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The EU Citizenship as an Element of European Identity

The Concept of Citizenship after *Commission/Malta*: Towards a New Narrative on the Abuse of EU Law?

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SUMMARY: 1. A path towards a value-based concept of EU citizenship. – 2. Striking a new balance: Member States' discretion in granting national citizenship and compliance with EU law. – 3. The (disguised) requirement of the "genuine link". – 4. The ripple effect of the Court's reasoning. – 5. Can the abuse of EU citizenship rights still be irrelevant? – 6. Some tentative conclusions in a future perspective.

1. *A path towards a value-based concept of EU citizenship*

The concept of Union citizenship, widely debated in the literature, returned to the forefront about a year ago following the Court of Justice ruling on the Maltese investor citizenship programme.[1] This decision,

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[1] Court of Justice, Judgment of 29 April 2025, Case C-181/23, *Commission/Malta*. The decision has been widely commented, often with criticism of the Court's approach. In a nutshell, the prevailing view is that the outcome is acceptable but the reasoning was unconvincing or unclear. Among the numerous comments see: H. VAN EIJKEN, N*ationality, Union Citizenship and Constitutional Values after Commission/ Malta*, in *ECLR*, p. 1 ff.; S. PEERS, *Pirates of the Mediterranean Meet Judges of the*

adopted pursuing an infringement procedure whose outcome seemed far from certain, endorses a concept of Union citizenship as «based on the common values contained in Article 2 TEU».[2] Such an approach is a clear departure from the origins of European citizenship, which was initially aimed more at completing the internal market than on developing a constitutional dimension for the Union. It also differs from the idea basically expressed in some previous judgments, in which the Court has placed the emphasis on the status of Union citizenship in relation to the rights it confers, rather than on its connection with the values of the Union.

Whilst the decision prompts a rethinking of the concept of Union citizenship, it also consistently reshapes Member States' discretion in defining the criteria for granting their nationality. Indeed, the value-based nature that the ruling attributes to the Union citizenship implies unprecedented limits in an area falling within the scope of Member States' retained competence. It is primarily through the principle of mutual trust that the Court seeks to establish these limits, which prevent

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Kirchberg: the CJEU Rules on Malta's Investor Citizenship Law, in *EU Law Analysis*, 30 April 2025; D. KOCHENOV, *Never Mind the Law, Again: Commission/Malta (C-181/23)*, in *ELL*, 30 April 2025; M. VAN DEN BRINK, *Why Bother with Legal Reasoning?*, in *VBlog*, 5 May 2025 and EUI, Robert Schuman Centre, 2 May 2025; L. D. SPIEKER, *In Defence of Commission/Malta*, in *VBlog*, 7 May 2025; S. POLI, *The End of the Reserved Domain on Citizens Attribution?*, in *ELL*, 13 May 2025; M. CHAMON, *Commission/Malta (C-181/23) and the Trilemma of EU Citizenship*, in *ELR*, 2025, p. 475 ff.; U. VILLANI, *La Corte di giustizia dinanzi alla "cittadinanza (di Malta) in vendita"*, in *RCE*, 2025, p. 1 ff.; J. H. H. WEILER, *Post-scriptum-Commission v Malta Who of the Two is Selling European Values?*, in D. KOCHENOV, M. SUMPTION, M. VAN DEN BRINK (eds.), *Investment Migration in Europe and the World*, London, p. 395 ff., and in *VBlog*, 14 April 2024; D. KOCHENOV, G. IÑIGUEZ, *EU Citizenship's New Essentialism*, in *ELR*, 2025; B. NASCIMBENE, *Cittadinanza: riflessioni su problemi attuali di diritto internazionale ed europeo*, in *Giustizia Insieme*, 13 novembre 2025; A. BUFALINI, *Sulla "vendita" della cittadinanza europea*, in *RDI*, 2025, p. 829 ff.; G. VETTORETTO, *L'attribuzione della cittadinanza per investimento alla luce della sentenza Commissione/Malta*, *ibidem*, 2025, p. 1117 ff.; F. STRUMIA, *Twice a missed chance: On citizenship, agency and movement in Commission/Malta (citizenship for sale)*, in *MJECL*, 2026, p. 1 ff.

[2] *Commission/Malta*, cit., para. 95. I will not dwell on the relevance attributed to Article 2 TEU, which is beyond the scope of this comment; in this regard the ruling has undoubtedly paved the way for the possibility of invoking Article 2 as an autonomous basis for legal action, later sanctioned by the Judgment of 21 April 2026, Case C-769/22, *Commission/Hungary*.

a Member State from commercializing its citizenship. In short, to ensure mutual trust between Member States and the resulting mutual recognition of the rights conferred by EU citizenship, nationality laws must comply with the conditions that the Court considers to be a common foundation for the Member States. The Court therefore considers that it can set out conditions that are necessary to ensure mutual trust and which, consequently, constitute a prerequisite for the recognition of the rights conferred on EU citizens.

