

CITIZENSHIP TO IMMIGRANTS AND SECOND GENERATION FOREIGNERS IN ITALY

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Introduction

When, on 08 August 1991, a boat full of immigrants coming from Albania reached the Italian port of Bari, Italy discovered itself having become a country of immigration. Since then, all the Italian governments who have dealt with immigration issues have adopted policies which seem forgetting the difficulties that Italian migrants had to face until recent decades, when Italy used to be a country of emigration. Law n. 91/1992, which regulates the access to the Italian citizenship, makes no exception.¹

Citizenship is commonly defined as “the rights and obligations that individuals accrue as full members of a community, usually taken as being the nation state.”² Therefore, the concept of citizenship can be considered an exclusive one, marking a distinction between ‘us’, the members of such community, and the ‘others’, who do not belong to the community. However, the possibility to access to this community by the ‘others’ makes of citizenship an inclusive concept too, permitting other people to benefit of a set of rights which are exclusively owned by the members of the community. Nevertheless, the access to a community and to its citizenship is not simply important from a legal point of view, but also from a sociological and psychological

¹ However, the high rate of unemployment within the Italian population (in particular among the youths), which has increased as a consequence of the current economic crisis, is urging a lot of Italians to leave their own country in order to find a job abroad. As a consequence, is it possible to say that Italy is both, a country of immigration for people coming from developing countries who are eager to receive very low wages, to work in dangerous environments and to do non-qualified jobs, and a country of emigration for a lot of Italians who do not accept such working conditions or that cannot find a job consistent with their studies? The topic does not seem having been sufficiently developed and would deserved to be analysed in depth in another essay.

² Mulvey, Gareth & Stewart, Emma, *Becoming British Citizens? Experiences and Opinions of Refugees Living in Scotland*, University of Strathclyde and Scottish Refugee Council, p. 11, 2011, available at <http://www.scottishrefugeecouncil.org.uk/search?q=Becoming+British+Citizens%3F+Experiences+and+Opinions+of+Refugees+Living+in+Scotland> (consulted on 07 March 2012). The terms citizenship and nationality are often used in an interchangeable way, indeed the two terms can be used alternately when referring to the juridical belonging of a person to a State. However, nationality is the only term which is possible to use when referring to the country of origin of a person (including a naturalised person). Zincone, *Cittadinanza e migrazioni: un'applicazione al caso italiano*, Fondazione CESIFIN, 2003, quoted at http://www.meltingpot.org/IMG/pdf/Tesi_Lombardo.pdf (consulted on 14 March 2012).

one: living in an area where a certain community lives, feeling part of that community – for instance, for having been living there for years –, but not being accepted within that community, makes the non-member feel isolated, discriminated, rejected, with a present and a future different from the ‘real’ members of the community.

Of course, the non-member of the community is usually the foreigner, the immigrant. As the French sociologist Pierre Bourdieu pointed out, the condition itself of the foreigner, of the immigrant, makes him feel in a “no-place”, as he does not live in his birthplace anymore and, at the same time, he is not recognised as a member of the new society he lives in:

Like Socrates as described by Plato, the immigrant is *atopos*, has no place, and is displaced and unclassifiable. [...] Neither citizen nor foreigner, not truly on the side of the Same nor really on the side of the Other, he exists within that “bastard” place, of which Plato also speaks, on the frontier between being and social non-being.³

In Italy (but, of course, not only in Italy) the issue of the access to citizenship affects, in particular, non-EU immigrants and especially the so-called foreigners of second generation⁴ (for the purpose of this essay, second generation migrants are considered to be people born in the host country from immigrant foreign parents).⁵ In fact, although these people feel Italian having lived all or most of their life in Italy, they have to carry out a tortuous bureaucratic course in order to gain the Italian citizenship.

³ Bourdieu, Pierre, Preface to Sayad, Abdelmalek, *The suffering of the Immigrant*, Cambridge: Polity Press, 2004, p. xiv.

⁴ The expressions ‘second generation foreigners’, ‘second generation migrants’ and ‘second generation immigrants’ are commonly used interchangeably, and so will be done in this essay. However, it would be more correct to talk only about ‘second generation foreigners’; indeed, defining as a migrant a person who was born in a country and who lives in that country is an oxymoron.

⁵ The expression ‘second generation migrants’ is not defined in legislation and its meaning is not univocal. For example, in 1984, Recommendation No. R (84) 9 of the Committee of Ministers of the Council of Europe considered as second-generation migrants “children born in the host country of immigrant foreign parents, who have accompanied them or who have joined them under family reunion and who have accomplished there a part of their education or vocational training”. The European Migration Network (EMN), instead, limits this expression to people who were born in and are residing in a country that at least one of the parents have entered as a migrant. The definition used in this essay is the one that best serves our analytical purpose and corresponds to the one given by the United Nations Economic Commission for Europe in its Recommendations for the *2010 Censuses of Population and Housing*. EMN, “Glossary”, <http://emn.intrasoft-intl.com/Glossary/viewTerm.do?startingWith=M&id=174> (consulted on 6 March 2012).

