

CASE NOTE

CJEU RULING ON MALTESE NATIONALITY: A BACKLASH, A STEP FORWARD OR AN OMEN?

FERNANDO LÓPEZ RANGEL *

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I BACKGROUND

The Court of Justice of the European Union ('CJEU') adjudicated the case *European Commission v Malta* ('*Malta Case*') on 29 April 2025.¹ The decision concerns the naturalisation scheme employed by Malta known as 'golden passport' citizenship.² The present case note assesses the crucial points regarding nationality in the case proceedings and the CJEU's judgment. It also provides an analysis of the relevance of the case and possible impacts thereof.

The CJEU has been construing its own approach to nationality since the late 1990s. The Court's jurisdiction has expanded to cover matters concerning European Union ('EU') member state's citizenship as additional rights have become increasingly associated with nationality. Indeed, the 1992 CJEU *Micheletti v Delegación del Gobierno en Cantabria* ('*Micheletti*') judgment³ introduced nationality into the CJEU's case law, despite nationality being considered to fall within member states' exclusive competence.

* LLM in International Law from the State University of Rio de Janeiro, Brazil. Researcher, legal consultant and human rights advocate. ORCID: <https://orcid.org/0009-0006-8759-6047>.

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¹ *European Commission v Republic of Malta* (Court of Justice of the European Union, C-181/23, ECLI:EU:C:2025:283, 29 April 2025) ('*Malta Case*').

² 'Golden passport' refers to the acquisition of nationality — naturalisation — based on investments made in the state. Other requirements may vary demanding specific types of investments, time of residency and so on.

³ *Mario Vincente Micheletti v Delegación del Gobierno en Cantabria* (C-369/90) [1992] ECR I-4239 ('*Micheletti*'). See Hans Ulrich Jessurun d'Oliveira, 'Court of Justice of the European Union: Decision of 2 March 2010, Case C-315/08, *Janko Rottman v Freistaat Bayern* — *Case Note I: Decoupling Nationality and Union Citizenship?*' (2010) 7(1) *European Constitutional Law Review* 138, 142–3.

Following *Micheletti*, the CJEU then adjudicated a number of nationality cases⁴ in the lead up to the landmark *Rottman v Freistaat Bayern* ('*Rottman*') judgment.⁵ Since then, the Court has developed over the past decades a consistent approach to nationality that is grounded in allegiance, loyalty, and reciprocity, in order to review member state withdrawal of citizenship and to protect individuals against arbitrary loss of EU nationality.

Even though member states retain exclusive competence to determine rules on nationality,⁶ *Rottman* lays out a proportionality test that should be applied to withdrawal decisions in light of EU law. The proportionality test has been present in all recent CJEU decisions over nationality. According to the case law established to date, the CJEU assesses compatibility with EU law against the fulfilment of certain requirements: (a) effective access to the procedure for maintaining nationality provided for by law; (b) reasonable time limit; (c) proper information about the procedure; (d) examination of the proportionality of the consequences of loss by the competent authorities or the possibility of incidental examination in an application for a nationality document;⁷ and (e) the possibility of *ex tunc* recovery of nationality at the end of this procedure. In its reasoning, the CJEU reiterates the importance of an individual examination of each requirement, which weighs public and private interests, including in cases of loss *ex lege*, whenever it implies the extinction of EU citizenship.

Thus, the CJEU upholds procedural and formal guarantees through a solid proportionality test while maintaining its historical appreciation for the national powers of its member states.⁸ For the CJEU, these must not be hypothetical or occasional bonds; deprivation of nationality would be unlawful only if it has real and objective implications.⁹ For example, on 5 May 2023, in

⁴ See Pierluigi Simone, 'Nationality and Regional Integration: The Case of the European Union' in Serena Forlati and Alessandra Annoni (eds), *The Changing Role of Nationality in International Law* (Routledge 2013) 169, 218.

⁵ *Janko Rottman v Freistaat Bayern* (C-135/08) [2010] ECR I-1467 [48] ('*Rottman*').