From a substantive point of view, previous case-law had led to extending the scope of Union citizenship by reducing Member States' discretion regarding the withdrawal of their nationality.[3] Following the infringement decision against Malta, the Court's approach leads to the opposite consequence, since the requirements that nationality laws must comply with entail a consequent reduction in the scope of Union citizenship ruling out the compatibility of certain conferral schemes with EU law.

2. *Striking a new balance: Member States' discretion in granting national citizenship and compliance with EU law*

As is well known, two conflicting principles are relevant to the nationality laws of the Member States.

On the one hand, Member States remain free to define rules on acquisition (and loss) of national citizenship. Article 20 of the Treaty on the functioning of the European Union (TFEU) clearly states that EU citizenship is «additional to» and «not replace» national citizenship. Declaration 2 annexed to the Final Act of the 1992 TEU and the so called Edinburg Declaration clarify that the question whether an individual has the nationality of a Member State shall be settled solely by reference to the national law of the Member State concerned. This criterion reveals a cautious attitude on the part of the Member States, or rather, one could say, it suggests their willingness to firmly maintain and preserve State sovereignty. In fact, such an approach seems not only driven by international law, according to which the power to grant

[3] See e.g Court of Justice, Judgment of 7 July 1992, Case C-369/90, *Micheletti*; 2 March 2010, Case C-135/08, *Rottmann*; 12 March 2019, Case C-221/17, *Tjebbes*.

citizenship pertains to the typical functions of the State, but also reflects the political attitude of the Member States towards the progress of European integration. The emphasis on preserving the national power to grant citizenship demonstrates the Member State's purpose to avoid a kind of creeping federalism, given the undeniably high symbolic value of creating a common citizenship status.

The Court could not fail to recognise, in its case-law, that Member States are in principle free to decide the conditions for granting national citizenship.[4] However, given the significant impact that citizenship has on the enjoyment of the fundamental freedoms enshrined in the Treaty – namely the free movement of persons and the right of residence – the Court has consistently held in its case law that Member States must exercise their discretionary powers with due regard for Union law. After all, this reflects the principle that, even in areas reserved for their exclusive competence, Member States must respect Union law whenever there is some connection with it.[5]

The balance point between Member States' discretion and sovereignty, on the one hand, and their obligation to comply with EU law, on the other, is far from clear-cut. The different – and even conflicting – approaches which in the case at issue were taken, respectively, by the Advocate General, the Commission, the European Parliament and the Court itself blatantly reveals this uncertainty. Furthermore, even under international law there does not appear to be a single, generally shared concept about the requirements that can justify the granting of national citizenship.

Drawing the line between the Member States' discretion to confer national citizenship and their obligations under EU law calls into question a number of constitutional cornerstones, such as the scope of Union's competence, the principle of primacy, the respect of Member States' national identity, and it even affects the very legal nature of the

[4] See also, among several cases, *Micheletti*, cit., para 10; *Rottmann*, cit., para. 39 and Court of Justice, Judgment of 25 May 1999, Case C-192/99, *Kaur*, para. 19 where the Court states that the rules on the acquisition and loss of nationality fall within the competence of the Member States.

[5] On the discretion of Member States in the domains of retained competence see L. AZOULAI *The Retained Powers Formula in the Case Law of the European Court of Justice: Eu Law As Total Law?*, in *EJLS*, 2011, p. 178 ff.

Union. Furthermore, one cannot ignore that the criteria adopted by one Member State to grant its citizenship are not irrelevant for the others, given the status deriving from EU citizenship and the rights that this implies, including non-discrimination and access to welfare systems. Indeed, recognising the rights provided for by the Treaty to citizens of other Member States implies a mutual acceptance of the criteria that each of them adopts for the purposes of granting citizenship. This assumption is precisely the focus of the ruling, which emphasises that the «mutual trust between the Member States as regards the fact that none of them is to exercise that power in a way that is manifestly incompatible with the very nature of Union citizenship».[6] In addition, the search for a balance between the sovereignty of the Member States and the limits to their autonomy deriving from EU law is made even more thorny and sensitive by the strong symbolic value of the concept of citizenship, its constitutional impact, and a sort of federal flavour linked to the status of Union citizenship.

Among the several issues that emerge following the ruling on Malta nationality by investment, I will focus briefly on two related points that seem worthy of some consideration in light of the knock-on consequences deriving by the new approach held by the Court: first, the need for a (certain) relationship between the applicant and a State as a condition for the granting of citizenship and, second, the relevance that the abuse of EU rights can consequently have in relation to mutual trust between Member States.

In short, this comment seeks to address the impact that the ruling – assuming it entails a comprehensive review on the criteria that Member States apply to grant their citizenship – could have on the irrelevance that abuse of rights has had to date in the Court's case law. Indeed, allowing a scrutiny of nationality laws seems to be at odds with the settled Court's approach that firmly preclude Member States from reviewing any abuse in recognising the rights deriving from EU citizenship.[7]

[6] *Commission/Malta*, cit., para. 95.
[7] I will not consider the related issue of national identity, which is explored in depth in this *Journal* by G. DI FEDERICO.

