

Commodifying Citizenship: The ECJ Rules Against Malta’s “Golden Passport” Program

Introduction

On April 29, 2025, the European Court of Justice (ECJ) held that Malta’s so-called “golden passport” scheme, formally known as its Citizenship by Investment (CBI) program, is illegal.¹ Under the program, a person who had contributed up to €750,000 to Malta and, at least in theory, spent 12 months in the country could gain Maltese citizenship and, by extension, the right to live anywhere within the European Union (Union). In practice, however, people spending less than a month in Malta were able to obtain its citizenship, as they could rent a property in Malta and then leave. This is a trend that several scholars and commentators have termed the commodification of citizenship.² This essay will summarize the European Commission’s challenge to the CBI program, analyze the ECJ’s judgment, and briefly discuss its significance in the context of public international law.

The European Commission’s Arguments

The European Commission (EC or Commission) challenged Malta’s program alleging violations of Article 20 of the Treaty on the Functioning of the European Union (TFEU) and Article 4(3) of the Treaty on the European Union (TEU). Article 20 of the TFEU, in essence, provides that every person holding the nationality of a member state shall be a citizen of the Union, and that EU citizenship rights shall be exercised in accordance with the conditions and limits defined by EU treaties and the measures adopted under them. Article 4(3) of the TEU enshrines the principle of “sincere cooperation” and provides that the EU and its member states shall, in full mutual respect, assist each other in carrying out tasks which flow from the treaties.

The EC argued that Article 4(3) includes both a positive duty to facilitate the achievement of the tasks of the EU and also a negative duty to refrain from taking measures that could jeopardize its objectives. In the Commission's view, the establishment and operation of an investor citizenship scheme allowing for the systematic grant of the nationality of a member state on the basis of predetermined payments or investments, without the necessity of having a genuine link, would imperil the integrity of the status of an EU citizen and the mutual trust that underpins that status.³

The EC further claimed the requirement of legal residence imposed by the 2020 investor citizenship scheme was inadequate to ensure that a person obtaining the citizenship had a genuine connection with Malta. The Commission submitted documents and emails obtained by the Daphne Caruana Galizia Foundation (an anti-corruption advocacy organization established in Malta following the 2017 assassination of investigative journalist Daphne Caruana Galizia), showing that there was no requirement of actual residence in Malta under the program's terms.

Malta's Defense

Defending its CBI program, the Government of Malta argued that the ECJ could only review the national competence to grant nationality when the exercise of national legislative power breaches the fundamental values or objectives of the EU, which was not the case here. Rather, Malta claimed that the Commission sought to review its entire legislative framework governing the requirements, procedures and effects of a naturalization scheme, effectively challenging Malta's sovereign policy choices. It argued that the "broader the review carried out in a field of national competence [like naturalization], the higher the risk that the European Union will exceed its competences."⁴ It also argued that the EC does not provide an operative and working threshold of what constitutes a "genuine prior link," between a person applying for citizenship, and that it was for Malta to define such a threshold.⁵

The ECJ's Decision

In a unanimous decision, the ECJ rejected Malta's contention that reviewing an EU member states' procedure for granting nationality should only be limited to a finding of significant breaches of the values or objectives of the European Union.⁶ The Court found that in exercising the political rights conferred on them, EU citizens participate directly in the democratic life of the Union. Member states' exercise of their power to frame the

conditions for the granting of nationality therefore has consequences for the functioning of the EU as a common legal order.⁷

The Court held that in accordance with the principle of “sincere cooperation” enshrined in Article 4(3), every EU member state is obliged to abstain from any measure which could harm the objectives of the Union. The exercise of the power of an EU member state to frame the conditions for granting the nationality of that state is thus not unbridled. Referencing its past precedents, the Court observed that the “bedrock of the bond of nationality of a Member State is formed by the special relationship of solidarity and good faith between that State and its nationals and the reciprocity of rights and duties.”⁸

Furthermore, while the Court accepted that members states have broad discretion in the choice of the criteria to be applied for granting nationality, those criteria must be applied in compliance with EU law. It therefore held that “a naturalization scheme based on a transactional procedure between that Member State and persons submitting an application under that programme, at the end of which the nationality of that Member State and, therefore, the status of Union citizen, is essentially granted in exchange for predetermined payments or investments,” manifestly disregards the special relationship of solidarity and good faith required under Article 4(3) of the TEU.⁹ In other words, acquiring citizenship is not a business transaction.

