

The Challenges of Citizenship in a Small European State - Malta

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Maltese Citizenship

- The origins of Maltese citizenship legislation: legacy of Colonial Rule
- Legislation perhaps to reflect its smallness and a new emerging state
- The legal instruments: The Maltese Constitution and the Maltese Citizenship Act
- Throughout the years such citizenship legislation went through radical reforms – resulting in the current version containing very liberal provisions aligning it to that of larger states.

Notwithstanding the protective approach Malta had embarked on when attaining statehood smallness has not inhibited development.

Citizenship – the view of the State, the Public & NGOs

- **The State** is very liberal in its approach vis-a-vis persons of Maltese ethnic origin and emigrants
 - Providing eligibility to Maltese citizenship to hundreds of thousands of persons of Maltese descent. Restrictive re facilitation to migrants.
- **NGOs** dealing with migrants lodge criticism towards the State for such approach, in particular those who are in Malta after having sought international protection and which also view the acquisition of citizenship as the ultimate stage of integration.

Citizenship – the view of the State, the Public & NGOs

- **The General Public** consider migration as one of the major concerns that Malta faces nowadays. Perhaps, this could be the result of the big influx of asylum seekers and migrants required to meet the demand for labour of a high performing economy.
 - Long term residents will make demand for citizenship.
- Following the introduction of the acquisition of citizenship by investment, the measure contributed to an intensive debate, which also extended beyond our shores.
- The argument being brought forward was; **citizenship should not be for sale and shady Third country nationals would acquire the citizenship of the European Union**

Citizenship – the view of the State, the Public & NGOs

- *Therefore, can one infer that such features characterise:*
 - i. the smallness,*
 - ii. the sensitivity to an already overpopulated territory, and*
 - iii. the social values of a tightly knit society, which after all is a relatively a “young” state that has developed into a big one in stature and whereby Maltese citizenship also implies citizenship of the European Union?*

Routes to Citizenship

Maltese nationality can be claimed:

- i. On the basis of the **jus solis and jus sanguinis** for those born in Malta prior to Independence and post 1989. During the interim period (1964-1989) by mere birth in Malta – reminiscent of British nationality legislation in 1964.
- ii. **Automatically** by means of descent through the father or mother post 1989 but prior to such date through the father only.

Routes to Citizenship

iii. **By registration**, which process is a mere formality in view that such claims are of right in the case of spouses of citizens of Malta, children born outside Malta prior to 1989 to Maltese mothers and those who are descendants of persons born in Malta.

On the other hand the Maltese Citizenship Act provides for citizenship to be acquired by naturalization on the basis of residence in Malta, by investment or on the grounds of merit, whereby such requests are not as of right but at the discretion of the Minister.

Citizenship by Investment – a Controversial Issue

Some features of the Programme:

- Financial Contributions including investment by applicants;
- Programme topped to 1800 main applicants excluding family members;
- Subject to intense due diligence;
- Apart from the revenue generated - 70% of which goes towards economic and social development - the objective is to attract new talent to Malta and one source of investment to an island state depleted of natural sources;
- Programme has already generated about EUR 700,000,000;
- Such Citizenship by Investment programmes and other Residence schemes are under scrutiny by the European Commission and a report thereon has been presented to the EP and Council.

Types of Citizenship

- Although there are different avenues for the acquisition of Maltese citizenship, **there is only one category of Maltese citizenship.**
- Persons acquiring Maltese citizenship obtain similar rights no matter on what grounds it has been acquired, with the right to hold dual or multiple nationality a concept that is enshrined in the Constitution of Malta.
- Notwithstanding the large diaspora of Maltese and their claim to Maltese citizenship, the legislator has not felt the need to impose categories of citizenship to restrict rights and inhibit settlement.
- Knowing perhaps that the ultimate goal of such descendant, mainly Australians, US or Canadian citizens is to acquire citizenship of the Union with all the rights of free movement in Member States.

Challenges to Citizenship

- The main challenge is that related to the relatively huge influx of migrants, who may not necessarily see Malta as their ultimate point of destination acquiring. Therefore, Maltese citizenship would only mean to them mobility on the European continent.
- Hence should there be the need to establish a balance between different criteria for different category of migrants to acquire Maltese citizenship?
- To rebut the concerns raised by the EU institutions regarding the acquisition of Maltese citizenship by investment keeping in mind that Malta has complete competence as long as appropriate processes are applied.

Challenges to Citizenship

- Given the upward migration trend and assuming that the current economic development would persist, Malta would be faced with challenges relating to (i) housing stock, (ii) education, (iii) welfare benefits and (iv) cultural differences.
- The grant of citizenship to such migrants would entitle them to such rights and the Government would be faced with already existing challenges in this regard.

Responses to Citizenship

A national policy for integration has been recently developed but there are yet no known strategies that address citizenship issues.

Impact of Maltese Citizenship in the International Fora

- The Individual Investor Programme was one instance whereby the EU Institutions have raised their concern over the issue of the sovereignty of Member States as regards national citizenship and EU citizenship in the case of acquisition by means of economic avenues.
- The case *Genovese v. Malta (application no. 53124/09)* gave a new dimension to the concept of citizenship as regards international law, whereby Malta was involved and influenced how citizenship should be addressed appropriately.

Both the Individual investor programme as well as the Genovese ruling show that notwithstanding the smallness of Malta, it has influenced citizenship issues beyond its shores.

Conclusion - Prospects

- With the establishment of a Constitutional provision for the participation of Maltese living abroad and a relative committee, would such forum create new demands for citizenship rights and avenues for the Maltese diaspora?
- NGOs, fundamental rights agencies and the Council of Europe are expected to continue to equate migrants' rights with the acquisition of citizenship.