the victims and their families, processes of purge, and a new legal order (Tamm, 2005).

In Italy, at least two radical institutional changes had to be carried out: firstly, from the Monarchy to Republic; and secondly, from an authoritarian to a democratic regime. Nevertheless, the vast array of the above-mentioned instruments to guarantee an adequate legal transition were not applied. So much that someone spoke of a “self-indulgent” approach to deal with this complicated past (Inzaghi, Lunardelli, Marbán & Pedrotti, W.D.).

This indulgency produced an amnesty by the Italian government, emanated by the minister of justice and leader of the Italian Communist Party, Palmiro Togliatti (DP 4/1946), that coexisted with new norms, principles trials and purge of the most violent protagonists of the previous era; at the same time, it was very frequent to turn a blind eye to the apparatus of officials who had previously served the State without being guilty of any particular crimes, despite their loyalty to a regime considered unworthy and authoritarian (Pavone, 1995; Riccobono, 2019).

This mixture of the punishment of Fascist crimes, with a wide range of legislation whose production began as early as 1944 (such as RDL 134/1944), and the continuity of the State, with the restoration of pre-Fascist measures, was also applied in matters of citizenship. In this case, the competing rights were various: that between Fascist and republican law; and at the level of the interface with international law, all the Fascist legislation on the restriction of citizenship for political, religious and racial reasons, as well as the regulations concerning Italian citizens in the African colonies, with differentiations also within the African territories controlled by Italy (Del Boca, 2002; Labanca, 2002).

An aggravating factor was that the Italian legislator had to deal with the legal consequences of the Peace Treaty before the new constitution was approved. The approach adopted tended to restore the legal philosophy and some of the norms of the pre-fascist order, typical of liberal Italy, without giving great importance to new political and legal atmosphere that had now established itself throughout the Western world.

This "minimal" or "regressive" option was due to the prevailing culture of the Italian jurists: many of them, coming from a liberal formation, gave enthusiastic support to Fascism. They saw Fascism as the completion of the *Risorgimento,* finding a wide scope of action especially with the corporate reform of the 1930s (Mattone, 1986). Some of them were purged because of their strict collaboration with the darkest pages of Fascism: it is the case of Giorgio Del Vecchio, who gave a decisive contribution to the new law system of the late 1930s, based on the race (Jewish) discrimination. Nonetheless, other illustrious fascist jurists had a different fate: Antonio Azara, a member of the scientific committees of the journals "Il diritto razzista" and "La nobiltà della stirpe" was named as a president of the Cassation Court between 1952 and 1953; not to speak of Gaetano Azzoriti, president of the fascist Race Court, subjected and acquitted for a purge trial, who rose to the highest judicial office in Italy, president of the Constitutional Court in 1957 (Varnier, 2019).

Thus, the idea was to come back, when possible, to a legal pre-fascist, liberal restauration (Caroli, 2015). This approach was adopted also regarding the regulation of the Italian citizenship law; consequently, this philosophy led to a legislative and juridical chaos, resulting in a series of contradictions that were essentially dealt with at the level of jurisprudence (and not normative) and doctrinal debate. In such confused way the Italian transition in citizenship matters was implemented by the new legal order.

The following section aims to provide a brief overview of the basic principles and conditions of Italian citizenship law as it was bequeathed by fascism. Thus, the article presents a specific point regarding the consequences of the Peace Treaty on Italian citizenship law.

2 BRIEF DESCRIPTION OF PRINCIPLES OF THE ITALIAN CITIZENSHIP LAW BEFORE THE PEACE TREATY

When, on 22 February 1910, the Minister of Justice, Scialoja, presented a new law on citizenship to Parliament, the objectives were clear: to reduce international conflicts of law, to link the right to citizenship to the actual place of residence of the individual, to pay maximum attention to family relationships and, finally, to subordinate citizenship to the free choice of the individual (Senato Del Regno, 1910). The four points outlined by Scialoja represented the most advanced positions in a liberal, pre-fascist Italy. In fact, the main concern of the legislator was to limit the numerous legal conflicts concerning citizenship. These conflicts can be summed up in a simple expression: that of dual nationality, a condition that particularly affected the numerous Italians who had emigrated abroad and had acquired the nationality of the host country, automatically losing their original Italian nationality. It is possible to state that a first conflict between the rigid view of the Italian legislator with the social and demographic transformations in progress since the end of the 19th century found their first expression in the debate and approval of the first organic law on Italian citizenship.

This conflict was well known at that time: Buzzati, in particular, had proposed the adoption of the dual citizenship in response to the massive migration of Italian citizens abroad (Buzzati, 1908; Cordini, 1906); however, the Civil Code of 1865 had established as its main basis the sacred principles of uniqueness of Italian citizenship, together with its transmission *iure sanguinis*, excluding any hypothesis of dual citizenship (Bussotti, 2016). The new law adopted in 1912, Law nr. 555, reiterated this concept. Senator Polacco, the rapporteur of the law, in his speech in the Senate, defined the idea of introducing the institution of dual nationality into the Italian legal system as a "legal monster" (Senato Del Regno, 1911). In this way, possible conflicts would be resolved by ignoring objective facts. Someone drew attention to the contradictions arising from Law nr. 555/1912, including the weakening - in some specific cases - of the principle of *ius sanguinis* (De Dominicis, 1916). Nevertheless, the principles of *ius sanguinis* and unicity remained the two main axes of Italian citizenship law.