Such issue is not a marginal one: in 2010, there were 4,235,059 foreigners residing in Italy. Among them, 932,675 were minors, 572,720 of whom were born in Italy (that is to say 13.5% of the total number of foreigners residing in Italy and 7% of the whole school population); it is a number, the latter one, which is constantly growing as it is 10.4% higher than in 2009 and has more than triplicated since 2001, when it was nearly 160,000.⁶

This essay will focus on the Italian legislation on the matter and on the problems posed by the difficult access to the Italian citizenship. In doing so, the Italian legislation will be compared with the ones adopted by some other European Union (EU) member states, in order to understand the Italian ‘anomaly’. Such anomaly is exemplified by the fact that, in 2009, the Italian citizenship was given only to 1.5 foreigners out of 100 (this percentage arose to 1.66 in 2010, which corresponds to 59,369 people), against a European percentage of 2.4 (Portugal was the EU country which granted the highest percentage of citizenships: 5.8 out of 100 foreigners).⁷ The total amount of Italian citizenships awarded to foreigners until 2009 was nearly 355,000.⁸

1. The Italian legislation

The access to citizenship in Italy is based on the principle of *ius sanguinis*, which was introduced in the Italian legislation in 1912 with the first organic law on citizenship (law n. 155/1912).⁹ At that time, the *ius sanguinis* principle was explained by the necessity of giving the possibility to gain the Italian citizenship to the children of Italian emigrants, so that they could keep a link with their motherland. When the new law on

⁶ Data from Istat (Istituto Nazionale di Statistica – Italian National Institute of Statistics), quoted in Save the Children, *I Minori Stranieri in Italia*, 2nd annual report, 2010, p. 92, available at http://images.savethechildren.it/IT/f/img_pubblicazioni/img133_b.pdf (consulted on 6 March 2012). L’Italia Sono Anch’Io, “Proposta di legge di modifica della L. 5 febbraio 1992 n. 91 ‘Nuove norme sulla cittadinanza’”, 2011(a), available at http://www.litaliasonoanchio.it/fileadmin/materiali_italiaanchio/pdf/Prop_cittadinanza_-_relazione_intro_.pdf (consulted on 22 March 2012). The average age of foreign residents in Italy is quite low: 22% is less than 18 years old (16.9% are the Italians under the age of 18), 47% is between 18 and 39 years old, while the over 40 are only 30.7% and the over 65 2.3%. L’Italia Sono Anch’Io, 2011(a).

⁷ Data available at L’Italia Sono Anch’Io, 2011(a). The data about 2010 is from Istat and is quoted in Save the Children, 2010, p. 92.

⁸ Istat data quoted in Save the Children, 2010, p. 92.

⁹ Ministero dell’Interno, *La Cittadinanza Italiana: la Normativa, le Procedure, le Circolari*, 2003, p. 10, available at http://www.interno.gov.it/mininterno/export/sites/default/it/temi/cittadinanza/Una_pubblicazione_sulla_cittadinanza.html (consulted on 13 March 2012).

citizenship was adopted, in 1992, the historical conditions that had justified the adoption of the *ius sanguinis* had ceased to exist since a couple of decades and Italy had started to be a country of immigration; however, law n. 91/1992 not only kept the *ius sanguinis* principle, but even strengthened it.¹⁰

According to law n. 91/1992,¹¹ the Italian citizenship can be acquired by:

- Birth. If at least one of the parents has the Italian citizenship, the child will automatically acquire the Italian citizenship at birth. The *ius soli* is considered only if both parents are unknown or stateless, or if the child cannot have the same citizenship as his/her parents according to the law of the country they belong to.
- Adoption. If a foreign minor is adopted by an Italian citizen, he/she has direct access to the Italian citizenship. If the adopted is a person of age, it is the principle of citizenship by naturalisation which applies (see below).
- Descent. A person, whose father, mother or grandparent has been Italian citizen by birth, can have access to the Italian citizenship in one of the following cases: he/she does military service for the Italian State and, before doing so, declares the will of gaining the Italian citizenship; he/she carries out a public employment for the Italian State and declares the will of gaining the Italian citizenship; once reached the eighteenth year of age, he/she has been legally resident in Italy for at least two years (in this case, the declaration of will of gaining the Italian citizenship must be done before the accomplishment of the nineteenth year of age). Furthermore, a 2006 amendment to this law provides the recognition of the Italian citizenship to people of Italian language and culture who are children or descendants of those people who were Italian citizens and residents in the territories of the Italian State that passed under the rule of the Republic of Yugoslavia as a consequence of the Peace Treaty signed in Paris in 1947.
- Marriage. The foreign or stateless consort of an Italian citizen can acquire the Italian citizenship after two years of legal residence in Italy (since the date of

¹⁰ Save the Children, 2010, p. 93.

¹¹ Law n. 91/1992 available at http://www.interno.it/mininterno/export/sites/default/it/sezioni/servizi/legislazione/cittadinanza/legislazione_30.html (consulted on 13 March 2012).

marriage) or, if resident abroad, after three years of marriage. These periods are reduced by half if the couple has natural or adopted children.

- Birth and residence in Italy. This is the case that concerns second generation migrants. According to article 4(2) of law n. 91/1992, the foreigner, who was born in Italy and who has resided in Italy without any interruption until the eighteenth year of age, can have access to the Italian citizenship if, within one year from the accomplishment of the legal age, he/she declares the will of becoming Italian citizen.
- Naturalisation. It is provided by article 9 of law 91/1992, which states that the Italian citizenship can be conferred on any foreigner who has been legally residing in Italy for at least ten years; such period is reduced to four years in the case of EU citizens, and to five years in the case of stateless people, refugees and foreigners of age adopted by an Italian citizen. The Italian citizenship can also be granted to the foreigner who has worked for the Italian State (either in Italy or abroad) for at least five years, to the foreigner who has given eminent services to the Italian State or whose recognition of the Italian citizenship constitutes a special interest for the State, and to the foreigner who has been legally residing in Italy for at least three years and whose father, mother or grandparent has been an Italian citizen (in this eventuality, the requisites asked in the case of citizenship by descent are not necessary). However, the access to citizenship by naturalisation is not automatic once the interested person has fulfilled the prerequisites and has submitted its application; in fact, according to article 9, the granting of citizenship by naturalisation is a discretionary act of the competent authorities who have to give a judgment on the basis of “the level of inclusion of the interested person in the Italian society, of his/her personality (social dangerousness, past convictions) and of his/her economic sufficiency”.¹²

¹² Osservatorio Provinciale delle Immigrazioni, “Stranieri non immigrati. I figli degli immigrati. Seconde generazioni in provincia di Bologna”, in *Portici*, no. 5, anno VIII, December 2005, available at <http://www.provincia.bologna.it/sanitasociale/Engine/RAServeFile.php/f/Documenti/3DossierFiglidegliimmigrati.pdf> (consulted on 13 March 2012). Free translation.

