COURT OF JUSTICE
OF THE EUROPEAN UNION

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Advocate General's Opinion in Case C-181/23 | Commission v Malta (Citizenship by investment)

AG COLLINS: The Commission has failed to prove that EU rules on citizenship (Article 20 TFEU) require that a 'genuine link' or 'prior genuine link' between a Member State and an individual must exist in order for it to grant citizenship

Following an amendment to the Maltese Citizenship Act in July 2020, the Republic of Malta adopted subsidiary legislation [1] which included the 'Maltese Citizenship by Naturalisation for Exceptional Services by Direct Investment scheme' [2] (the '2020 citizenship scheme'). Under the 2020 scheme, foreign investors could apply to be naturalised upon fulfilling a number of conditions, principally of a financial nature.

In this infringement action, the Commission seeks a declaration that, by establishing and operating the 2020 citizenship scheme that offers naturalisation, in exchange for pre-determined payments or investments, to persons, notwithstanding the absence of a genuine link between them and the Republic of Malta, Malta failed to fulfil its obligations under Article 20 TFEU concerning EU citizenship [3] and the principle of sincere cooperation. [4]

In today's opinion, Advocate General Anthony Collins advises the Court that **the Commission has failed to prove that, in order to lawfully grant citizenship, EU law requires the existence of any 'genuine' or 'prior genuine' link between a Member State and an individual other than that required under a Member State's domestic law.**

Advocate General Collins observes that, in these proceedings, the Commission must prove that a Member State has not fulfilled an obligation binding upon it at EU law and it may not rely upon any presumption in order to do so. In its oral submissions in this case, the Commission confirmed that its complaint is based upon proof of the existence of a requirement under EU law that, in order to preserve the integrity of EU citizenship, a 'genuine link' must exist between a Member State and its nationals.

According to AG Collins, Declaration 2 on nationality of a Member State annexed to the final act of the Treaty of the European Union [5] reflects the view of the Member States that their respective conceptions of nationality touch on the very essence of their sovereignty and national identity, which they do not intend to pool. **It follows that the Member States have decided that it is for each of them alone to determine who is entitled to be one of their nationals and, as a consequence, who is an EU citizen.** AG Collins therefore finds that while a Member State, under its nationality laws, may require proof of a genuine link, EU law does not define, much less require, the existence of such a link in order to acquire or to retain that nationality.

Although EU law does not lay down conditions for the exercise of powers the Member States have chosen to retain, that exercise must not breach EU law in situations that come within the latter's scope. Thus whilst EU law may constrain, in principle, the exercise of a Member State's sovereign prerogative to grant or withdraw citizenship, that limitation applies only where that Member State acts in a manner contrary to EU law. The conditions for the grant of nationality are a matter of national law, although deference may be paid to rules of international law against statelessness and EU law requires that the human and procedural rights of the persons concerned are respected, at

least as regards the loss of nationality.

The duty under EU law to recognise the nationality granted by another Member State is a mutual recognition of, and respect for, the sovereignty of each State and is not a means to undermine the exclusive competences that the Member States enjoy in this domain. There is no logical basis for the contention that because Member States are obliged to recognise nationality granted by other Member States, their nationality laws must contain any particular rule. To find otherwise would upset the carefully crafted balance between national and EU citizenship in the Treaties and 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.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.
Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Unofficial document for media use, not binding on the Court of Justice.

The full text of the Opinion is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the Opinion are available from 'Europe by Satellite" ✆ (+32) 2 2964106.

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[1] The 'Granting of Citizenship for Exceptional Services Regulations, 2020', adopted in November 2020 in accordance with Article 10(9) of the Maltese Citizenship Act, as amended by the 2020 Citizenship Act.

[2] Part III and Part IV of the 2020 Regulations contained detailed rules governing the processing of applications for naturalisation for exceptional services by merit and by direct Investment in the economic and social development in the Republic of Malta.

[3] Article 20 TFEU.

[4] Article 4(3) TEU.

[5] OJ 1992 C 191, p.98.