The other basic principle of the new law, in continuity with the Civil Code of 1865, was the family unit applied to the right of citizenship. And, of course, the primacy of the husband's citizenship over that of the wife and the children, with the mother's citizenship taking precedence only in the case of an unknown father (art. 1 of L. 555/1912). The risk of possible cases of dual nationality was frequent, as when a foreign wife of an Italian citizen did not lose her nationality once she acquired the Italian one (Gemma, 1913). Or when an Italian wife did

not want to take her husband's nationality and wanted to keep her original Italian nationality. In this case, the new law allowed her to remain Italian, thus breaking the principle of the family unit of citizenship (Bussotti, 2002).

The innovations introduced by law 555/1912 concerned some elements of freedom in the choice of nationality, in an attempt to avoid automatic mechanisms and the distinction between different typologies of citizenship ("full" and "small" or "minor" citizenship), the limitation of the case of statelessness, in particular in cases where the father was unknown or stateless.

The line of continuity between the Civil Code and the first organic law on citizenship in Italian law suffered some complications with the advent of Fascism. In fact, Fascism did not make many changes to the principles of Italian citizenship law; it simply limited some of the liberal aspects of Law 555/1912 and introduced different typologies of citizenship, especially in relation to Italian colonial citizens (or subjects). Nevertheless, it is possible to identify at least two other fundamental principles introduced by Fascism: firstly, that of demography. Through demographic expansion, Mussolini wanted to spread and at the same time strengthen the ties of blood that Italian law identified as the basis of a common citizenship (De Felice, 1981).

On this basis, the first mentors of Fascism developed an ideology and a theory. Grandi, for example, appealed to the civic consciousness of the Italian people, as opposed to the free individual choice postulated by Cavour (Grandi, 1922). The philosopher Giovanni Gentile expressed a similar idea speaking of the need to cement the nation in blood (Gentile, 1925).

Secondly, in this period, Italianity corresponded to Fascism; thus, all possible attacks on the integrity and security of the Fascist state were interpreted as crimes, with penal implications for the right to citizenship (Ferri, 2017; Gentile, 2017). The citizenship rights of all those who did not want to identify themselves with fascism for political, religious and racial reasons, had to be abolished.

A few months before the rise of Fascism, a decree (RDL 138/1922) established that the requirement to obtain Italian citizenship could be presented up to six months after the publication of the decree itself. What L. 555/1912 had tried to eliminate (two different categories of citizens) was reintroduced, with many people having a "minor citizenship".

The only law specifically approved by fascism on citizenship right was the RDL 1997/1934, about Amendments to the Law of 3 June 1912, No 555 on Citizenship. This decree was based on the bill presented in 1930 by minister Rocco, but that was never approved (Senato Del Regno, 1930). Its main principles coincided with those of Law 555/1912 (*ius sanguinis* and family unity), with one important addition: that of extending the possibilities of acquiring Italian

nationality to some specific persons, according to the demographic philosophy of Fascism. For example, a foreigner born in Italy automatically became Italian if, at the age of 21, he resided in Italy and did not submit a declaration to retain his original nationality. The decree, effectively approved by Fascism, established two specific measures: the modification of art. 4 and the abolition of art. 6 of L. 555/1912. In the case of art. 4, the "minor citizenship" was granted by the opinion (and not the authorisation) of the Council of State (Lampis, 1935). Italian citizenship was also granted, after six months of residence, to a citizen who had the right to apply for Italian citizenship but who, for reasons of omission, did not exercise that right. Finally, art. 6 of L. 555/1912 was abolished and its content was included in the new law, which extended the government's discretionary power to grant Italian citizenship to specific persons and abolished the parliamentary vote that L. 555 had provided for in these cases.

The colonial experience had important consequences for citizenship law. Colonial law was not entirely new: in fact, the first one had been passed in 1913, before Fascism. RDL 315/1913, On subjection, followed by two other similar measures, regulated the legal situation of Libyan subjects: one for Tripolitania (RDL 931/1919), the other for Cyrenaica (RDL 2401/1919). Civil and political rights were established for these new Italian citizens, both for Tripolitania and Cyrenaica.

The first law passed by Fascism (L. 1267/1927) aimed to establish a single citizenship for the inhabitants of Tripolitania and Cyrenaica. The new law established the equality of this type of citizen before the law and guaranteed them civil and religious rights, including the right to practise both the Muslim and Jewish religions. This was a new measure, since in the laws of 1913 only Muslims could enjoy freedom of religion, whereas now Jews could also practise their religion (Bertola, 1937). Italian-Libyan citizens could apply for full Italian nationality if they were adults (over 21 years of age), had a minimum education (at least the third year of Italian primary school), were not polygamous and were loyal to Italy. The new law abolished the Libyan parliament, de facto eliminating any form of political participation for Italian-Libyan citizens.

