

GEDIP

Projet de lignes directrices sur la nationalité

My dear friends,

Thank you very much indeed for the result of your fruitful deliberations concerning the second draft of the 'lignes directrices' after our lively discussions in Paris.

In anticipation to our virtual meeting in November I may be allowed to put some preliminary remarks concerning this new draft on paper.

Given my piece on Golden Passports in Working Paper no. 162 at COMPAS, my notes on the first draft as sent to you, and my contribution to the discussion at our meeting, it cannot come as a big surprise that the conclusions of Advocate-General Anthony Collins in the case of the Commission v. Malta (C-181/23) were most agreeable to me. Although we have of course to wait for the judgment of the European Court of Justice, the institution that has most actively developed the concept of Union Citizenship and its broad implications, and may not be happy with the conclusions of its A-G, nevertheless I find them cogent enough to be incorporated in our lignes directrices. This leads me to the following comments on the individual articles.

Articles.2.1 and 2.2. Acquisition of nationality.

My preference is still to strike out both articles and thus opt for version 2. For the reasons expounded by the Advocate-General there is no competence with the EU to deal with the nationality laws of the MS as concerns the acquisition of nationality, and thus no obligation of sincere cooperation. Neither international law, nor EU law demand a (genuine) link for granting a nationality. In other words: it is the Member State that defines autonomously,- the prerogative of even limited sovereignty,- the conditions for granting, and it thus possesses the defining power as to what counts as a genuine) link. Contributions to the economy of a state may, and have in the past until the present day counted in many countries as such a link. The fact that art. 20 TFEU attributes Union Citizenship automatically on all nationals of Member States does not entail

competence of the Union to oblige the MS to exercise their exclusive competence in certain ways. Neither may MS make their recognition of a nationality dependent on certain extra requirements. This is well established case-law of the Court since *Micheletti* and *Zhu*. The implication is that there is a diversity of connecting facts in the laws on nationality of the member states; unification must come from a treaty.

Version 3 seems to me less agreeable, as it is the MS involved that defines the link, and not the EU. Hence no duty for sincere cooperation.

Version 4. This general principle, mentioned by A-G Collins, is conditioned by the existence of a requisite EU competence. Is there such competence? I furthermore would introduce, if this version is adopted, the explanation that it is the citizen/national who invokes EU law fraudulently. An example in a footnote would be useful.

Loss of nationality.

Art. 2.4. I would prefer this principle to be somewhat more explicit, incorporating the text of art. 7 (1) sub b of the European Convention on Nationality. For EU Member States that have not yet seen fit to join the Convention, its content counts as codification of customary international law. Thus:

Sauf en cas d'acquisition de la nationalité à la suite d'une conduite frauduleuse, par fausse information ou par dissimulation d'un fait pertinent de la part du requérant, la perte de la nationalité d'un Etat membre ne peut conduire à l'apatridie.

Art.2.5. According to the judgment in *JY both* Member States involved are responsible for avoiding statelessness, not only the State of origin, but the state of the new nationality as well. Why mention the state of origin only? Could we introduce guidelines on a mechanism to be introduced to avoid statelessness in this situation?

Art.2.6 I agree fully.

Art.2.7. What is the relationship of this article with art.1.2, that asks from MS to abide by the many European principles mentioned there. This is a matter of internal consistence of our guidelines. Why only mention here the principle of

proportionality and not the other principles mentioned in art.1.2, such as the non-discrimination principle or the best interest of children?

Best wishes,

Ulli d'Oliveira

Amsterdam, 4.10.2024.