

Abstract

This thesis deals with the phenomenon of citizenship by investment ('CBI') schemes in the European Union. Its aim is to critically examine the judgment of the Court of Justice of the European Union in Case C-181/23 *Commission v Malta*, its implications for the division of competences between the EU and the Member States and to develop a test for compliance of CBI schemes with EU law that would protect the integrity of EU citizenship while preserving Member States' sovereignty as much as possible.

The first chapter describes what CBI schemes are and illustrates their operation on the example of the Maltese scheme which was the subject of the judgment. Next, the thesis summarises the reasoning of both the Court and the Advocate General. Third chapter reviews existing literature reacting to the decision and outlines four main topics of discussion. Fourth chapter develops theoretical basis for the fifth chapter which designs a test of compliance of CBI schemes with EU law.

The test consists of the following steps: (i.) existence of bond between the applicant and the Member State, (ii.) sincere cooperation of the Member State and (iii.) Member State does not enable systematic abuse of rights. The steps are to be taken in this order and should the examined scheme fail at any step, the remaining step(s) are not necessary and the scheme is to be deemed unlawful under EU law. For a scheme to fail the test, its transactional nature has to be so dominant as to be capable of calling into question mutual trust between Member States.

The test is designed to outlaw only the most dangerous CBI schemes that threaten the attainment of the Area of Freedom Security and Justice. For CBI schemes to be outlawed altogether under EU law, a consensus between Member States on an amendment to the Treaties would have to be reached.

Keywords: EU citizenship, investment migration, fundamental values, sincere cooperation

Title: Combatting Investor Citizenship Schemes in the European Union