Nevertheless, the Italian-Libyan citizenship was a privileged condition within the colonial law. In fact, the L. 999/1933, Organic Ordinance for Eritrea and Somalia, although establishing two autonomous governments for the two new colonies, unified all the issues related to the condition of citizenship. The new Italians were considered subjects and not citizens, as in the case of Libya. The only right they retained was that of religious freedom. The same measures were determined by the RDL 1019/1936, which established the Italian Oriental Africa and introduced a system called *assoggettamento* ("subjugation") (Monaco, 1937).

The other important measures adopted by Fascism with regard to citizenship rights had to do with the restriction of fundamental rights on political, religious and, finally, racial grounds. In the 1920s, a series of meagre legislative measures (namely RDL 16/1926 and L. 108/1926) were introduced to deprive people of their Italian nationality for political reasons and in an arbitrary manner. In the 1930s, new measures were adopted to aggravate the economic consequences of losing citizenship for political reasons, such as RDL 1559/1930 and RDL 1295/1933.

Regarding the anti-Judaic law approved in 1938 – preceded by a famous *Manifesto* (Manifesto, 1938) and followed by a new Civil Code (Codice Civile, 1942) - it is sufficient here to refer to the vast literature on this subject (Beer, Foa & Iannuzzi, 2010; De Napoli, 2012; Losano, 2022). Nevertheless, one observation must be made: the weakening of one of the main fascist ideological principles, that of demographic expansion, in favour of citizenship restrictions for political as well as for religious reasons.

3 THE PEACE TREATY AND ITS IMPLICATIONS FOR THE ITALIAN CITIZENSHIP LAW

The Peace Treaty signed in Paris in 1947 overlapped with the work of the Constituent Assembly, whose works began in 1946 and ended in 1948; however, its members did not show any particular interest in the question of citizenship. As stated before, the liberal prevalent juridical culture that characterized Italian institutions, including the Parliament, suggested a simple return to a pre-fascist condition about the regulation of the citizenship law. On the other side, the left-wing representatives did not give great importance to such question. For instance, the Socialist Lelio Basso explicitly stated that the only relevant part regarding the Italian citizenship law should be that on the fascist legacy regarding the deprivation of citizenship for political reasons, to be included in art. 22 of the new Constitution (Assemblea Costituente, 1946). Art. 22 of the republican Constitution swept away the entire repressive and discriminatory apparatus of the fascist laws for political reasons.

Basso's approach confirms a decisive element of the transition of the Italian legal system: the illusion that it would be enough to eliminate the "fascist residues" from the legislation to have a coherent and complete system. A circumstance that led to considerable problems, especially with regard to citizenship. Recent research also demonstrated that at least a part of a fascist legacy was maintained in Italian culture, especially regarding the former colonial subjects. Thus, a still "white" Italy "invited" Italian-Eritrean and Italian-Libyan

citizens, including the Askaris, to come back to their respective homes, despite their contrary willing (Deplano, 2018).

The Constituent Assembly accepted the principle of *ius sanguinis* as the main criterion for obtaining Italian citizenship. Citizenship regulation was "de-constitutionalised", and questions as that of the dual citizenship were not considered as good options for the new Italian legal system (Grosso, 1998). Finally, the legal status of women in relation to citizenship was also excluded from the debate: the Constituent Assembly considered that the general principles of the new Constitution were sufficient to establish legal equality between men and women.

The Peace Treaty raised very serious and complex issues, especially concerning the protection of linguistic minorities, while the Constitution clashed with a significant part of the spirit of Law 555/1912. Very soon after the adoption of the Constitution, some observers raised the question of the need for a new organic law on citizenship, in keeping with the times and the new constitutional apparatus (Bosco, 1945; Bolaffi, 1950; Monaco, 1950). It was not until 1983 that the Italian Parliament adopted a new, partial law on citizenship, L. 123/1983; nevertheless, its main aim was to remove the contradictions between the L. 555/1912 and the principles laid down in the 1948 Constitution, particularly with regard to equality between men and women (Bussotti, 1999).

In addition to the general issues mentioned above, the Italian legislator had to deal with specific issues arising from the bilateral agreements concluded after the Second World War. In short, the following can be said:

General principles: The Peace Treaty regulated the relations between Italy and its partners on the basis of some fundamental general principles. The second part of the Treaty, Political Clauses, Section Two, Nationality - Civil and Political Rights, established in art. 19 that Italian citizens residing on 10 June 1940 (the date of Italy's declaration of war on France and Great Britain) in territory ceded by Italy to another State under peace agreements, as well as their children born after that date, shall lose their Italian nationality and acquire the nationality of the State to which the territory was ceded, with full civil and political rights. Italian-speaking citizens of full age or emancipated minors who were part of the ceded territory could apply to retain their Italian citizenship within one year. It was established that the husband's option had no consequences for his wife, while the father's (or mother's if she had parental authority) implied the transmission of citizenship to minor unmarried children. The State to which the territory was ceded could, within one year from the date of the option, require the opting party to transfer his residence to Italy, while the same State had to guarantee to all persons residing on its territory "the enjoyment of human rights and fundamental freedoms".

