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CITIZENSHIP, IDENTITY AND VALUES – REFLECTIONS ON COMMISSION V MALTA

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ABSTRACT

On its face, Case C-181/23, *European Commission v Republic of Malta*,[1] looks like a case about EU citizenship, as indeed it is. The single plea raised by the European Commission concerned the infringement of EU Citizenship provisions. The Commission argued that, by introducing an 'investment citizenship scheme' under which Maltese citizenship and, automatically and as advertised, EU citizenship could be acquired for significant financial remuneration, the Republic of Malta had failed to fulfil its obligations under European Union law. The article proposes a reading of Article 2 of the Treaty on European Union (TEU) that goes beyond the question of its justiciability and suggests that the judgment in the case C-181/23, *European Commission v Republic of Malta*, was, at least implicitly, informed by EU values, notably but not exclusively, solidarity. It argues that, whilst valuable accidents of concepts mentioned in the first sentence of Article 2 TEU have normative force within the legal order of EU law, their value, or absence thereof, is determined by the substance of the concepts mentioned in the second sentence of Article 2 TEU. This requires some basic consensus about the substance of Article 2 TEU, which

[1] Case C-181/23 *European Commission v Republic of Malta*, ECLI:EU:C:2025:283.

is, at minimum, possible to define in negative terms, namely as the absence of authoritarianism, intolerance, injustice, selfishness, and discrimination.

Keywords: EU citizenship, solidarity, national constitutional identity, Aristotle's substance and accident

1. Introduction

It is always uncomfortable for a sitting judge,[2] and even more so for a reporting judge, to reflect publicly on a decided case. A prudent reader should assume that the thoughts presented here are personal and academic and extend beyond the matters considered in deliberations that remain confidential and confined to the four corners of the Commission's plea. After all, this text is not primarily focused on the case itself but on its possible broader consequences for the interpretation of European Union law (EU law).

On its face, Case C-181/23, *European Commission v Republic of Malta*[3] (*Commission v. Malta*) looks like a case about EU citizenship, as indeed it is. The single plea raised by the European Commission concerned the infringement of EU Citizenship provisions under Article 20 of the Treaty on the Functioning of the European Union (TFEU)[4] and the breach of the duty of loyal cooperation under Article 4(3) of the Treaty on European Union (TEU).[5] The Commission argued that, by introducing an 'investment citizenship scheme' under which Maltese citizenship and, automatically and as advertised, EU citizenship could be acquired in exchange for financial remuneration, the Republic of Malta had failed to fulfil its obligations under EU law. The Grand Chamber of the Court of Justice of the European Union (CJEU) upheld the Commission's action, holding that '…by establishing and operating an institutionalised citizenship investment scheme (…) which establishes a transactional naturalisation procedure in exchange for predetermined payments or investments and thus amounts to the commercialisation of the grant of the nationality of a Member

[2] Judge, CJEU, reporting judge in *Commission v. Malta*. The opinions expressed in this paper are my own extra-judicial thoughts and do not reflect the deliberations in the case.

[3] Case C-181/23 *European Commission v Republic of Malta*, ECLI:EU:C:2025:283, (Grand Chamber) judgment of 29 April 2025 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62023CJ0181

[4] Consolidated Version of the Treaty on the Functioning of the European Union [2012], EN26.10.2012 OJ C 326/47 https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF

[5] Consolidated Version of the Treaty on European Union [2012], OJ C 326/13 https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF#page=5.09

State and, by extension, that of Union citizenship, the Republic of Malta has failed to fulfill its obligations under Article 20 TFEU and Article 4(3) TEU.[6]

The facts of the case are relatively simple. The Republic of Malta introduced a scheme under which the acquisition of national citizenship was made available subject to payment of EUR 600,000 to EUR 750,000 to the government, the purchase of property with a minimum value of EUR 700,000 and minimum lega-residence requirements that, in effect, allowed an applicant to be physically present in the territory of Malta not more than twice: for the collection of biometric data and for the taking of an oath.[7]

While the judgment speaks for itself, the question I want to discuss in this paper goes beyond its legal and factual background. Given that the acquisition of national citizenship is a retained competence of the Member States, and that the exercise of that competence is limited by EU law, the question is how the line is drawn between 'good' and 'bad' acquisition of national citizenship and, more broadly, between good and bad exercises of national competence. While this is seemingly a moral question, I will try to separate law and morality[8] and look for the answer within the framework of EU constitutional law, notably, through the lens of EU identity and the values enshrined in Article 2 TEU. I will propose a reading of Article 2 TEU that goes beyond the question of its justiciability and suggest that the judgment in *Commission v Malta* was, at least implicitly, informed by EU values, notably, but not exclusively, solidarity. My reading of Article 2 is inspired by Aristotle's doctrine of categories and his distinction between substance and accidents.