In any case, the law provides that the foreigner who acquires the Italian citizenship does not have to renounce to his/her previous citizenship, unless he/she decides to do so.

2. Issues deriving from the Italian legislation

2.1 Issues concerning immigrants

As seen above, immigrants can become Italian citizens by marriage or naturalisation, but, in the latter case, only after ten years of legal residence in Italy and according to the discretion of the competent authorities. This seems to be quite a strict provision: ten years is a long time during which migrants can neither benefit of the civil and political rights of the country they live in, nor plan their life with the certainty of finally obtaining the Italian citizenship, as it could be denied them by the discretion of a state officer or by an even stricter law. Furthermore, in order to stay in Italy, migrants must have a residence permit whose concession is subject to the enrolment in a school or university in Italy, or to the availability of a job;¹³ therefore, the end of the studies or the loss of the job without getting another one within a couple of months (but, according to the law, not less than six) means, for the concerned migrant, the obligation to go back to the country of origin. It is plain that such a provision makes migrants' life uncertain and dependent on external factors, such as the economic trend. Indeed, the Italian government seems to treat migrants as means to be used in order to make the Italian economy work, since migrants are usually ready to do those jobs which are no longer attractive for Italian people, either because not enough qualified, not well remunerated, or characterised by dangerous working conditions.¹⁴

Nevertheless, although the access to the Italian citizenship brings migrants legal and social advantages, not all of them want to get a citizenship different from their original one, especially if, according to the law of the country of origin, it is not allowed to have a double citizenship. With regard to the possibility of accessing to the

¹³ Law on immigration, 30 July 2002, also known as law Bossi-Fini.

¹⁴ See "Un decimo dei toscani sono cittadini immigrati", 10 October 2011, http://firenze.repubblica.it/cronaca/2011/10/27/news/un_decimo_dei_toscani_sono_cittadini_immigrati-23964791/?ref=search. Petrini, Carlo, "Un impegno ad ospitarli", 7 April 2011, available at <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2011/04/07/un-impegno-ad-ospitarli.html?ref=search>. Both websites consulted on 14 March 2012.

citizenship of the host country, the Italian sociologist Luca Queirolo Palmas identifies three different attitudes that correspond to three different groups of migrants: anchored to their origins; on the ford; projected to Italy. The first group is formed by migrants who want themselves and, in case, their children to keep their original citizenship; they feel that, if they accept the citizenship of the foreign country they live in, they would betray their roots and, as a consequence, their country of origin. These individuals are usually older than the ones part of the two other groups, their family do not live with them in the foreign country, they are practising religious, their social relations are ethnically oriented, they have strong links with their country of origin, and their intention is not to stay in Italy for the rest of their life, but 'to go back home'. As for the second group of migrants, it is formed by individuals that feel uncertain about the possibility of gaining the citizenship of the host country or that do not want such citizenship to be acquired by themselves but only by their children. These migrants usually feel on the ford between two cultures and two countries: on the one hand, their country of origin, with which they have kept a strong link, on the other one, the host country, which is the country where their children are growing up and where they themselves will maybe spend the rest of their life. The third group is formed by migrants that want the Italian citizenship to be gained by themselves and by their children. These individuals are usually very well integrated in the new society they live in, their financial condition is better than that of the members of the two other groups, and they feel that the obtainment of the Italian citizenship would definitely consecrate themselves as members of that society. Of course, each individual can either pass from one group to another of the three identified by Palmas, or always stay in the same one.¹⁵

Therefore, the analysis of the Italian sociologist points out how the access to the Italian citizenship is not simply dependent on the strict Italian legislation, but also on the migrants' will of acquiring it. However, it is plain that the government must adopt social policies aimed at integrating migrants in the Italian society and must change the

¹⁵ Palmas, Luca Queirolo, *Prove di seconde generazioni: giovani di origine immigrata tra scuole e spazi urbani*, Milano: Franco Angeli, 2006, pp. 165-180.

law so as to facilitate the possibility of obtaining the Italian citizenship: then, the decision is up to each single migrant if applying or not applying for it.¹⁶

2.2 Issues concerning second generation immigrants

Second generation foreigners can acquire the Italian citizenship only after their eighteenth year of age and, if they fail to apply for the Italian citizenship between their eighteenth and their nineteenth year of age, they have to follow the usual procedure reserved to migrants.¹⁷ Moreover, they can apply for the Italian citizenship only if they have been legally residing in Italy since their birth and without any interruption; this means, for example, that if the minor left Italy with his/her family for a couple of months and went to live abroad, he/she cannot apply for the Italian citizenship by birth and residence because not legally residing in Italy during that period.¹⁸ However, in order to diminish the rigidity of the law, the Minister of the Interior issued provision K.60.1 of 5 January 2007, which states that, if the foreigner went abroad for short times for studying, working, medical cares or for assisting the native family, such travels must not be considered prejudicial to the access to the Italian citizenship, as long as the concerned foreigner, during the stay abroad, kept his/her legal residence and the centre of his/her family and social relations in Italy.¹⁹ The obligation for second generation foreigners to reside in Italy since their birth to gain the Italian citizenship also implies that the minor must be registered at the registry office at the moment of birth. A literal application of the law brought the competent authorities to refuse citizenship applications by minors who were born in Italy and who were legally residing in Italy without any interruption until their legal age, but whose mothers, not having a fixed domicile, had no residence address at the moment of their birth and, as a consequence,

¹⁶ In Italy there is a big discrepancy between the number of people that dispose of the requisites to apply for the Italian citizenship and the effective number of applications presented. According to many scholars, such phenomena cannot be simply explained by a lack of will of getting the Italian citizenship; in fact, a lot of people are discouraged from applying because of the excessive wait time and because of the discretion of the competent authorities. Save the Children, 2010, pp. 92-93.