⁶ Simone (n 4) 228:

The Rottmann case can be considered as a confirmation of the complementary nature of EU citizenship in respect of nationalities of member states; building upon the obligations incumbent on the member states with regard to the principle of proportionality, the case pointed out how European citizenship affects the sovereigns' right to define their nationals.

⁷ For more information about the Court of Justice of the European Union's ('CJEU') limitation to nationality, see Christelle Macq, 'Contours et Enjeux de la Déchéance de la Nationalité', *Courrier Hebdomadaire du CRISP* (online, 2 February 2022) 75 <<https://shs.cairn.info/revue-courrier-hebdomadaire-du-crisp-2021-30-page-5?lang=fr>>, archived at <perma.cc/JR4K-7AEF>, citing *Tjebbes v Minister van Buitenlandse Zaken* (Court of Justice of the European Union, C-221/17, EU:C:2019:189, 12 March 2019) [41] ('*Tjebbes*')

Ainsi, elle pose pour principe qu'« un tel examen exige une appréciation de la situation individuelle de la personne concernée ainsi que de celle de sa famille afin de déterminer si la perte de la nationalité de l'État membre concerné, lorsqu'elle emporte celle du statut de citoyen de l'Union, a des conséquences qui affecteraient de manière disproportionnée, par rapport à l'objectif poursuivi par le législateur national, le développement normal de sa vie».

[Thus, it establishes the principle that 'such an examination requires an assessment of the individual situation of the person concerned and that of their family in order to determine whether the loss of the nationality of the Member State concerned, where it entails the loss of the status of citizen of the Union, has consequences that would disproportionately affect, having regard to the objective pursued by the national legislature, the normal development of their life'.]

⁸ See *SÖ v Stadt Duisburg* (Court of Justice of the European Union, Joined Cases C-684/22 to C-686/22, ECLI:EU:C:2024:345, 25 April 2024) ('*Cases C-684/22 to C-686/22*').

⁹ See *ibid*; *JY v Wiener Landesregierung* (Court of Justice of the European Union, C-118/20, EU:C:2022:34, 18 January 2022), cited in *Malta Case* (n 1) [44]; *Tjebbes* (n 7); *Rottman* (n 5).

Udlændinge-og Integrationsministeriet (Loss of Danish Nationality), the CJEU clarified that member states have discretion to consider nationality as an expression of a genuine link for the purpose of withdrawing nationality.¹⁰ The CJEU approach to nationality creates a paradox: the meaningful bond limits state power to deprive it in so far it has real grounds; otherwise, it would be acceptable for the state to withdraw it.

The *Malta Case*, however, presented a new situation for the CJEU. It is the first time the CJEU has directly considered the nationality law of a member state. Additionally, as the case involves citizenship by investment, it raises the issue of conferral of nationality rather than loss. Therefore, the case has much to contribute to the construction of EU law on nationality.

II THE CASE

The European Commission ('Commission') referred Malta to the CJEU after notifying member states that investor citizenship schemes were unlawful under EU law, as they could violate the principle of sincere cooperation between member states. Specifically, the Commission required a substantial social bond to exist when granting nationality, and a system allowing naturalisation before developing such a link would not be consistent with the objective of strengthening solidarity between the people of the EU that are socially attached to its member states.¹¹

Accordingly, the Commission sent formal communications to Malta requesting its compliance with EU law. The Russian invasion of Ukraine in 2022 particularly alarmed the Commission, because Malta's investor citizenship scheme risked affording wealthy Russians connected to their government access to the European financial system through naturalisation — Maltese citizenship would allow them to bypassing existing economic sanctions on Russian nationals.¹² Then, a set of recommendations were considered on citizenship by investment.¹³ The recommendations refer to infringement procedures against two member states in order to repeal the schemes. On 22 March 2023, the Commission referred Malta to the CJEU,¹⁴ because Malta remained the sole EU member state maintaining the citizenship by investment scheme in violation of arts 20(1) of the *Treaty on the Functioning of the European Union* and 4(3) of the *Treaty of the European Union* ('TEU').¹⁵

¹⁰ See, eg, *Tjebbes* (n 7) [35], cited in *X v Udlændinge- og Integrationsministeriet* [Ministry of Immigration and Integration, Denmark] (Court of Justice of the European Union, C-689/21, ECLI:EU:C:2023:626, 5 September 2023) [32].