3. *The (disguised) requirement of the "genuine link"*

The ruling raises first of all the question of what role the controversial criterion of genuine link should, if any, play in granting citizenship. There is ongoing debate over Member States' obligation to comply with this requirement, and whether the origin of this alleged obligation might lie in international law or EU law. The basis that could be found in international law, identified in the famous *Nottebohm*[8] case, seems in fact rather weak, because it does not concern the granting of citizenship, but rather its recognition by other States.[9] In *Commission/Malta* the Court calls for respect for international law, without however specifying what obligations this should entail, shortly stating that «it is for each Member State, *having due regard to international law*, to lay down the conditions for the grant and loss of the nationality of a Member State» (para. 81, emphasis added).

According to the Commission there should be a common basic understanding by Member States that nationality is grounded on a genuine link between the State and the applicant; lacking such criterion, both the integrity of Union citizenship and the principle of sincere cooperation would be undermined. This argument suggests that the foundation of the genuine link criterion lies in EU law rather than in international law. However, finding in the Treaties a solid bedrock for the Commission's argument is a rather difficult task.[10] Furthermore,

[8] International Court of Justice, 5 April 1955, *Liechtenstein/Guatemala*.

[9] See, among the most recent contributions, S. MARINAI, *L'incidenza del genuine link nei rapporti tra cittadinanza statale e cittadinanza dell'Unione europea*, in *DUE*, 2023, p. 467 ff.; M. VAN DEN BRINK, *Revising Citizenship within the European Union: Is a Genuine Link Requirement the Way Forward?*, in *GLJ*, 2022, p. 79 ff.; L. D. SPIEKER, *Bonds without Belonging? The Genuine Link in International, Union, and Nationality Law*, in *YEL*, 2024, p. 56 ff.; F. CASOLARI, *EU Citizenship and Money: A Liaison Dangereuse? International and EU Legal Issues Concerning the Selling of EU Citizenship*, in *Biblioteca delle libertà*, 2025, p. 45 ff.; A. BUFALINI, *op. cit.*, pp. 832-833.

[10] According to the Commission, Article 20 TFEU and Article 4(3) TEU could give a sufficient basis. While the Court bases on Article 20 the requirement that nationality laws make the granting of citizenship conditional on the existence of a personal relationship. Much of the criticism regarding the ruling focuses on the controversial

identifying the basis of the genuine link in EU law would lead to establish under that law a limit to the discretion of the Member States whose compatibility with the latter's retained competence is not proven at all. The Advocate General Collins sharply found that EU law does not define, much less require, the existence of a "genuine link"; thus he concluded that the Commission has failed to prove that art. 20 TFEU requires the existence of such link.[11]

Moreover, even if it were possible to demonstrate that such a requirement is actually needed, two thorny problems would arise: first, when must the requirement be satisfied, and, second, on what factual elements must it be based. The Commission stated that a genuine link should exist at the time of citizenship recognition; thus a bond that arises subsequently seems irrelevant to the Commission. However, the condition of continuity of residence by citizens is provided for by several national laws as a condition for maintaining citizenship. Regarding the factual elements, the Commission appears to identify a genuine link in a residence requirement, with the resulting uncertainties in establishing the duration, the means of control and the modalities of residence.[12]

Given the weakness of the Commission's arguments, the government of Malta had an easy time arguing that EU law does not impose on Member States any legal obligation to require a prior genuine

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extension of Article 20 TFEU to the acquisition of Member State nationality: cf. H. VAN EIJKEN, *op. cit.*, p. 13.

[11] Advocate General Collins maintains that there «is no significant divergence between EU law and international law on the question as to whether a genuine link must exist between an individual and the State of which he or she is a national, since neither imposes such a requirement» (point 57). A skeptical view has already been expressed by Advocate General Tesauro in his Opinion in case *Micheletti,* where he considered that the criterion of effective nationality had its origin in «a 'romantic period' of international relations and, in particular, in the concept of diplomatic protection; still less, in my view, is the well-known (and, it is worth remembering, controversial) *Nottebohm* judgment of the International Court of Justice of any relevance». Cf. S. MARINAI, *Il ruolo dell'effettività nei rapporti tra cittadinanza statale e cittadinanza dell'Unione Europea*, in this *Journal*, 2024, p. 365 ff.; B. NASCIMBENE, *op. cit.*; L. D. SPIEKER, *Bonds without Belonging?*, cit., p. 39 ff.

[12] E. FRIPP, *EU Court of Justice Finds Malta 'Golden Passports' Scheme Incompatible with EU Law*, in *EJIL:Talk!*, 9 May 2025 ironically wonders whether «would the 2020 Malta scheme of 'golden passports' be compatible with EU law if, for instance, it incorporated the requirement of a weekend's 'actual residence' in Malta? If not, would a full week or perhaps a fortnight suffice?».

link, and that this requirement does not even derive from international law.