¹⁷ Rete G2, "Legge cittadinanza", <http://www.secondegenerazioni.it/legge-cittadinanza/> (consulted on 15 March 2012).

¹⁸ Save the Children, 2010, p. 95.

¹⁹ Ministero dell'Interno, provision K.60.1, 5 January 2007, available at <http://www.meltingpot.org/articolo9574.html> (consulted on 16 March 2012).

were not able to register them at the registry office.²⁰ Such an interpretation of the law has been softened by one more provision of the Minister of the Interior (n. 22/7, 7 November 2007), according to which a late inscription of the minor at the registry office is not prejudicial to the obtainment of the Italian citizenship as long as the presence of the minor in Italy before his/her inscription at the registry office is proved by documents such as, for example, medical certificates.²¹

In order to stay in Italy until when they will gain the Italian citizenship, second generation foreigners need a residence permit. As long as they are under fourteen years of age, they are inscribed in the residence permit of their parents; after such age, they are given a personal one for familiar reasons, which is valid until when they come of age. Once they are eighteen years old, they can renew their residence permit for familiar reasons and for the same duration of the ones of their parents (as long as the conditions for the lodging and the economic requirements for the familiar re-joining provided by the law on immigration are respected); however, if applicable, they can ask for a residence permit either for studying, working or medical reasons.²² It is plain that the need of the residence permit gives origin to some issues:

- it makes second generation migrants feel different from their friends and schoolmates, in a certain way they feel 'precarious', subject to a deadline (the expiration of their residence permit) which could even not be renewed;²³
- the renewal of the residence permit could arise some practical problems. Indeed, during the phase of renewal or of emission of the residence permit, the concerned person is not allowed to leave the country, which means, for example, that the second generation minor may not be able to go on a school trip if it takes place during that period of time;²⁴

²⁰ Save the Children, 2010, p. 95.

²¹ Ministero dell'Interno, provision n. 22/7, 07 November 2007, available at <http://www.meltingpot.org/articolo11462.html> (consulted on 18 March 2012).

²² "Permesso di soggiorno per minori", 2012, <http://www.pratomigranti.it/?act=i&fid=2184&id=20080416123109870> (consulted on 18 March 2012).

²³ L'Italia Sono Anch'Io, "Nati in Italia e non italiani, cresciuti in Italia e non italiani", 2011(b), available at http://www.caritasitaliana.it/materiali/campagne/litaliasonoanchio/litaliasonoanchio_minoristranieri.pdf (consulted on 23 March 2012).

²⁴ *Ibidem*.

- the non-renewal of the residence permit means for the second generation migrant the obligation to leave the country as any other migrant.²⁵ Of course, this is the case also of minors who were not born in Italy but who feel Italian for having arrived in Italy with their parents in tender age and for having grown up in this country; indeed, the law does not provide any particular procedure for such people who, as a consequence, are considered ‘normal’ migrants.²⁶ There are lots of cases which can be referred to the just mentioned situation, but the most recent one is that of Andrea and Senad. Andrea and Senad, respectively 23 and 24 years old, were born in Italy from Roma Bosnian parents and have grown up in this country. After having worked for years as pedlars, their parents lost their job and, consequently, their residence permit, which was subsequently lost also by the two brothers who were working with them. Andrea and Senad were then shut up in the CIE (Centro di Identificazione ed Espulsione - Identification and Expulsion Centre) of the city of Modena because their parents had never registered them at the Bosnian embassy. Therefore, Andrea and Senad were ‘imprisoned’ in the CIE waiting for an act – the expulsion from Italy and the repatriation to Bosnia – which could never be executed because Bosnia does not recognise them as Bosnian citizens. The two brothers were in a limbo and sent a letter to the European Court of Human Rights and to the Italian President, Giorgio Napolitano, to complain about their situation. At the same time, their lawyer appealed against the ordinance of expulsion issued by the prefect of Modena, while Cécile Kyenge, spokesperson for the association Primo Marzo, defined such story as a case of “institutional racism”. Finally, on 21 March 2012, a justice of the peace of Modena judged the expulsion of the two brothers unlawful as, according to the judge’s sentence, a person who was born in Italy, even if from foreign parents, cannot be held in a CIE and, as a consequence, expelled. Therefore, Andrea and Senad were finally released from the CIE of Modena

²⁵ *Ibidem*.

²⁶ Liberto, Laura & Votta, Mariano, “Immigrazione: dai Luoghi Comuni ai Beni Comuni”, in *Argomenti*, no. 3, 2011, p. 134.

after one month's detention. Such a sentence is an historical one as it had not been pronounced by any judge in Italy before.²⁷

One more problem which affects second generation migrants is risen by a provision that does not allow non-Italian citizens to enrol in competitive sports in Italy; of course, such a tough provision represents a strict limitation considering the importance that sports have in the growth and in the formation of children and teenagers.