The Broader Question of Commodifying Citizenship

As already noted, the citizenship scheme of Malta is not an isolated program. Similar initiatives have been introduced in other EU states like Cyprus, Portugal, Greece, while in the United States, a new visa program known as the “Trump gold card” has recently been introduced.¹⁰ According to Swiss lawyer Christian Kalin, the selling of “citizenship” has become a global industry worth \$25bn (£20bn) a year, involving more than half of all states globally allowing access to their passports through some form of an investment scheme.¹¹ In some extreme cases like Vanuatu’s, people carrying its passports never even need to enter the territories of Vanuatu. Rather, they can apply for citizenship in offices located overseas, such as a licensed “citizenship broker” located in Hong Kong.¹² Some scholars and commentators have advocated for treating citizenship like membership, meaning that you should be able to “buy” citizenship much as you can subscribe for a club membership.¹³ Taken to its extreme, however, such an approach can ignore the very political fabric of the institution of a state. It may even be fair to suggest that voting as a state “citizen” would become like voting in a company, where voting is based on the number of shares held by shareholders, not the number of shareholders.

As a policy matter, similar schemes have also permitted affluent individuals to siphon off their money and acquire a passport in doing so. Many individuals from the Global South (and elsewhere) have taken advantage of such programs to evade justice, raising persistent concerns about the corruptive potential of such programs.¹⁴ Some view these schemes as a “cushion” if they are pursued by law-enforcement agencies in their native country.¹⁵ Even as these schemes have proliferated, then, there has also been a growing backlash against them. Countries such as Australia, Cyprus, Ireland, The Netherlands, and Portugal have already reformed them in various ways.¹⁶ The ECJ’s opinion may further inform the evolution of these policies.

Of course, the ECJ’s judgment is based on EU treaty law, not on the basis of general public international law. Given that there is no global treaty governing the laws of naturalization, it is difficult to see how an issue like this could be settled based on a global treaty. Thus, a similar naturalization scheme by a non-EU member state may not be amenable to challenge in an international court, unless there is a *Nottebohm*-like scenario where the grant of nationality by a state is squarely at odds with the nationality law of another state and becomes a contentious issue for an international court to address.¹⁷

Conclusion

While human beings have always migrated for a myriad of reasons and naturalized in states other than their country of birth, citizenship in historic terms was not perceived as a matter of buying a passport. Naturalization has traditionally required some form of nexus, such as long-term residence or some outstanding contribution between the applicant and the state offering citizenship, not merely a monetary investment. At a time when states are generally increasingly hostile to individuals seeking refuge on their shores on humanitarian grounds, opening the route of naturalization by procurement raises pressing moral and ethical questions about the commodification of citizenship itself.

About the Author: Md. Rizwanul Islam <rizwanuli@u.nus.edu> is a Professor of Law and Dean of the School of Humanities and Social Sciences at North South University. He is grateful to Farhaan Ahmed, Sayere Nazabi Sayem, and Ahamed Musa for their comments on a draft version of this essay.

¹ Case C-181/23, *Comm'n v. Malta*, 2025 E.C.R. I-00064.

² Javier García Olmedo, *In Fairness to Nottebohm: Nationality in an Age of Globalization*, 15 *ASIAN J. INT'L L.* 76 (2025).

³ ECJ, *supra* note 1, ¶ 53.

⁴ *Id.* ¶64.

⁵ *Id.* ¶ 78.

⁶ *Id.* ¶ 82.

⁷ *Id.* ¶ 89.

⁸ *Id.* ¶ 95.

⁹ *Id.* ¶ 99.

¹⁰ Ed Pilkington, ‘Trump gold card’ to offer rich foreigners route to US citizenship for \$5m, THE GUARDIAN, Feb. 26, 2025, <https://www.theguardian.com/us-news/2025/feb/26/trump-gold-card-visa-rich-foreigners>.

¹¹ Sarah Treanor and Vivienne Nunis, *How selling citizenship is now big business*, BBC (Oct. 10, 2019), <https://www.bbc.com/news/business-49958628>.

¹² *Id.*

¹³ *Id.*

¹⁴ ORG. FOR ECON. COOP. & DEV., MISUSE OF CITIZENSHIP AND RESIDENCY BY INVESTMENT PROGRAMMES (2023) https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/11/misuse-of-citizenship-and-residency-by-investment-programmes_a3e76bac/ae7ce5fb-en.pdf.

¹⁵ Nik Martin, *Why are ‘golden visa’ schemes being scrapped?*, DW (Jan. 25, 2024), <https://www.dw.com/en/why-are-golden-visa-schemes-being-scrapped/a-68073414>

¹⁶ *Id.*

¹⁷ Nottebohm (Liech. v. Guat.), Judgment, 1955 I.C.J. Rep. 4 (Apr. 6) (second phase). In this case, during the Second World War, Guatemala seized the property of Nottebohm, a German national, who was considered an enemy alien. As Nottebohm was also a citizen of Lichtenstein, a neutral state, it challenged the seizure of the property belonging to its citizen. Hence, the Court had to grapple with the issue of Nottebohm’s nationality.