¹¹ *Malta Case* (n 1) [96].

¹² The recommendation refers to a Joint Declaration by France, Germany, Italy, the United Kingdom, Canada, and the United States of America: see European Commission, *Joint Declaration on Further Restrictive Economic Measures* (Statement No 22/1324, 26 February 2022).

¹³ European Commission, *Commission Recommendation of 28.3.2022 on Immediate Steps in the Context of the Russian Invasion of Ukraine in Relation to Investor Citizenship Schemes and Investor Residence Schemes* (Recommendation No C(2022) 2028, 28 March 2022).

¹⁴ *Treaty on the Functioning of the European Union*, opened for signature 7 February 1992, [2009] OJ C 115/199 (entered into force 1 November 1993) art 258 ('TFEU'); European Commission, 'Investor Citizenship Scheme: Commission Refers Malta to the Court of Justice' (Press Release IP/22/5422, 29 September 2022).

¹⁵ *TFEU* (n 14) art 20(1); *Treaty on European Union*, opened for signature 7 February 1992, [1992] OJ C 191/1 (entered into force 1 November 1993) art 4(3) ('*Treaty on European Union*').

The *Maltese Citizenship (Amendment No 2) Act 2020*¹⁶ amended art 10(9) to provide the Minister responsible for matters relating to Maltese citizenship with the discretion to grant naturalisation to persons who may prove to be of ‘exceptional’ interest to the country,¹⁷ such as those who contributed investments to Malta’s economy. The Maltese Parliament also adopted a regulation to implement the legislation (‘2020 Regulations’).¹⁸ The 2020 Regulations provided for the naturalisation of foreign investors over 18 years old who meet the following requirements: (a) having made a contribution of at least €600,000, from which €10,000 is a non-refundable deposit; (b) having a residential property of minimum value of €700,000 or annual rent of €16,000 for a minimum of 5 years; (c) having made a philanthropic donation of at least €10,000; (d) having a 36-month period of residence, which can be reduced to 12 months when the direct investment is over €750,000; and (e) passing an eligibility assessment.¹⁹ Moreover, the 2020 Regulations limits approval under this policy to 400 applications per year, and provides for up to 1,500 citizenship application approvals in total while the policy is in place.

On 4 October 2024, Advocate General Collins gave his opinion on the case to the CJEU (‘Advocate General Opinion’).²⁰ According to him, the Commission has to meet the burden of proof on alleged breaches and take notice of the general duty of the member states to cooperate with measures to ensure the effectiveness of EU law. He also considered Malta’s defence that citizenship by investment cannot undergo examination since it does not discriminate in any way, and that it complied with due diligence processes to ensure its measures were in line with EU laws against money laundering, corruption and terrorism.

Advocate General Collins reviewed the ‘genuine link’ claim by the Commission under international nationality law. He argued that EU citizenship is attached to member states’ nationalities granted under their exclusive competence with due regard to international law.²¹ He stressed that member states had chosen to leave citizenship regulation with each exclusive sovereign competence, as shown by Declaration No 2 annexed to the *TEU*.²² The CJEU previously endorsed states’ exclusive competence such as in the *Micheletti* judgment, in which the CJEU decided that member states could not impose additional conditions to the recognition of nationality of another member state.²³ The Advocate General pointed out that citizenship regulation on granting and withdrawal of nationality

¹⁶ *Act No XXXVIII of 2020 ‘Maltese Citizenship (Amendment No 2) Act, 2020’*, s 3 (Malta).

¹⁷ *Act XXX of 1965 ‘Maltese Citizenship Act’*, s 10(9) (Malta).

¹⁸ *Subsidiary Legislation No 188.06, 2020 ‘Granting of Citizenship by Naturalisation on the Basis of Merit Regulations’* (Malta) (‘2020 Regulations’).