The discrimination suffered by minors who were born or who have been growing up in Italy is pointed out by a survey carried out by Fondazione ISMU (Iniziative e Studi sulla Multiethnicità - Initiatives and Studies on Multiethnicity) over a sample of 17,000 pre-teenagers children of immigrants. According to the results, only 32% of the interviewed declared to feel Italian, which means that almost seven foreign pre-teenagers out of ten do not feel belonging to the community they live in, which, evidently, has not done enough in order to make them feel part of it. As for school scores, only 31.1% of the foreign students affirmed of obtaining good evaluations, against 45.6% of the Italians; such percentage is a symptom of the condition of uneasiness felt by many foreign minors and, according to Luigi Fadiga (former chairman of the Rome Juvenile Court and professor of juvenile law), reminds of the school scores obtained by minors whose parents are "heavily incompetent or maltreating".²⁸

There are two more issues which characterize the procedure of citizenship, both regarding migrants and second generation foreigners: the excessive wait time for its conclusion (even if the law sets the maximum duration in two years, the average wait

²⁷ Bonacini, Silvia, "Due italiani rinchiusi nel CIE. Lettera al presidente Napolitano", 7 March 2012, available at <http://www.ilmanifesto.it/attualita/notizie/mricN/6727/>. Polchi, Vladimiro, "Chi nasce in Italia non deve vivere nei CIE", 22 March 2012, available at http://www.repubblica.it/solidarieta/immigrazione/2012/03/22/news/chi_nasce_in_italia_non_deve_vivere_nei_cie-32016396/. "Non chiamateli ospiti sono cittadini", 10 March 2012, <http://www.ilmanifesto.it/attualita/notizie/mricN/6755/>. "Niente Centro di espulsione per i nati in Italia. Lo dice il giudice", 22 March 2012, <http://www.ilmanifesto.it/attualita/notizie/mricN/6869/>. "In piazza per due bosniaci-sassuolesi rinchiusi al Cie", 9 March 2012, <http://www.balcanicaucaso.org/Cooperazione/Dalle-regioni/In-piazza-per-due-bosniaci-sassuolesi-rinchiusi-al-Cie-113537>. All websites consulted on 22 March 2012.

²⁸ Fadiga, Luigi, *Il Bambino è un Cittadino: Minore Età e Diritti di Cittadinanza*, pp. 30-31, available at <http://www.regione.emilia-romagna.it> (consulted on 6 March 2012). Free translation. Fondazione ISMU's data quoted in *ibidem*.

time is nearly three years),²⁹ and the cost for its application, which is equal to 200 euros.³⁰ This is a considerable amount of money – especially considering that migrant families usually belong to the poorest part of the population –, which can make some people postpone the citizenship application because of a lack of funds. In these conditions, citizenship is a burden rather than the right it should be.

3. The long-term residence permit language test

The Italian law does not require to get through any language test in order to access to the Italian citizenship. However, according to law by decree of 4 June 2010, the language test is required to get the long-term residence permit which can be requested by foreigners who have been legally residing in Italy for five years.³¹ It is important to briefly examine what this test consists of, since the last Berlusconi government, which introduced it, wanted to extend it also to the citizenship application procedure, and it is not excluded that such provision may be adopted by another government in the future.

The long-term residence permit has an indefinite duration, it can be requested only after the fourteenth year of age, but it cannot be asked by people who have a residence permit either for studying, professional formation, temporary protection, humanitarian reasons, asylum application when such a status has not been recognised yet, and neither by people who have a short-term residence permit (correspondent to a maximum of three months). The person who wants to apply for a long-term residence permit is exempted from the language test if he/she can demonstrate having a knowledge of the Italian language equal or superior to the CEFR (Common European Framework of Reference) A2 level. According to the above mentioned law decree, the attainment of such level can also be demonstrated by the achievement of a secondary

²⁹ Save the Children, 2010, p. 95.

³⁰ Wallace Goodman, Sara, *Naturalisation Policies in Europe: Exploring Patterns of Inclusion and Exclusion*, 2010, pp. 6-7, available at <http://eudo-citizenship.eu/docs/7-Naturalisation%20Policies%20in%20Europe.pdf> (consulted on 6 March 2012).

³¹ The reason why Italy does not require foreigners to take any language test before granting the Italian citizenship, but, on the contrary, ask them to get through a linguistic examination for getting the long-term residence permit is rather incomprehensible. In fact, if the language test is required in order to assess the level of integration of the migrant in the Italian society, it is plain that such a test would make more sense if demanded for citizenship (which is the legal mark of the acceptance of an individual within a new society) rather than for a residence permit, although long-term.

school diploma or by the attendance of university courses, masters or doctorates.³² This means that, even if second generation migrants and foreigners that grew up in Italy fail to apply for the Italian citizenship between their eighteenth and their nineteenth year of age, they do not need to take the language test as they have usually attended Italian schools. On the contrary, migrants that have been working in Italy for five years but did not attend Italian schools or universities are obliged to take the Italian test if they want to apply for the long-term residence permit.

Although law by decree of 4 June 2010 provides for the exception from the language test for people affected by serious language learning limitations due to their old age, to a pathology or to a handicap,³³ some illiterate or not-well literate people could have some problems to pass the test. As pointed out by a refugee in the UK (where the language test is envisaged by law to gain the British citizenship),

the level of understanding, motives and ambition of learning a new language is different from person to person. You will find some people ready to learn a new language easily. On the other hand, you will find that the language is a big problem for some people.³⁴

Furthermore, the Italian government does not provide for any free language course intended to help migrants to improve their language skills. As a matter of fact, the only aid set up by the government is a TV programme, available on the internet at the address www.cantieriditalia.com, aimed at improving language and civic education; of course, poor people who cannot afford the purchase of a computer or of the internet connection cannot even rely on this small help.³⁵

³² Ministero dell'Interno, *Il Test di Lingua Italiana per gli Stranieri*, (a), available at http://www.interno.it/mininterno/export/sites/default/it/assets/files/20/0771_Brochure_test_italiano.pdf; —, *Il Permesso di Soggiorno "CE" per Soggiornanti di Lungo Periodo*, (b), pp. 1-2, available at <http://www.stranieriinitalia.it/news/guideviminale2007/D.pdf>. Paggi, Marco, "Soggiorno di breve durata – Soppresso l'obbligo di richiedere il permesso di soggiorno", 1 May 2007, available at <http://www.meltingpot.org/articolo10630.html>. <http://www.tuttostranieri.org/forum/cittadinanzaitaliana/test-di-lingua-per-la-cittadinanza/>. All websites consulted on 2 April 2012.