The Court reversed the Commission's approach and apparently avoided taking the slippery slope of the genuine link requirement.[13] Indeed, the Court moved-on to the dimension of the relationship between Member States and the Union, and Member States among themselves, founding on principles of sincere cooperation and mutual trust. Thus, the perspective adopted by the Court seems to focus on the relationship between legal systems, rather than that on the link between the individual and the Member State called upon to confer citizenship. Indeed, the citizen's behaviour remains in the shadows, while the rules on the attribution of citizenship by a Member State are the core of the Court's reasoning.

This approach essentially allows the Court to find that the Maltese programme of citizenship by investment is incompatible with EU law without delving into the maze of the genuine link requirement. However, albeit the Court does not mention such requirement at all, it states that mutual trust relates to the premise that the grant of nationality by a Member State must be based on a «special relationship of solidarity and good faith», thus justifying ultimately the recognition of the rights resulting from EU citizenship.[14] However, although the genuine link is

[13] As remarked by M. VAN DEN BRINK, *Why Bother with Legal Reasoning?*, cit., «By foregrounding solidarity and mutual trust and thereby substituting the principle of genuine link, the Court will at least escape the criticism that it does not understand ICJ case law».

[14] The Court refers to the «special relationship of solidarity and good faith between that State and its nationals and the reciprocity of rights and duties» (para 96). It is true that in the *Rottmann* case, cit., the Court made the same reference to the "special relationship of solidarity and good faith" between a Member State and its nationals, but with a completely different purpose. According to the *Rottmann* judgment, Member States are free to consider this requirement; in *Commission/Malta*, on the contrary, this relationship emerges as a necessary condition for the granting of national citizenship in accordance with the principle of mutual trust and therefore adequate to provide a basis for mutual recognition. Along the same lines of *Rottmann*, cfr. the *Tjebbes* Case, cit., in which the Court reiterated that a Member State can legitimately consider nationality as the expression of a genuine link: «it is legitimate for a Member State to take the view that nationality is the expression of a genuine link between it and its nationals, and therefore to prescribe that the absence, or the loss, of any such genuine link entails the loss of nationality» (para. 35). See also Court of Justice, Judgment of 18 January 2022, Case C-118/20, *JY*, para. 52; 5 September 2023, Case C-689/21, *X* (loss of Danish citizenship), para. 32; and 25 April 2024, Joined

not mentioned in the ruling, one cannot deny that it comes through the back door. It would be difficult not to consider the need for a «special relationship» between the citizen and the Member State as a kind of genuine link, albeit disguised.

Even the conclusions reached in the ruling by virtue of the said assumption clearly reflect a genuine link paradigm. In fact, the Court's reasoning – albeit rather convoluted – led to conclude that a Member State manifestly disregards the requirement for such a special relationship of solidarity and good faith when it establishes and implements a naturalisation scheme based on a merely transactional procedure.

4. *The ripple effect of the Court's reasoning*

Making citizenship conditional upon the existence of a special relationship that a person has with a Member State ultimately means imposing a requirement that any nationality legislation must respect. It can in fact be assumed that the condition established by the Court may have a general scope and also concern nationality legislation in other Member States.[15] Indeed, the need for a personal relationship required by the Court for the mutual trust to be assured seems to affect, in principle, any legislation on nationality, even where it is not based on investment; and it might concern not only naturalisations but also the

Cases C-684/22 and C-686/22, *Stadt Duisburg* (loss of German citizenship), para. 37. On the criterion of genuine link in relation to citizenship withdrawal cf. M. FERRI, *Il sindacato della Corte di giustizia in materia di cittadinanza nazionale*, in *RDI*, 2024, p. 179 ff.

[15] Although the ruling was issued in infringement proceedings, the potentially general nature of the Court's findings emerges above all from paragraphs 95 and 96. The possibility of a general impact of a decision finding Maltese law incompatible with EU law had been highlighted by the Advocate General with regard to the Commission's submission: «the interpretation advocated by the Commission entails serious risks. First of all, that interpretation would have an immediate impact on the legislative frameworks governing nationality in all the Member States, in particular in those States in which naturalization is granted in a discretionary manner» (point 67). The potentially general impact of the ruling is underlined in several comments; cf. among others VAN DER BRINK who remarks that «while the case is about the legality of one specific CBI scheme, the reach of the Court's reasoning is much wider. The Court effectively interprets Article 20(1) TFEU as an obligation that nationality cannot be awarded if the special relationship of solidarity between that State and its nationals and the reciprocity of rights and duties has not been formed».

criteria each Member State chooses for the attribution of nationality, including the granting of citizenship *jure sanguinis*. This may entail a significant extension of the relevance that the ruling assumes, well beyond the limited number of persons who have actually benefited from Maltese legislation on "golden passport".[16] According to the Court's assessment, the "special relationship" is intended as a prerequisite for the mutual trust on which citizenship of the Union is based, regardless of whether the citizen who has acquired the nationality of a Member State actually benefits from it or not.