¹⁹ The applicant must apply for an eligibility assessment with the according form accompanied by declarations and documents: see *ibid* art 8. Article 9 on the other hand established that the Community Malta Agency must perform due diligence checks to verify all the information provided, to review the applicant’s background, to ensure the legitimacy of the investment’s source (as stipulated in anti-money laundering and financing terrorism legislation) and to assess the risk therein: *ibid*. The agency then informs the Minister for their decision.

²⁰ *European Commission v Republic of Malta (Opinion of Advocate General Collins)* (Court of Justice of the European Union, C-181/23, ECLI:EU:C:2024:849, 4 October 2024) (‘Advocate General’s Opinion’).

²¹ *ibid* [44].

²² *Treaty on European Union* (n 15) 98.

²³ *Micheletti* (n 3) [10].

cannot be in breach of either EU law or international law, especially if it impacts on individual rights.²⁴

The *Malta Case* is the first where the CJEU has had to address a member state's conferral of citizenship, and as such, it is not possible to draw a parallel between rules on withdrawal and granting of citizenship.²⁵ The *Rottman* case illustrated such a point.²⁶ Even though a member state has the prerogative to consider the 'genuine link' under its law as a condition for granting citizenship, EU law does not require it. However, it demands close examination in the case of withdrawal or revocation to ensure that it does not violate any individual rights.²⁷ Lastly, the Advocate General noted the International Court of Justice ('ICJ') findings in the *Liechtenstein v Guatemala* ('*Nottebohm*') judgment that a state may refuse to grant nationality if there is no genuine link between the person and the state.²⁸ At the same time, he explained that that this does not mean that international law imposes a genuine link as a condition for states when conferring nationality. Therefore, EU law and international law do not diverge, and both recognise that nationality rules are for states to decide. In light of this, the Advocate General advised the CJEU to dismiss the case.

III THE JUDGMENT

The Court issued its judgment on 29 April 2025.²⁹ It explicitly endorsed the aforementioned interpretation distinguishing between applicable law concerning the conferral as opposed to the withdrawal of nationality.³⁰ The CJEU adopted the view that member states have broad discretion to establish conditions for granting nationality within their competence.³¹ Nevertheless, the Court departed from the Advocate General's conclusion. The judgment considered that there must be a 'special relationship' to support the bond of nationality.³² Mainly, such a bond must exist in order to support the solidarity, good faith and reciprocity between the member states of the EU. It thereby justifies the legal consequences such as cooperation and mutual recognition, and the rights and duties between nationals and member states which stem from EU citizenship.³³

The Maltese citizenship by investment scheme thus did not meet the substantial social bond requirement. Considering how CJEU case law obliges member states to recognise nationality granted by another member state, the Maltese scheme cripples the principles of solidarity and good faith that underpin this obligation.

Overall, the Court disregarded previous decisions that it is not for other member states nor the EU to establish conditions different from those of the member state of nationality. The absence of a genuine link breaks the mutual trust between member states and does not justify the rights attached to EU citizenship.³⁴ In

²⁴ *Advocate General's Opinion* (n 20) [49].

²⁵ *Cf Tjebbes* (n 7), cited in *Advocate General's Opinion* (n 20) [54].

²⁶ *Rottman* (n 5) [48].

²⁷ *Advocate General's Opinion* (n 20) [55].

²⁸ *Nottebohm Case (Liechtenstein v Guatemala) (Judgment)* [1955] ICJ Rep 18, cited in *ibid* [56].

²⁹ *Malta Case* (n 1).

³⁰ *ibid* [95].

³¹ *ibid* [98].

³² *ibid* [96], [99].

³³ *ibid* [97], [101].

³⁴ *ibid*.

conclusion, the Court found that Maltese citizenship by direct investment is incompatible with EU law, as it incorporated into the bloc's law the requirement of 'genuine link' as a condition for domestic nationality regulations. Therefore, the CJEU has construed for the first time a nationality rule within EU law to which every member state should abide in regulating their own nationality.³⁵

IV ANALYSIS

The judgment sets a precedent for citizenship acquisition and member states' competence for the regulation of nationality. The decision over Malta's citizenship schemes draws parallels with the reasoning in the *Nottebohm* judgment, according to which international law and states may not recognise nationality should it lack a genuine social attachment. Even though the CJEU does not refer to the ICJ case law, and the *Nottebohm* judgment does not create a rule for domestic nationality regulation as pointed out by the Advocate General, the 'special relationship' — genuine link — becomes a *sine qua non* condition for the mutual recognition of EU citizenship.³⁶ In line with the Advocate General Opinion, EU law does not prescribe conditions for the acquisition of nationality and previous CJEU case law recognises national competence on nationality matters. Despite this, should a member state nationality law be incompatible with EU law — which demands relevant social bond — the EU citizenship cannot be afforded, and hence other member states could not recognise that nationality.