Coherently with this general principle, various specific situations had to be faced by the Italian legislator, on the base of the Paris Peace Treaty, namely the Julian question (art. 20), the Albanian and Ethiopian question (Part VII, art. 78), the Statute of the Free Territory of Trieste (Annex VI), the former colonial territories, especially regarding the citizenship of the Italian-Libyan citizens, especially those of Jewish or Muslim religion (Clerici, 1986; Bariatti, 1989; Alicino, 2016), finally the citizenship of Italians living in the Aegean islands. This last case was resolved through a bilateral treaty signed in Rome on 21 August 1949, supplemented by a protocol signed in Athens on 6 August 1960, (Villari, 1950; Espinoza, 2021).

4 THE MANAGEMENT OF THE LEGAL TRANSITION REGARDING CITIZENSHIP LAW: JURISPRUDENCE IN ACTION

All the situations mentioned in the point before provoked various contradiction in the Italian legal system, showing many difficulties in implementing a juridical form of transition in line with the new international order that was being set up. Here, three fundamental cases will be analysed: the "Ljubljana question", the "South Tyrol" question and finally the "Italian-African" question. These three cases were the most problematic within the transition process of the Italian citizenship law from Fascism to post-fascism. As a matter of fact, the other two found a solution thanks to political developments. Trieste became Italian in 1954, while the Aegean question – as remembered above - was resolved through specific treaties between Italy and Greece.

1. The "Ljubljana Question". A particularly complex issue concerned the situation of the inhabitants of Ljubljana, who, after the Italian invasion in 1941 and Royal Decree nr. 291, found themselves under the yoke of Italy. The problem concerned those who, in accordance with the Peace Treaty, had chosen to remain Italian citizens. The case presented a conflict between Italian domestic law and international law. In the first case, these citizens were to be considered Italian, while in the second case, according to international law, these persons belonged to the Yugoslav state.

In fact, the Peace Treaty of 1947 did not recognise the conquests made by Italy after 1 March 1938, including that of Ljubljana. This contradiction was not resolved by legal instruments, but at the level of jurisprudence and doctrine. A symbolic case was that of Mr Kozuh, who considered that he still had Italian nationality, even though the area in which he lived (Ljubljana) was now part of the Yugoslav State. The Court of Appeal of Milan considered that the citizens concerned in the province of Ljubljana had become Italian citizens *ipso jure*

after the annexation in 1941. Consequently, under Italian law, the annexation was valid and Mr Kozuh had to be regarded as an Italian citizen. The Peace Treaty stipulated that citizens like Mr Kozuh immediately reacquired Yugoslavian citizenship, but without necessarily losing their Italian citizenship, thus giving rise to a case of "dual nationality".

The conclusion was that the applicant could have the right to choose Italian citizenship.[3] The position of a part of the doctrine on the case was that the Court had judged fairly, but probably according to rather questionable legal criteria. Cansacchi, for example, argued that the applicant could not have exercised the right to choose, because of the dispositions of the Treaty; therefore, the status of Italian citizenship should have been annulled, as if it had never existed (Cansacchi, 1952). Biscottini, on the other hand, took the opposite opinion, arguing that - despite the fairness of the judgement - national law (and international law) did not allow for the retroactive annulment of the annexation law and the consequent granting of Italian citizenship (Biscottini, 1952). For Migliazza, the Court (and the doctrine) had taken as a criterion for determining Italian nationality in relation to annexation (in the absence of a specific law on the Italian side) "pertinence", the use of which "seems neither acceptable nor necessary" (Migliazza, 1953).

On the contrary, it would have been necessary to use the concept of "domicile". Hence the conclusion that, in 1941, Italian citizenship was acquired by those Yugoslav citizens "residing in the annexed territories who, at that time, were resident in the former provinces and had their last place of residence in Yugoslavia in those territories"; in the same way, Italian citizenship had to be considered lost in 1947 by those who "acquired it by virtue of the fact of annexation" and who "maintained their residence in those territories at the time of the law of execution".

It follows that those who had not lost their Italian citizenship before 1947 had lost their Yugoslav citizenship. Contrary to the decision of the Court of Justice, the Tribunal of Milan adopted an opposite decision for a case practically analogous to the one described above[4]. A decision that was essentially shared by Bartolomei, according to which, because Italy had signed the 1947 Peace Treaty, the alleged conflict between national and international law did not exist, so that "the Yugoslav subjects belonging to the territory of Ljubljana must

[3] For the text of the judgement (18 March 1952), see *Giurisprudenza italiana*, 1952, I, 2, 451- 458.
[4] This is the Judgment of 18 March 1954, which reads as follows: "The 'pertinent' in the Yugoslav territories formerly annexed to Italy lost their Italian citizenship with the entry into force of the decree that made executive the Peace Treaty", reported in *Foro Italiano*, 1954, 1338.

be considered to have always remained so, both under international law and under Italian national law"[5].

If the doctrinal and jurisprudential disputes in the case in question were very complex, the problems in applying the provisions on options were equally complex. In this respect, it is worth noting that the wide-ranging debate was organised by the magazine *Lo Stato Civile Italiano*. In this case, one aspect was highlighted: the objective difficulty of translating the provisions of laws, regulations and ministerial circulars into administrative acts, which often contradicted each other and caused extreme embarrassment to the civil servants who had to apply the provisions of the law. The editors of the aforementioned journal stated that the "state of organised disorganisation that the Ministry continues to foster, either by remaining silent or by issuing circulars that are in complete contradiction with existing legislation" (Bartolomei, 1954: 1362). In absence of a clear law, this question continued to be treated through contradictory juridical sentences, nourishing an endless jurisprudential debate.