There is no doubt that the ruling shifts the balance between Member States' discretion and their compliance with EU law in favour of the latter. This may imply uncertainty about the conformity of Member States' nationality legislation with EU law, even beyond the specific case of a programme of naturalisation by investment. Doubts could arise about the conditions necessary to satisfy the existence of a "special relationship" and the modalities for its assessment.[17] One might wonder, for instance, whether loose legal residency requirements could be considered sufficient by the Commission. This could arguably open the way to infringement proceedings with an uncertain and unpredictable outcome against national legislation[18] which, falling outside the scope of Union competence, could not be harmonized. As referred to in

[16] The number of naturalisations granted under the Maltese investment programme appears to be in the low thousands; cf. E. SPAVENTA, *A Very Valuable Citizenship? European Values and Citizenship after Commission v Malta,* in *CMLR*, 2025. However, the economic benefits resulting from the programme have reportedly been significant: «more than €1.6 billion was spent by applicants to Malta's golden passport scheme in its first 10 years, government data shows» (*Times of Malta*, 5 May 2025, www.timesofmalta.com/article/over-5300-new-citizens-16-billion-later-malta-golden-passports.1109137). The Maltese investment programme was abolished immediately after the ruling and replaced by legislation granting naturalisation on the basis of merit and national benefit (Act No. XXI of 24 July 2025, www.legislation.mt/eli/act/2025/21/eng).

[17] J. H. H. WEILER lists several national legislations that do not require a significant connection to acquire citizenship: *Citizenship for sale (Commission/Malta) – Who of the Two is Selling European Values?*, cit. For a comprehensive review on investor and citizenship schemes across Europe see F. CASOLARI, *op. cit*.

[18] Advocate General Collins warns that to consider the Maltese investment programme incompatible with EU law «would amount to allowing the Commission, as guardian of the Treaties, to review the naturalization policies, laws and practices of the Member States in the light of EU law» (point 67).

literature, several national legislations provide for some forms of naturalisation, such as those that grant citizenship to personalities from the world of culture or sport, which do not require to demonstrate a (significant) connection with the State. Furthermore, people with on birth-right acquisition, be it by descent (*jus sanguinis*) or by birth in the territory (*jus soli*) may have lost all ties with the country to which they belong. Whilst the Maltese citizenship for sale programme may be considered an extreme case, it is nevertheless a challenging task to identify a standard by which to assess the conformity of national legislation with the criterion of "special relationship" set by the Court. A further element of uncertainty is the potential relevance that the international context could have in assessing the conformity of national legislation with EU law, particularly when it is necessary to prevent nationals of a third country subject to sanctions from acquiring the citizenship of a Member State in order to avoid circumvention of restrictive measures provided for by the Union.[19] In short, if the requirement for a special link to the country of nationality were to be applied generally, this would result in significant limitations on the discretion of Member States, leaving the situation uncertain until further clarification based on the practice of the Commission or the case-law of the Court.[20] Moreover, a paradoxical situation arises in which a nationality law complies with international law, yet is

[19] Following the Russian Federation's invasion of Ukraine, the Commission on 28 March 2022 called on Member States to abolish citizenship-by-investment programmes and limit residence-by-investment programmes, in order to prevent the rights and freedoms established for EU citizens from being extended to Russian and Belarusian citizens "close" to the Russian government (Commission Recommendation, of 28 March 2022, on immediate steps in the context of the Russian invasion of Ukraine in relation to investor citizenship schemes and investor residence schemes, C(2022)2028 final). The recommendation was followed by Malta, which excluded Russian and Belarusian citizens from the investment programme it was in operation at the time.

[20] As observed by S. PEERS, «Time will tell whether the Court's judgment is an anomaly – a reaction to a particularly egregious national policy in the context of broader allegations of corruption – or a key part of further case law on nationality law in particular and the EU legal order in general» (*op. cit.*). H. VAN EIJKEN (*op. cit.*) remarks that «future preliminary cases could shed more light on the scope of the requirement of manifestly disregarding the special relationship between member state and national», while B. NASCIMBENE (*op. cit.*) lists in detail the various questions that, following the ECJ judgment in *Commission/Malta*, could usefully be the subject of preliminary rulings.

incompatible with EU law because it fails to meet the criteria deemed necessary to guarantee mutual trust. Thus, the condition required by the Court could reasonably be limited to the mere possibility of benefiting from the rights associated with Union citizenship, implying a distinction between, on the one hand, national citizenship and, on the other, national citizenship that is relevant for the purposes of EU law.[21]

Therefore, the interpretative shift whereby citizenship is "based on common values" could perhaps raise unpredictable issues in the future about the relevance of other situations that, beyond commercialization, could be seen as a violation of the "personal relationship" requirement. Furthermore, the connection between citizenship and the EU values may also be relevant in respect of accession to the Union; it could be argued that nationality laws should be included among the parameters examined to assess compliance with Article 2 TEU.[22]

5. *Can the abuse of EU citizenship rights still be irrelevant?*

One might wonder what consequences the position taken in *Commission/Malta* could have on the Court's settled approach as to abuses of the rights conferred on Union citizens. Such situation does not refer to fraud or procedural defects,[23] but rather to formally correct conduct aimed at obtaining an advantage based on a citizenship status obtained or exploited for that very purpose.[24]

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[21] An approach reflecting this distinction emerged from a long-standing ruling in which the Court held that the *ipso iure* conferral of national citizenship was irrelevant for EC law if it resulted in a discrimination against women regarding officials of the Community institutions: Court of Justice, Judgment of 20 February 1975, Case 21/74, *Airola*.