The Court underscored that the matter touches upon the very foundation of the EU legal system.³⁷ It recognised that nationality plays a vital role in international law as a constitutor of legal orders and their subjects.³⁸ The decision also mentions the individual, political and social rights attached to the legal bond of citizenship. Accordingly, the CJEU embraces the noteworthy conclusion that nationality provides individuals with a broader scope of protection. For that reason, the rules safeguarding individual and human rights impose limits and obligations upon states in the matter of nationality.

In fact, this decision reflects the CJEU case law's position on loss of nationality despite distinct rules applying to the conferral of nationality. The proportionality test sets up the standard to assess nationality loss based on the robustness of the social link and the impacts that the loss may have on individual public and private rights. In the CJEU's understanding, the genuine link should be taken into consideration when both withdrawing and conferring nationality.

However, the application of such principles delivers different results in each situation. The special relationship 'bedrock'³⁹ of the bond of nationality sets a high bar for member states to withdraw EU citizenship. Conversely, requiring strong social bonds as a condition for naturalisation shifts the burden of meeting such standards onto the individual. In this sense, the proportionality test establishes formal and procedural guarantees for individuals losing their EU nationality. By

³⁵ It follows the expansion of the *ratione materiae* and *ratione personae* of European Union ('EU') law over nationality promoted by CJEU case law: see Simone (n 4) 183. In this regard, the *Malta Case* confirms that member states should act to implement EU law in matters of nationality, contrary to its previous stance that nationality was a purely internal situation or an individual examination of non-application of EU law: see *ibid* 185.

³⁶ *Malta Case* (n 1) [99].

³⁷ *ibid* [91].

³⁸ *ibid* [93].

³⁹ *ibid* [96].

contrast, the proportionality test is not applied to naturalisation, since the *Malta Case* concerned EU member state's nationality law and thus did not consider such impacts on the individual. Moreover, the CJEU did not elaborate on the objective grounds needed to establish a genuine link sufficient to support nationality regulations compatible with EU law. The absence of clear standards poses risks to EU naturalisation procedures.

The decision also has implications for the treatment of nationality from the standpoint of international law. Indeed, the Court recognised that nationality constitutes part of the fabric of international law, and considered how it forges the personal component of states, defines jurisdictions, and indirectly identifies individuals. Many institutions of international law rely on nationality, especially under the EU framework. Hence, the expansion of international law has led to the development of regulations concerning nationality which apply a handful of international norms that limits state action. Despite this expansion, domestic concerns and political discretion still largely dictate the treatment of nationality.

Interestingly, the EU framework reveals an apparent contradiction, as it limits the state's authority in granting nationality so as to protect the sovereignty of other member states who are compelled to recognise such nationality and to afford accompanying rights. In sum, the CJEU adopts a restrictive understanding of nationality within the same legal framework that provides protection to the individual's right to a nationality. Yet, contrary to its protective stance against arbitrary deprivation, the Court denies international effects to nationality lacking a 'special relationship' to safeguard member states' sovereignty, regardless of Malta's own exclusive competence.⁴⁰

In some ways, the *Malta Case* incorporates the *Nottebohm* precedent into EU law, paving the way for additional conditions on naturalisation rules. However, in contrast to *Nottebohm*, in which the ICJ dismissed diplomatic protection based on a 'void' nationality, the CJEU intended to preclude the 'grant of rights resulting, in particular, from Union citizenship' through 'transactional naturalisation'.⁴¹ On one hand, it indirectly adopts the genuine link of *Nottebohm* through the 'special relationship' as a condition for naturalisation schemes,⁴² regulating the conferral of nationality. On the other hand, the genuine link condition serves the purpose of both restricting the access to nationality as well as diminishing individual choice over nationality.