2. The "South Tyrol question". The question was regulated, firstly by the Gruber-De Gasperi Agreement of September, 1946, then by the point 3.a of Annex IV of the Peace Treaty, Agreements reached between the Government of Italy and the Government of Austria (Steininger, 2003). Italy had to "revise, in a spirit of fairness and understanding, the regime of citizenship options, as a result of which the citizenship of the South Tyrol will be the Hitler-Mussolini agreements of 1939". The 1939 agreement and the subsequent and consequent Law nr. 1241 of 21 August 1939, containing Norms for the loss of citizenship of German-speaking Italian citizens living in South Tyrol, established that who wished to transfer their residence to Germany, had to renounce their Italian citizenship.

This provision was confirmed and developed in the subsequent Rome Agreement of 21 December 1939 between the two states. Here the option of German citizenship was even more closely linked to the need to transfer residence to German soil. At the end of the war, the first question had to do with the border between the two countries. In other words, should South Tyrol be part of Austria or Italy? In Italy, the association "Friends of South Tyrol" became the reference point for defending Italian claims to the territory. The most prominent member of this association, Carlo Battisti of the Florentine section, tried to show the inconsistency of the Austrian position (Battisti, 1945; Battisti, 1956). For him, Italy's "natural" border with Austria should be the Brenner Pass. A politically liberal approach to the question of South Tyrol had

already emerged in the discussions between the Italian and Austrian delegations following the peace agreements of 1947.

So much so that only those who, after careful investigation by the Ministry of the Interior, had affected their "civic honour", being guilty of committing particularly serious crimes or political offences against the state, would be excluded from the possibility of regaining Italian citizenship; on the other hand, those who decided not to opt for Italian citizenship would have to be protected and "treated in the same way as all other foreigners". The Austrian delegation did not hesitate to express its satisfaction with this approach, since "naturalised optants will be able to benefit from fair and liberal rules in order to freely decide their destiny" (Farina, 1950: 94). Thus, after DL 21/3/1947, n. 157, implying Modalities for the issuance of the certificate of citizenship to persons born in the mixed-language municipalities of the Alto Adige and of the adjoining provinces, which required people of the aforementioned territories to ask for a confirming visa issued by the Prefect of Bolzano in order to obtain the certificate of citizenship, the central measure became the DL 2/2/1948, no. 23, on Revision of the options of the South Tyrolean citizens, or Decreto Optanti (Larcher & Oberbichler, 2023).

This new decree was intended to give those who, already Italian, had opted for German citizenship following the 1939 agreements, the maximum opportunity to regain their original citizenship (art. 1). The same possibility - but with a fundamental ambiguity that was not present in the provisions of art. 1 - was granted to those who had made a similar choice by obtaining German citizenship but without transferring their residence to German territory; in this case, the decree foresaw the possibility of "reacquiring" Italian citizenship. In other words, the legislator assumed that they had previously lost it; nevertheless, paragraph 2 of art. 2 provided that these people had "always retained Italian nationality". This ambiguity gave rise to considerable jurisprudential and doctrinal controversy, especially as it affected several hundred thousand people with regard to their citizenship status.

In both cases, the time limit for applying for Italian citizenship, thereby renouncing German citizenship, was three months from the entry into force of the decree, or one year for those who were not resident in Italy. The restriction on the re-acquisition of Italian nationality concerned all cases of persons who had "belonged to the SS" as "officers or non-commissioned officers", as well as other persons who had been convicted of war crimes and those who, even without having been convicted, had been guilty after 8 September of "acts of cruelty, sectarian denunciations or serious acts of persecution against Italian citizens" or citizens of a state of the United Nations. The Ministry of the Interior stated that the effects of this disqualification would be extended to the wife and unemancipated minor children. Finally, the decree provided for the

suspension of the right to vote of "Italian citizens who have held leading positions in the Nazi party or its organisations similar to the Fascist party, which, according to the law, entail the suspension of the right to vote" (art. 25).

The issue that should have been settled with the above-mentioned decree, gave rise to a series of positions, interpretations and criticisms in the jurisprudence that lasted until the 1950s; thus, the South Tyrolean issue became one of the fundamental nodal points for the regulation of citizenship in the Italian legal system. The starting point of this long jurisprudential and doctrinal process is to be found in a case of inheritance.

The problem that arose concerned the choice of the civil law to be applied to the succession of the deceased Mrs Zambelli, who had chosen and obtained Italian citizenship, although she had not transferred her domicile. The Court of Appeal of Trento, which was asked to rule on the case, considered that the civil code to be applied was the Italian one, since Mrs Zambelli had not lost her Italian nationality. In this sense, the following sentence is very significant: "Alto Adige citizens who opted for German citizenship pursuant to Law nr. 1241 of 21 August 1939 lost their Italian citizenship with the formal declaration of renunciation and the granting of Italian citizenship, even if they have not moved to Germany or been removed from the lists and registers of Italian citizenship".[6] The Court of Cassation objected to this judgment, going so far as to annul it and transfer it to another court of law, with arguments that included the dissent of various scholars (Quadri, 1959; Farina, 1950; Bartolomei, 1948; Bartolomei, 1949).