³³ Ministero dell'Interno, (a).

³⁴ Mulvey & Stewart, 2011, p. 50.

³⁵ Bagameri, Daniel, "Changing integration policy towards third-country nationals in the European Union: Language and knowledge of society tests in the Member States", in *Migration Studies Unit Working Papers*, No. 2011/13, 2011, p. 16, available at http://www2.lse.ac.uk/government/research/resgroups/MSU/documents/workingPapers/WP_2011_13.pdf (consulted on 7 April 2012).

One more issue that arises from the language test is its illiberal character. Indeed, although Italy considers itself a liberal country, such test is based on nationalist evaluations recognising the right to indefinite stay in a country only to those people who can conform to the language of the new society they live in. The language test makes of the long-term residence permit a privilege that can be granted only to the ones who deserve it. Dora Kostakopoulou (professor in European law and European integration at the University of Manchester) writes about citizenship tests in Europe: “European governments have decided to change the rules of engagement in the new millennium and to put emphasis on the traditional markets of national identity”, like, for example, on “linguistic assimilation, [...] as opposed to the facticity of residence and equal contribution. I struggle to see anything liberal in this state-led asymmetrical treatment”.³⁶ On the same topic, Joseph Carens (professor of Political Science at the University of Toronto) affirms:

as a matter of fundamental democratic principle, people who have been settled in a country for several years are members of society and should be able to participate in the political process governing their society. Their opportunity to do so should not depend upon their capacity to pass a test, however it is designed. I am not suggesting that we should be indifferent to what immigrants learn or how they adapt. But there is a big difference between encouraging or even expecting people to acquire certain sorts of knowledge or other competencies and requiring this. It is one thing to think that citizens ought to understand something, quite another to make this knowledge a legal prerequisite for citizenship. It is important to encourage people to feel as though they belong in the society they have joined. It makes sense to encourage immigrants to learn the language of the country where they have settled (of course, they normally have strong incentives of their own to learn the language, given adequate opportunity) [...] so long as this is designed to make them feel welcome and comfortable in an unfamiliar environment rather than

³⁶ Dora Kostakopoulou adds: “Individuals should be valued, not evaluated and tested; should be respected, not presumed to be deficient, backward or inferior; should be encouraged to feel ‘at home’ in their new country, not discouraged or selected; and should be allowed to get on with their lives without having to conform to elites’ perceptions of what it means to be a ‘good citizen’ or how to be a national”. Kostakopoulou, Dora, “What liberalism is committed to and why current citizenship policies fail this test”, in Bauböck, Rainer & Joppke, Christian, (eds.), *How Liberal Are Citizenship Tests?*, EUI Working Papers RSCAS 2010/41, 2010, p. 16, available at http://eudo-citizenship.eu/docs/RSCAS_2010_41.pdf (consulted on 9 March 2012).

as a way to pressure them to conform. I doubt that citizenship tests are likely to help with these positive transformations.³⁷

Therefore, the Italian government should provide for free language courses aimed at integrating any foreigner who desires it in the new society, rather than subjecting the granting of the long-term residence permit (and in case, of citizenship) to the achievement of a language test.

4. The access to citizenship in the European Union

How is the access to citizenship by birth and by naturalisation regulated in the European Union member states? Is the law as restrictive as in Italy? Is the *ius sanguinis* or the *ius soli* to prevail? Let's examine the main aspects.

4.1. Citizenship by birth

As for citizenship by birth, first of all it is to be said that all EU members apply the *ius sanguinis*, while, although there are some countries that consent the *ius soli* – the United Kingdom (UK), Ireland, France and Germany – there are no countries that apply the *ius soli sine conditio*. In fact, in the just mentioned countries there is a mixed system and the *ius soli* is never integrally applied.

In the UK, the *ius soli* was in force until 1982, but, since 1 January 1983, a person born in the UK is a British citizen if, at the time of his/her birth, one of the parents was a British citizen (*ius sanguinis*) or was legally settled in the UK (partial *ius soli*).³⁸

Also the Irish immigration law envisaged the *ius soli* and the *ius sanguinis* until 2004, nonetheless, since 1 January 2005, the *ius soli* principle has been subject to strong limitations. In particular, the new immigration law states that a person born in Ireland to

certain non-nationals [...] shall not be entitled to be an Irish citizen unless a parent of that person has, during the period of 4 years immediately preceding the person's

³⁷ Carens, Joseph, "The most liberal citizenship test is none at all", in Bauböck & Joppke, (eds.), *ibidem*, p. 19.

³⁸ UK Border Agency, "If you were born in the UK or a qualifying territory", available at <http://www.ukba.homeoffice.gov.uk/britishcitizenship/othernationality/Britishcitizenship/borninukorqualifyingterritory/> (consulted on 9 April 2012).

birth, been resident in the island of Ireland for a period not less than 3 years or periods the aggregate of which is not less than 3 years.