[22] Candidate countries for accession to the Union have been urged to abolish investment programmes similar to the Maltese one, as in the case of Moldova.

[23] See e.g. Court of Justice, Judgment of 29 July 2024, Case C-14/23, *Perle*, where, in respect of a national of a Third State, the Court recognised that a Member State may refuse an application for admission to its territory for study purposes on the ground that is demonstrated that the national has made that application without having a genuine intention of studying on the territory of that Member State.

[24] A definition of abuse of law was given by the Court in *Hungary/Slovakia* (Case C-364/10): «evidence of an abusive practice requires, first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by the European Union rules, the purpose of those rules has not been achieved and, secondly, a subjective element consisting in the intention to obtain an advantage from the

The Court has always ruled out the possibility for a Member State to challenge the nationality law of another and invoke an abuse of rights to deny a citizen of a Member State the rights provided for by EU law.[25] The new approach therefore raises the question of whether a Member State could now legitimately refuse to recognise the rights deriving from the status of Union citizenship when another Member State has granted its nationality failing to comply with the conditions established by the Court, which must be considered as an integral part of the principle of mutual trust and recognition.[26] As mentioned above, it cannot be ignored that the nationality laws of each Member State are indeed relevant to the others, by virtue of the recognition of the rights deriving from the status of EU citizenship.

This critical assessment of the effects of the ruling in question could open up an unprecedented scenario, with the risk of highly uncertain outcomes regarding the protection of the rights of EU citizens. Once the Court has found that the granting of national citizenship must conform to a certain requirement, it seems questionable to prevent a Member State from drawing consequences from the claim that a right – namely a right of entry or residence[27] – is conferred to a person who has obtained nationality in the absence of such requirement.

European Union rules by creating artificially the conditions laid down for obtaining it» (para. 58).

[25] In the different context of tax law, the Court has instead recognised that «EU law cannot be relied on for abusive or fraudulent ends», and specified that «the application of EU legislation cannot be extended to cover abusive practices by economic operators»: Court of Justice, Judgment of 22 November 2017, Case C-251/16, *Cussens*, para. 27. See also Judgment of 26 February 2019, Case C-116/16, *T Danmark*; Judgment of 26 February 2019, Joined Cases C-115/16, C-118/16, C-119/16 and C-299/16, *N Luxembourg 1*. For comprehensive analysis on abuse of rights cf., among others, S. VOGENAUER, *The Prohibition of Abuse of Law: An Emerging General Principle of EU Law*, in S. VOGENAUER, R. DE LA FERIA (eds.), *Prohibition of Abuse of Law*, Oxford, 2011, p. 521 ff.; G. BUTLER, K. ENGSIG SØRENSEN, *The Prohibition of Abuse of EU Law: a Special General Principle*, in K. S. ZIEGLER, J. NEUVONEN, V. MORENO-LAX (eds.), *Research Book on General Principles in EU Law*, Cheltenham, 2022, p. 402 ff.

[26] S. PEERS, *op. cit.*, asks a very sharp question in this regard: «can Member States now refuse to recognise another Member State's citizenship, if it has been obtained via means of an investor citizenship scheme that breaches EU law?».

[27] Regarding the recognition of political rights, raising even more delicate issues, see in this *Journal* C. TOVO.

With regard to the Maltese legislation, an abuse of right could have been invoked by arguing that an investment was made for the sole purpose of obtaining EU citizenship, thus circumventing the rationale of the relevant legislation. The brochure advertising the Maltese programme as a means of obtaining European citizenship and the rights that come with it could be seen as a kind of incentive to an abuse of right.

The Court does not appear to have attached, in its case-law, any importance to deliberate conduct aimed at benefiting from the rights guaranteed by the status of Union citizenship. The most emblematic case is certainly that of *Chen*: whilst it was clear that the birth in Ireland was for the purpose of obtaining the EU citizenship for the child,[28] the Court avoids giving any importance, in the relations between Member States, to this evident abuse: «it is not permissible for a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty» (para 39). Therefore, a Member State cannot be entitled to refuse citizens of other Member States a fundamental freedom recognised by the Treaty «merely because their nationality of a Member State was in fact acquired solely in order to secure a right of residence under Community law for a national of a non-member country».[29]

[28] Court of Justice, Judgment of 19 October 2004, Case C-200/02, *Zhu and Chen*, para. 11: «It is common ground that Mrs Chen took up residence in the island of Ireland in order to enable the child she was expecting to acquire Irish nationality and, consequently, to enable her to acquire the right to reside, should the occasion arise, with her child in the United Kingdom». For the Court, this finding had no impact on the right to benefit from the rights deriving from citizenship status.