Despite the divergent positions within the criticism, as well as in the debate between different organs of the state judiciary, the 1948 decree was the founding text that inspired legislation on the subject in the years to come. The tendency - very clear and explicit - was to promote, as far as possible, the integration of the German minorities in the life of South Tyrol (and thus of Italy), with measures aimed at equalising their access to employment opportunities and general living conditions compared to Italian-speaking citizens. The issue of South Tyrol was also to be a kind of litmus test in the Constituent Assembly, especially with regard to the protection of minorities (art. 3) and, even more, with regard to the State's promotion of local autonomy and the "widest possible administrative decentralisation" (art. 5), with the reaffirmation of the special statute for Sicily, Sardinia, Valle d'Aosta, Trentino-Alto Adige and Friuli-Venezia Giulia in art. 116 (Palermo, 1997; Arban, Palermo & Martinico, 2021). As De

[6] UNITED SECTIONS, 14 February 1949, No 232 - Pellegrini Presidente - Zappulli Estensore - Eula PM. (conf.) - Mayrgundter (lawyers: Perathoner, Mumelter, Mazzolani) - Mayrgundter (lawyers: Serra, Pren- CIS, Marini, D'Atena), Cassa App. Trento, 19 July 1947, reported in *Giurisprudenza italiana*, 1949, I, 1, 524.

Gasperi stated, the recognition of "fundamental ethnic rights" was a central foundation of the new republican Italy. It was necessary to avoid giving "the feeling of wanting to make Italians of those who are German" and to ask "our German brethren to be equally loyal" to the state of which they were citizens (De Gasepri, 1947).

Therefore, as the years went by and legislation became more and more in line with the principles of the Constitution, appeals - mainly on grounds of unconstitutionality - became more frequent in relation to certain fundamental parts of the 1948 Decree, in particular to the attribution of the Italian citizenship for the people (about 75,000) who had opted for the German citizenship, having transferred their residence in Germany. These citizens found many practical difficulties in re-obtaining the Italian nationality, due to the limits that the 1948 Decree had established in this sense.

A similar chaos occurred regarding the re-admission as public servants "for those – as a bill by Prime Minister De Gasperi postulated (Senato Della Repubblica, 1951) - already employed in the State administration" and not also for non-permanent employees and employees. During the debate in the First Senatorial Commission, concerns and disagreements emerged about the government's excessive condescension towards this particular category of citizens. The left-wing opposition was critical of the bill's approach. For example, Senator Minio believed that those who opted for German citizenship had to be counted among those who "took this step because of their Nazi beliefs". It was therefore "excessive charity" towards those who had "no title of charity and gratitude towards the country" (Atti Parlamentari, 1952). More pragmatic and moderate was Sen. Rizzo, who expressed his dissent not so much through ideological-political motivations, but rather through jurisprudence bases. In his opinion, the measure under discussion would not re-hire "those who have been made redundant on the basis of the option, but would re-hire staff for posts to be re-created *ex-novo*", a circumstance that had to be related with the decree of April 1948, which prohibited new recruitment in the public administration.

The response of the majority and the government to these objections was entrusted to Andreotti, who reduced the question to a mere consequence of the peace agreements. The exceptional nature of the measure was such that it could not be invoked by anyone as a "prelude to a legislative revision of the rules established in 1948". Finally, when the measure was presented to the Chamber (Camera Dei Deputati, 1952), the rapporteur, Mr Conci, reiterated the "democratic and humanitarian" spirit that had inspired the government in the circumstances, concluding that "this bill (...) resolves a human problem and gives legal value to the agreement reached between the two governments concerned". Following the adoption of this first and

decisive measure, which gave substance to what had been established by the 1948 decree, another law was passed. This second law, Extension of benefits in favour of Upper Adige citizens who reacquire Italian citizenship pursuant to Article 4 of Law No 555 of 13 June 1912, established more favourable conditions, even for those who were excluded from reacquiring Italian citizenship pursuant to the Decree of 2 February 1948.

The considerable ambiguity and lack of clarity of the 1948 decree was due to the fact that the republican legislator had not decided to abolish the 1939 law in its entirety, but had legislated "in a way that was perhaps 'democratic' and 'anti-totalitarian', but legally imperfect" (Boaretto, 1985: 318): a fact that provoked - also in organs of the State, such as, specifically, the Court of Bolzano - the desire to conform, in spirit, to the letter of the Constitution, but probably contradicting the 1939 and 1948 provisions.

Practical cases demonstrated, once more, an evident legislative lack of clarity. For instance, when the Court of Bolzano had to decide whether the daughter of an opting South Tyrolean, who had moved to Germany at the time and thus lost the Italian citizenship and excluded from re-acquisition, might elect Italian citizenship, on the basis of Articles 3, no. 2 and 12 of the 1912 law on citizenship, issued a positive judgement, in effect contradicting what the 1948 decree had established.