However, the Irish law provides for the non-application of such provision if at least one of the parents “was at the time of the person’s birth a person entitled to reside in the State without any restriction on his or her period of residence”, which means that the child of two immigrants in Ireland can acquire the Irish citizen at birth if at least one of them has been granted a permanent residence status.³⁹

In France, the attribution of the French citizenship by *ius soli* dates back to the Constitution of 1789, nevertheless, in 1804 the Civil Code of Napoleon affirmed the supremacy of the *ius sanguinis* over the *ius soli*. After that, the *ius soli* was progressively reintroduced during the second half of the XIX century and in the XX century, so that nowadays the *ius sanguinis* is complemented by a partial *ius soli* according to which the French citizenship is granted to any person born in France if at least one of the parents was also born in France.⁴⁰

Despite what happened in the UK, in Ireland and in France, Germany never provided for a pure *ius soli*. In Germany, such principle was introduced only with the new nationality law which recognizes the German citizenship to any person born in Germany after 1 January 2000, provided that at least one of the parents has legally lived in the country for eight years, or that at least one of the parents has been granted either a residence permit or, since at least three years, a permanent residence status.⁴¹

³⁹ Irish Nationality and Citizen Act 1956, available at <http://www.inis.gov.ie/en/INIS/consolidationINCA.pdf/Files/consolidationINCA.pdf> (consulted on 9 April 2012).

⁴⁰ Ministère de l'emploi, du travail et de la cohésion sociale, “Un peu d’Histoire”, 1999, available at http://www.vie-publique.fr/documents-vp/nationalite_histoire.pdf. Ministère des Affaires Étrangères, “Nationalité Française”, 2010, <http://www.diplomatie.gouv.fr/fr/les-francais-a-l-etranger/vos-droits-et-demarches/nationalite-francaise/>. Both websites consulted on 9 April 2012.

⁴¹ Bundesministerium des Innern, “Important questions and answers regarding German citizenship”, <http://www.bmi.bund.de/SharedDocs/Standardartikel/EN/Themen/Migration/Staatsang/faq.html> (consulted on 9 April 2012). If in Europe there are no countries that apply the *ius soli* integrally, in the United States, on the contrary, citizenship is founded on such principle (according to the American law, a person born in the United States is a US citizen), while the *ius sanguinis* has a weak connotation. In fact, a person born abroad to two US citizens is a US citizen if at least one of the “parents lived in the United States at some point in his or her life”, and a person born abroad to only one US citizen is a US citizen if “all of the following are true:” one of the parents was a US citizen at the moment of the birth of the concerned, “the citizen parent lived at least 5 years in the United States” before the birth of the concerned, “and at least 2 of those 5 years [...] were after” the “citizen parent’s 14th birthday.” U.S. Citizenship and Immigration Services, “A Guide to Naturalization”, M-476 (rev. 03/12), p. 5, available at [http://www.uscis.gov/ files/](http://www.uscis.gov/files/)

4.2. Citizenship by naturalisation for residence

All European Union countries require a certain legal residence period in order to grant citizenship by naturalization. In the EU, the average time requested is roughly seven years. Belgium and Ireland are the countries that demand the shortest period of residence, respectively three and four years, while Austria, Italy, Lithuania and Slovenia are the ones that request the longest time, ten years. Above the European average there is also Germany (eight years), while France and the UK demand five years.⁴² However, a person born in France, whose parents are not French nationals, can acquire the French citizenship only after the thirteenth year of age and after having resided in the country for at least five years (in order to acquire the French citizenship between the thirteenth and the eighteenth year of age it is necessary to present an application, after the legal age citizenship is automatically assigned).⁴³ In Portugal, the requested time for people coming from Portuguese speaking country is six years, while other nationals have to reside in the country for ten years.⁴⁴ Ten years is the time of residence demanded also by Spain, but such period drops to two years in the case of nationals of Ibero-American countries, Portugal, Andorra, the Philippines and Equatorial Guinea, as well as in the case of Sephardi Jews. Furthermore, a person born in Spain only needs one year of residence to obtain the Spanish citizenship.⁴⁵

All the above mentioned periods of residence can be consistently more in the practice, as their length depends also on each state tolerance of residence interruptions (Austria, Denmark, France, Lithuania, Luxembourg, the Netherlands and Spain are among those countries that, like Italy, require uninterrupted or continuous residence

article/M-476.pdf (consulted on 9 April 2012). The *ius soli* is also prevalent in Canada and New Zealand, as well as in Latin America where, in 2001, 89% of the countries applied it. In Australia there is a mixed system, while the *ius sanguinis* is prevalent in Africa (in 2001, it was applied by 69% of the countries) and in Asia (83%). Bertocchi, Graziella & Strozzi, Chiara, *L'evoluzione della leggi sulla cittadinanza: una prospettiva globale*, 2010, p. 6, available at http://morgana.unimore.it/bertocchi_graziella/RPS.web.pdf (consulted on 6 March 2012).

⁴² Wallace Goodman, 2010, p. 24.

⁴³ Ministère des Affaires Étrangères, 2010.

⁴⁴ Serviço de Estrangeiros e Fronteiras, “Aquisição de nacionalidade portuguesa”, http://www.sef.pt/portal/v10/PT/asp/apoioCliente/detalheApoio.aspx?fromIndex=0&id_Linha=4352 (consulted on 9 April 2012).