[29] As reiterated in several cases, Member States cannot invoke a situation of abuse of law to deny the rights deriving from citizenship, nor can they challenge the criteria adopted by another Member State on the acquisition of national citizenship. In case *Micheletti*, cit., the Court clearly stated that «it is not permissible for the legislation of a Member State to restrict the effects of the grant of the nationality of another Member State by imposing an additional condition for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the Treaty» (para 10). See also Court of Justice, Judgment of 2 October 2003, Case C-148/02, *Garcia Avello*, para. 28. This principle is echoed by Advocate General Collins in his Opinion, recalling that Member States cannot impose additional conditions for recognising the

A similar attitude emerged from the *Akrik* case, which shows that according to the Court it makes no difference what reason may have prompted a worker to seek employment in another Member State[30]. Whilst in case *Zambrano* a situation defined by Belgian authorities as "legal engineering" was not considered by the Court to constitute an obstacle to benefiting of the status of European citizenship; the Court merely observed that «since Mr Ruiz Zambrano's second and third children possess Belgian nationality, the conditions for the acquisition of which it is for the Member State in question to lay down (…), they undeniably enjoy that status».[31]

The Court's stance, which clearly excludes that any relevance could be given to the abuse of rights,[32] seems justified by several reasons. Overall, the essential aim is to prevent the application of EU law from being hampered or fragmented. Allowing one Member State to challenge the requirements for granting citizenship established by another would open the door to a range of different solutions, potentially undermining the uniform application of EU law and the mutual trust between Member States. In principle, the enjoyment of the fundamental freedoms that the Treaty confers to the citizens of the Union must prevail over a claim of abuse of rights from Member States; it is ultimately the principle of primacy of EU law that prevents Member States from reviewing the circumstances in which the status of citizenship was acquired. Not to mention the difficulty in tracing the real intentions of those who carry out certain conducts with the sole purpose of creating the conditions for the acquisition of a right.

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citizenship of another Member States. (Opinion of AG Collins, delivered on 4 October 2024, Case C-181/23, *Commission/Malta*, point 48).

[30] Court of Justice, Judgment of 23 September 2003, Case C-109/01, *Akrik*.

[31] Court of Justice, Judgment of 8 March 2011, Case C-34/09, *Zambrano*. Cf. also, Judgment of 4 June 2026, Case C-147/24, *Safi*.

[32] In summary, the intentional predetermination of the conditions for benefiting from the advantages conferred by European citizenship is not in principle prohibited by EU law. I have elsewhere examined the Court's approach to the abuse of rights in different contexts (*Rivista di diritto internazionale*, 2012, p. 329 ff.) and, with regard to free movement of persons (*Abuso del diritto e libertà di circolazione dei cittadini dell'Unione europea e dei loro familiari: qualche riflessione su alcuni orientamenti della prassi recente*, in G. FURGIUELE (a cura di), *Abuso del diritto*, Napoli, 2017, p. 97 ff.).

When the status of citizenship is used just as a means to obtain the deriving rights, it could easily be objected that such behaviour would totally contradict the value-based concept affirmed by the Court in *Commission/Malta*. Furthermore, the possibility of derogating from the application of Union law based on mutual trust is not unknown to the area of freedom, security, and justice. The Court has admitted that a Member State may derogate from EU legislation when the situation in another Member State undermines the principle of mutual trust, as occurs, in particular, with regard to violation of the values of the Union or systemic deficiencies in the reception of asylum seekers.[33]

One might therefore guess whether *Commission/Malta* could pave the way for a Member State to consider itself entitled to deny a right conferred by EU citizenship when based on a nationality conferred by another Member State without respecting the conditions established by the Court. More specifically, one might ask whether the presumption of conformity with the "personal relationship" criterion, a necessary condition for mutual trust, can be rebutted, as is the case in other areas of EU law.

6. *Some tentative conclusions in a future perspective*

On the basis of the above observations, it cannot be ruled out that the Court's approach could be interpreted by a Member State as a green light to challenge the criteria by which another Member State grants citizenship, arguing that these do not comply with the requirements defined by the Court and therefore undermine the principle of mutual trust.[34] If this were to lead a Member State to consider itself entitled to

[33] This possibility has arisen in the event of a violation of EU values in a Member State, particularly regarding the treatment of asylum seekers. For a comprehensive analysis, see, among many others, A. VON BOGDANDY, *Principles and Challenging of a European Doctrine of Systemic Deficiencies*, in *MPIL Research Paper Series*, No. 2019-14.

[34] Following the ruling, the government of Malta was quick to affirm that the decision has no effect on the status of those who have already obtained citizenship for investment (Government of Malta, press release of 29 April 2025 (www.gov.mt/en/Government/DOI/Press%20Releases/Pages/2025/04/29/PR250702en.aspx). If this concerns the granting of national citizenship, it cannot rule out the possibility that a Member State might find that citizenship has been misused to benefit from rights conferred by Union citizenship.

deny the rights deriving from Union citizenship, this would entail very serious consequences regarding respect for fundamental rights. It could be argued, however, that this exception should apply when citizenship rights are invoked instrumentally, regardless of the conditions under which national citizenship was granted.[35] Thus, the concept of abuse of rights would once again become relevant, despite all the pitfalls and reluctance mentioned above; from this perspective, however, it would help to limit the Member States' reaction only to those cases in which the principle of mutual trust is actually violated, thus focusing on a citizen's attempt to abusively exploit the status he or she has acquired, rather than on national rules on the acquisition of citizenship.