Therefore, much more than by "arguments of strict law", this court "allowed itself to be persuaded by reasons of equity", invoking the anti-democratic sense of the 1939 law and, therefore, an overcoming of it *de facto* (Boaretto, 1985: 321). The absolute discretion in the granting of citizenship would directly affect the composition - and therefore the disrespect - of the minority ethnic group, and thus infringe fundamental rights. For this reason, Articles 2 and 3 of the DL 1948 were considered by the President of the Province of Bozen-Bolzano to be unconstitutional, as was - *a fortiori* - the RDL of 1926. Not of the same opinion was the Constitutional Court.

More cogent on the merits, it expressed the opinion that the Province did not have the legitimacy to raise a question on the constitutional legitimacy of either RDL nr. 16 of 10 January 1926 or DL nr. 23 of 1948, since "the Province (like the Regions) may in fact plead only the violation of constitutional provisions regarding laws of the State that result in an infringement of the sphere of co-constitutional competence guaranteed to it".

A judgement that, as can be seen, formally protected the correct application of Italian laws, but did not resolve the question of the application of the 1948 decree in relation to the entire Italian legal order, going beyond the interests of the German-speaking population of

Upper Austria by referring to the allogens of the territories "formerly part of the Austro-Hungarian Empire" (Boaretto, 1985: 322).

Many jurists and politicians of the time were inclined to grant Italian native-born citizens almost absolute equality and opportunities with respect to all others, and to guarantee the greatest respect for fundamental rights to all other native-born citizens who wished to retain Austrian citizenship. Among the provisions inspired by these principles, it is worth mentioning the Law no. 927 of 16/11/1950. This law made it possible for the wife to exercise the faculties provided for in art. 1, 2, 11 of the DL of 1948, if the husband had disappeared "during or in the course of the war", had been taken prisoner, had been interned or had otherwise not been heard from since the entry into force of the Peace Treaty.

The other law, Law nr. 1008 of 20 July 1952, was particularly important for Upper Austrian citizens who had regained their Italian citizenship. For them, the law established the possibility, if they had been civil servants in the state administration and had interrupted their service after opting for German citizenship on the basis of the 1939 provisions, to apply for readmission to the branch of the public administration in which they had previously worked. These provisions were extended to parastatals and, if they so decided, to local authorities.

On the other hand, those who had transferred their residence abroad as a result of the option were reinstated as pensioners, but with effect from the date of the ministerial decree granting Italian citizenship. The spouses of the deceased, who had already received a pension from the State and had opted for German citizenship, were themselves granted the citizenship of the survivor's pension, if they had not opted for German citizenship, "from the day following the death of the predecessor", in the case of re-entitlement, on the basis of DL. 2.2.1948, and finally, if they had reacquired Italian nationality, from the date of the relevant decree of the Ministry of the Interior.

3. The "Italian-African question". One of the unclear points of the Peace Treaty, was the status of the former Italian East African colonies of Eritrea, Libya and Somalia. Art. 23 stated that these "possessions shall remain under their present administration until their administrative fate is decided". This meant that they would remain under British administration (only Somalia would be under Italian provisional trusteeship from 1950) and that Italy would have to give up its colonial possessions, although the treaty did not specify to which power it would have to cede these territories.

Furthermore, "nothing is said about the nationality or a right of option of the inhabitants, whether native or Italian citizens" (Kunz, 1947). Since Article 19 of the Treaty could not be applied in this respect, it had to be assumed that Italian citizens residing in the former colonies

remained Italian, even though the Treaty did not clarify this fundamental point. In his view, it was difficult to determine the status of the former colonial subjects, since the Treaty did not make any specific provision for them. It seemed certain, according to Villari, that these populations should not be considered Italian, but - with regard to their present positive condition – "any conclusion would be arbitrary" (Villari, 1950: 674).

The Peace Treaty thus opened up a series of questions of great importance for the history of Italian citizenship after the Second World War, and may well be considered a turning point for those who wish to trace its course. Italian politics and law benefited from contact with the new international reality, which tended to respect and protect subjective wills and minorities, whatever they might be. Stendardi, on the other hand, took the opposite view. According to him, "the existence of such citizenship is not incompatible with any of the new principles introduced in our legal system", and he predicted that it would most likely "die out by dint of age, when there will be no more Libyan-Italian citizens to invoke its application in Italy".

Nevertheless, huge problems had to be faced regarding Italian Jewish and Muslim Libyan citizens. For them, the rules of rabbinical and sharia law would have to be applied to Italian Jewish and Muslim Libyan citizens respectively - in matters of family, marriage and inheritance law, including the jurisdiction of the aforementioned rabbinical and sharia courts - with obvious problems of recognition of these rules and, above all, of decisions by the Italian legal system (Stendardi, 1957: 63-64).

Italian jurisprudence was very clear, as shown by the case of the Haddad family; a case that the Milan Court had to face almost thirty years after the signing of the Peace Tretay, in 1974.[7] The Haddads were a family of the Jewish religion who, lining in Libya, could not opt for Libyan citizenship because of the discriminatory laws of the Libyan state against the Jewish.

As a matter of fact, until 1968, the year in which the reclaiming Haddad family decided to move to Italy, Libya only provided to the Haddads a simple temporary residence permits, considering all the members of the family to be stateless. When, in 1968, the Haddads decided to move to Italy, they demanded the transformation of their Italian-Libyan citizenship into Italian citizenship *optimo iure*, given also that they could not continue to be stateless.