⁴⁵ Ministerio de Asuntos Exteriores y de Cooperación de España, “Nacionalidad”, 2012, <http://www.maec.es/es/menuppal/consulares/serviciosconsulares/informacionaextranjeros/nacionalidad/Paginas/Nacionalidad.aspx> (consulted on 9 April 2012). The European country (but not member of the EU) that requires the longest period of residence is Switzerland: twelve years. Wallace Goodman, 2010, pp. 6-7.

before applying for citizenship), as well as on the need “to hold a certain residence status or permit at the time of application or even throughout the required residence period” (among the states that take into consideration only the years spent in the country with a permanent residence status, there are Bulgaria, Czech Republic, Greece, Latvia and Poland).⁴⁶

Most EU countries (Austria, Bulgaria, Denmark, Estonia, Finland, Germany, Latvia, Lithuania, the Netherlands, Portugal Romania, Slovenia and the UK) require foreigners to get through a language test before been granted citizenship, while some other countries (Czech Republic, France, Greece, Luxembourg and Malta) demand the language knowledge to be assessed through an interview or a conversation with an immigration officer. The only states where no language requirements are needed are Belgium, Ireland, Poland, Sweden and Italy (as seen above, Italy requires to take a language test in order to get the long-term residence permit but not to gain citizenship). Moreover, 11 states out of 27 (Austria, Denmark, Estonia, Germany, Hungary, Latvia, Lithuania, the Netherlands, Romania, the UK and Slovakia) require also the assessment of the country knowledge through a formal test, while France, Greece and Luxembourg assess it through an informal test. In all the other countries such a knowledge is not required.⁴⁷

Finally, quite a high number of EU members (Austria, Denmark, Germany, the Netherlands, Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Poland and Slovenia) do not tolerate dual citizenship, which means that foreigners have to renounce to their previous citizenship if they want to acquire the citizenship of one of these countries.⁴⁸ The issue arisen by such a request consists in the possibility for some migrants to perceive it as an act of hostility from the part of the host country,⁴⁹ meaning: “either you renounce to your previous community and accept to be completely part of our community, or you will not be part of our community”. Moreover, as already stressed in paragraph no. 2, the act of renunciation to the previous citizenship can be felt

⁴⁶ Wallace Goodman, *ibidem*.

⁴⁷ *Ibidem*, pp. 14, 17.

⁴⁸ Italy abolished the renunciation requirement with the immigration law n. 91/1992. Other countries that have recently removed such requirement are Sweden (2001), Finland (2003) and Luxembourg (2008). *Ibidem*, p. 10.

⁴⁹ *Ibidem*, p. 9.

by some foreigners as an act of refusal, of betrayal of their own origins. As a consequence, a certain number of people relinquish the idea of acquiring the citizenship of the new country they live in, which results in negative effects on their process of integration in the new community and in the impossibility of benefiting from the rights deriving from the status of citizen.

These outlines about access to citizenship in the European Union show how most member states have adopted quite a tough legislation in the matter. The Italian legislation is one of the most restrictive, although it does not require to pass any language or country test for gaining citizenship. Ireland, France, Germany and the UK are among the countries that have adopted the less stringent laws, but also these legislations do not seem abreast of the times (in France and Germany there are already some hypothesis of reform). Despite this, the number of citizenships granted in the whole European Union is increasing, having been 699,000 in 2008 and 776,000 in 2009.

Conclusion

At the end of this analysis, it is plain that the Italian law on citizenship is anachronistic, absolutely inadequate to the present multi-ethnic character of the Italian society. Law n. 91/1992 does not give migrants, and especially second generation migrants, the possibility to concretely feel part of this society and to fully develop themselves. Thus, the Italian law on legislation needs to be changed. Some proposals have already been put forward; the most interesting and progressive is the one suggested by 19 organizations of the Italian civil society which are collecting the 50,000 signatures necessary to introduce such bill in the Italian Parliament.⁵⁰ This law proposal is very interesting and it would consistently improve the Italian legislation on citizenship. Nonetheless, in this essay, I would like to suggest my personal law reform, outlining its main aspects:

- the *ius soli* should have a central importance in the Italian legislation: a person born in Italy to non-Italian citizens should acquire the Italian citizenship by birth if at least one of the parents has been legally living in Italy for a

⁵⁰ The text of this law proposal is available at L'Italia Sono Anch'Io, 2011(a).

minimum of one year. “Legally living in Italy” means that a legal presence should be enough; a legal residence should not be necessary since not every person has a fixed domicile and, as a consequence, a residence address;

- foreign people (including EU citizens and children of foreign nationals) should be entitled to the Italian citizenship after one year of legal stay in Italy;
- stateless people and refugees should be granted the Italian citizenship as soon as their status is recognized. In fact, according to article 15(1) of the Universal Declaration of Human Rights, “everyone has the right to a nationality”, therefore there are no reasons to require a stateless person to legally live in Italy for a certain period of time before conferring the Italian citizenship. As for refugees, their condition is similar to that of a stateless person: a refugee is a person who is fleeing his/her own country, which is no longer able to grant him/her the necessary protection or which is the source itself of his/her flight; it is like if the refugee does not belong to his/her country anymore, his/her original citizenship is valueless and, as a consequence, he/she needs a new one;
- the economic sufficiency of the concerned person should not be a prerequisite for granting the status of citizen, no fee should be requested for the citizenship application and its acceptance should be automatic (thus not dependent on the discretion of an authority, although competent) if all the requisites are satisfied: citizenship is a right, not a privilege.

Somebody may find this proposal too permissive, some others too restrictive. In any case, it is sure that such a law, if adopted, would simplify the life of millions of people living in Italy who wish to acquire the Italian citizenship, either because they feel Italy their country, or because their life is now part of this country, and they deserve the same rights as any other member of this community.

Abbreviations

CIE	Centro di Identificazione ed Espulsione - Identification and Expulsion Centre
EMN	European Migration Network
EU	European Union
EUI	European University Institute
ICAR	Information Centre about Asylum and Refugees
ISTAT	Istituto nazionale di Statistica - National Institute for Statistics
UK	United Kingdom
US	United States

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