⁴⁰ Ernst Hirsch Ballin, *Citizens' Rights and the Right to Be a Citizen* (Brill 2014) 113:

We are seeing two trends in the development of European citizenship, as recently discussed in the European Constitutional Law Review: one where – in line with the case law of the EU Court of Justice – member states are required to take account of the consequences of their nationality decisions for EU citizenship (Gerard-Rene de Groot and Anja Seling), and another where the independence of EU citizenship is advocated so as to reduce this dependency on domestic law (HU Jessurun d'Oliveira). These two approaches have one thing in common: in periods of migration – within the EU itself to begin with – European citizenship provides a normative framework for fundamental rights for people on the move. The political climate is however at present not favourable.

⁴¹ *Malta Case* (n 1) [99].

⁴² Commenting on the negotiations preceding the *Malta Case*, Marrero Gonzalez notices that both supranational legal standards and judge-made general principles of law such as the 'genuine link' theory, and the EU principle of sincere or loyal cooperation impacted the case to restrict legislative power of member states in nationality matters: Guayasén Marrero Gonzalez, 'Civis Europaeus Sum? Consequences with Regard to Nationality Law and EU Citizenship Status of the Independence of a Devolved Part of an EU Member State' (PhD Thesis, Maastricht University, 2017).

V CONCLUSION

Overall, the judgment overlooks contemporary human rights standards, and instead imposes limitations over state's competence to regulate nationality by reference to the rights of other member states. In other words, this increased regulation does not flow from human rights concerns. Likewise, it does not examine the impacts on individuals despite pointing out relevant rights attached to nationality. The decision follows social turmoil as states attempt to tighten access to nationality and to exert greater control over migration.⁴³ Since nationality remains one of the last bastions of state sovereignty under international law, it provides a sphere for political discretion. Nationality arbitrariness enables states to circumvent international obligations, shape migration policies, and extend or retract individual protections.⁴⁴

Engagement with international law thus becomes crucial because this ruling serves as a pivotal precedent on the conferral of nationality. In addition, current international law helps to identify adequate solutions that uphold human dignity. A rights-based perspective on nationality requires overcoming exclusionary elements within the state-centric securitisation perspective. This entails overcoming political discretion and national sovereignty fundamentals that lead to circumventing international obligations. The *Nottebohm* case has been widely criticised by contemporary trends in international human rights law since it contrasts a rights-based perspective.⁴⁵ The human right to a nationality encompasses other rights such as the right to private life, and the right to work among others. In this regard, the European Court of Human Rights has taken a more progressive stance. It highlights the incompatibility of full state discretion over one's nationality — viewed as a 'privilege' rather than a right or a matter of individual choice — with human rights law.

⁴³ Analysts have noticed stricter rules and decisions on nationality for security reasons in the fight against terrorism and migration control. Regarding terrorism, see Macq (n 7) 81. Regarding migration control, see Betty de Hart, 'Recent Trends in European Nationality Laws: a Restrictive Turn?' (Research Paper No PE 408.301, 25 March 2008) 11.

⁴⁴ For a broader analysis of security-based citizenship revocation, see Christian Prener, *Denationalisation and Its Discontents: Citizenship Revocation in the 21st Century* (Brill 2022).

⁴⁵ For arguments put against *Nottebohm* 'genuine link' reasoning, see Laura van Waas, *Nationality Matters: Statelessness Under International Law* (Intersentia 2008); Alice Edwards, 'The Meaning of Nationality in International Law in an Era of Human Rights: Procedural and Substantive Aspects' in Alice Edwards and Laura Van Waas (eds), *Nationality and Statelessness Under International Law* (Cambridge University Press 2014) 11, 34; Kim Rubenstein and Niamh Lenagh-Macuire, 'More or Less Secure? Nationality Questions, Deportation and Dual Nationality' in Alice Edwards and Laura Van Waas (eds), *Nationality and Statelessness Under International Law* (Cambridge University Press 2014) 264, 266–71.