On the contrary, the Ministry of the Interior claimed that the Haddads had acquired the Libyan nationality, thus denying their alleged statelessness and invoking the verification of the documents that would have prevented them from acquiring Italian nationality. The court's position - and the reasons for its decision - left no room for doubt: apart from the impossibility

[7] Tribunale di Milano, Sentenza 20 maggio 1974, Haddad e altri (avv. Nencini) contro Amministrazione dell'interno, *Rivista di diritto internazionale privato e processuale,* 1975, 530-533.

of obtaining the requested documents, given the Libyan authorities' refusal to cooperate in any way with persons of the Jewish religion, there were grounds for concluding that the persons concerned had never acquired Libyan nationality, as testified by the Chief Rabbi of Milan. According to him, no Jew had ever acquired the nationality of that State, as evidenced by an identity document of the person concerned from 1967, which classified him as "without nationality".

Therefore, on the basis of Article 3 of the Italian Constitution and at least three sentences from the 1960s,[8] the Court of Milan declared the applicant and his family to be Italian citizens, thus definitively resolving a long-standing issue that had been dragging on since the signing of the peace agreements in 1947.

5 CONCLUSION

The process of political and legal transition in Italy after the signing of the 1947 Peace Treaty was, as this article has tried to show, very complex and ambiguous. This is not only true with regard to the general principles that the Italian legislator had to deal with in relation to international law; the problems were even greater with regard to the specific question of citizenship. In this case, the conflict involved different areas of law, including pre-fascist and fascist legislation, which overlapped with the incipient democratic constitutional principles and the rules of international law for the protection of minorities established by the peace treaty.

The Italian legislator decided not to include the question of citizenship in the new constitution, nor to approve a new, specific law on this matter. It was an option that showed continuity with the Italian legal tradition, since the regulation of citizenship has never been included in constitutional texts in Italy. It was not the only element of continuity: law 555/1912, purged by the fascist amendments regarding the restriction of fundamental rights for certain categories of citizens, represented the basis of the new democratic and republican citizenship. The *ius sanguinis*, the non-acceptance of dual nationality, the unity of citizenship within the same household were the basic principles that the Italian legislator maintained, drawing inspiration from the only legal tradition that was acceptable both nationally and internationally, the liberal one. Nevertheless, some contradictions remained: not all the fascist norms on citizenship were abolished, as the article states, in particular those concerning the former African colonial territories or the South Tyrolean citizens. Thus, in this delicate transition, there

[8] These are: Cass. sentence 1 February 1962, no. 191; Corte d'Appello di Milano, sent. 15 Aprile 1956, in causa Amministrazione dell'Interno c. Pellegrino; Cass., sent. 31 luglio 1967, no. 2035.

was a partial legal - and administrative - continuity with fascism. Moreover, the clauses on the protection of linguistic minorities in South Tyrol, Ljubljana and the Free State of Trieste provoked numerous cases of uncertain legal regulation. Perhaps the most incredible case was the *de facto* retention of Italian-Libyan citizenship, as seen above. In the absence of a legal regulation that should have responded to the need to avoid statelessness, in the absence of Libyan citizenship, given that the Libyan state had not yet been formally constituted, it was the jurisprudence that had to deal with situations like this, responding with the few instruments at its disposal.

Since the Italian legislator did not clarify such elements in a specific law - adopted only in 1983 - it was concluded that this confusion of cases was resolved by often contradictory court rulings. This situation demonstrated the obsolescence of Italian law on various issues relating to nationality. In fact, the Peace Treaty opened the door to a much-needed revision of citizenship law, in particular as regards the recognition of dual citizenship, full equality between men and women and, finally, the possibility of having families of different nationalities.

The changes and adaptations resulting from the peace treaty and the rapid social changes in Italy have taken place in a lawless environment. The most important aspects of the citizenship issues highlighted in this work were, in fact, resolved spontaneously. Trieste ceased to be a free territory in 1954, with the London Memorandum, and was reintegrated into Italian territory. Libya became an independent state in 1951, automatically resolving the question of the citizenship of the former Italian-Libyan citizens; South Tyrol became a bilingual region with a special constitutional status, thus attenuating the problems related to the legal aspect of citizenship; and finally, the citizens of the Aegean islands, Eritrea and Somalia became citizens of the respective states or of the colonial powers that controlled them until their independence. The solution to the legal transition of Italian citizenship from Fascism to the Republic was soft and confused, left to jurisprudence rather than legislation. It is probably for this reason that critics have largely ignored what happened to citizenship after the signing of the Treaty of Paris. However, the lives of entire families and individuals have been greatly affected by this enormous legislative vacuum, which this work has attempted to recall.

A definitive solution to many problems relating to citizenship was only possible with the adoption of L. 91/1992. This law introduced the institution of dual citizenship into the Italian legal system, healing old wounds caused by the maintenance of a restrictive principle (the uniqueness of citizenship), without taking into account the demographic and social changes that had taken place within the Italian population since the end of the 19th century. But this is a new history that cannot be dealt with in this short essay.

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