This narrative could find some support in the objectives actually pursued by the Court in *Commission/Malta*. In short, to achieve the goal of preventing the commercialization of EU citizenship, the ruling addressed the root of the problem by limiting the discretion of Member States in granting national citizenship. The outcome is therefore quite intrusive and, as Advocate General Collins had suggested, seems to go beyond the scope defined by EU law.[36]

Arguably, the settled principles defined by the Court regarding the withdrawal of citizenship also affect the discretion of Member States, intruding into an area of reserved competence. However, these requirements are intended to take into account the specific situation in which citizenship is revoked and the consequences this entails for an individual.[37] Therefore, the conditions limiting the power to withdraw citizenship do not constitute a general constraint on the nationality

[35] The Commission lists the risks to security, money laundering, circumvention of EU rules, and tax evasion that golden passports can pose (Commission Report, COM(2019) 12 final). However, these risks ultimately do not necessarily arise from the "generous" criteria for granting citizenship, but rather from the abusive or illegal use of the rights that come with it.

[36] On this issue, Advocate General Collins has expressed a very clear position, according to which requiring citizenship laws to contain a specific provision «constitute a wholly unlawful erosion of Member States' competence in a highly sensitive field which they have clearly decided to retain under their exclusive control», point 57. Furthermore, according to J. H. H. WEILER (*op. cit.*), the judicial development of a genuine link would circumvent the competence of the legislature.

[37] Such requirements are well clarified in Case *Tjebbes*, cit., where the Court specifies that Member State should respect the principle of proportionality, the right to judicial protection, and fundamental rights, permitting an individual examination of the consequences that the loss implies for the persons concerned.

legislation and, in any case, leave national authorities a certain margin of discretion calling respect for the principle of proportionality.[38]

Whilst the case-law on withdrawal focuses on the specific situation of the citizen in order to protect him or her from an arbitrary decision, the imposition of a criterion for granting citizenship limits the discretion of Member States without taking into account the wide variety of situations that may arise. Indeed, although the ruling considers only one extreme case, nothing prevents a citizenship obtained through investment from implying or determining a personal relationship with the State; conversely, there is no guarantee that those who have obtained a birth-right acquisition citizenship have or maintain actual ties with their country. In short, establishing a condition of "personal relationship" could prove, on the one hand, too restrictive of Member States' autonomy, and, on the other, inadequate to capture the diversity of different concrete situations. It could thus be argued that the criteria applied to grant national citizenship are in themselves of little relevance from the Union's perspective; what really matters for the Union is the purely instrumental use of European citizenship, which places unjustified burdens on Member States and undermines the value-based dimension of EU citizenship.

Ultimately, the outstanding issues leave little doubt that, following *Commission/Malta*, the Court will likely have to clarify or (re)consider the relevance of abuse of rights in the definition of the principle of mutual trust where an allegedly unjustified claim is asserted regarding rights conferred from the status of EU citizenship.

[38] This difference is highlighted by E. SPAVENTA, *op. cit.*, p. 1812, who, referring to a violation of the conditions of solidarity and good faith, observes that «whereas, in the case of withdrawal, it is the citizen who is deemed as no longer fulfilling these conditions, in the case of the sale of citizenship, it is the State that is breaching these very principles…».

ABSTRACT (ITA)

La sentenza nel caso *Commissione/Malta* porta la Corte di giustizia ad affermare principi inediti, che valorizzano il significato costituzionale della cittadinanza dell'Unione e la mutua fiducia tra gli Stati membri che è alla base del riconoscimento dei diritti spettanti ai cittadini. Sebbene la Corte non si riferisca al controverso principio del *genuine link*, essa limita la discrezionalità degli Stati membri richiedendo che l'attribuzione della nazionalità presupponga un particolare legame con il cittadino. Ciò pone interrogativi, sui quali lo scritto si sofferma, riguardo sia alla rilevanza generale di tale criterio sia all'incidenza che esso potrebbe presentare riguardo all'orientamento della giurisprudenza relativo all'abuso di diritto.

ABSTRACT (ENG)

The judgment in the *Commission/Malta* case leads the Court of Justice to affirm innovative principles that underscore the constitutional significance of Union citizenship and highlight the principle of mutual trust among Member States as the foundation for recognising the rights held by EU citizens. Although the Court makes no explicit reference to the controversial *genuine link* criterion, it limits Member States' discretion by requiring that the granting of citizenship be conditional upon the existence of a particular link with the individual. This raises questions – which this article aims to examine – regarding both the general relevance of this criterion and its potential impact on the Court's case law, which rules out any relevance of the abuse of rights.