I will also suggest that the current Article 2 TEU debate and litigation, as well as the debate about the national constitutional identity clause of the TEU, are just variations of the old struggle to immunise national legal orders from the primacy and direct effect of EU law, a struggle that historically manifested itself in different and well known guises starting with the German *Solange* saga,[9] the Italian *Frontini* reservation,[10] *ultra vires* theory, and national identity litigation.

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6 *Commission v Malta* (n 3).

7 See Commission v Malta (n 3) [24].

8 Arguably, Article 2 TEU values, as well as the entire constitutional edifice of the EU, contain moral judgment within themselves, which makes the separation of law and morality illusory.

9 This refers to three decisions of the German Federal Constitutional Court (Bundesverfassungsgericht, BVerfG), in particular the decision of BVerfGE 37, 271 (*Solange I*) https://www.servat.unibe.ch/dfr/bv037271.html#Opinion, the decision of BVerfGE 73, 339 (*Solange II*) https://www.servat.unibe.ch/dfr/bv073339.html, and the decision of BVerfGE 89, 155 (*Maastricht*, also referred to as *Solange III*) https://www.servat.unibe.ch/dfr/bv089155.html

10 See decision of the Italian Constitutional Court, *Frontini v. Ministero delle Finanze*, decision of 27 December 1973 https://www.cortecostituzionale.it/stampa-pdf-pronuncia/1973/183

2. Member States' competences and primacy of EU law

According to Article 5(1) TEU, '[t]he limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.' Conversely, Member States retain the competences that have not been conferred on the EU. When the CJEU examines the *exercise* of a Member State's retained competence and not conferred on the EU, its reasoning follows the analytical syntax 'exercise of competence – restriction of the exercise – justification of the restriction', where a restriction may be justified by a general principle of EU law, the *raison d'être* of the EU,[11] a fundamental right[12] or the identity of the EU.[13] Ultimately, Article 2 TEU values also prevail over claims based on values of national constitutional identity.[14]

Disputes between the EU and the Member States over competences can also be understood as disputes about the primacy of EU law. EU law can take precedence over national law in two ways. First, it may do so if the EU has competence to regulate a field and, second, if a Member State, when exercising its retained competence, encroaches upon EU law.

[11] Opinion 2/13 of the Court, ECLI:EU:C:2014:2454 /172] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=ecli:ECLI:EU:C:2014:2454#page=34.75

[12] Case C-267/06 Tadao Maruko ECLI:EU:C:2008:179, para. 59: 'Admittedly, civil status and the benefits flowing therefrom are matters which fall within the competence of the Member States and Community law does not detract from that competence. However, it must be recalled that in the exercise of that competence the Member States must comply with Community law and, in particular, with the provisions relating to the principle of non-discrimination (see, by analogy, Case C-372/04 Watts [2006] ECR I-4325, paragraph 92, and Case C-444/05 Stamatelaki [2007] ECR I-3185, paragraph 23).' Judgement of the Court (Grand Chamber) of 1 April 2008 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62006CJ0267

[13] Case C-156/21 *Hungary v. Parliament and the Council*, ECLI:EU:C:2022:97, para 127: 'The values contained in Article 2 TEU have been identified and are shared by the Member States. They define the very identity of the European Union as a common legal order. Thus, the European Union must be able to defend those values, within the limits of its powers as laid down by the Treaties.' Judgment of the Court (Full Court) of 16 February 2022 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62021CJ0156

[14] Case C-769/22, *Commission v Hungary (Values of the Union),* ECLI:EU:C:2026:326, para. 559: 'According to the case-law of the Court, although the Union is required to respect the national identities of the Member States, in accordance with Article 4(2) TEU, with the result that those States enjoy a certain margin of assessment in implementing the values referred to in Article 2 TEU and the principles of EU law giving concrete expression to those values, it in no way follows from this that the obligations resulting from Article 2 TEU may vary from one Member State to another…' Judgment of the Court (Full Court) of 21 April 2026 https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62022CJ0769

Over the decades, the Member States' attempts to immunise their legal systems against the primacy of EU law have taken different guises and reached their most abstract level, where the primacy of EU law is asserted on the grounds of values. In brief, value-based primacy asserts a normative claim according to which an Article 2 value of the EU, as defined by the CJEU, prevails over an asserted national constitutional identity[15] or, indeed, over an asserted national value not enshrined in Article 2 TEU.[16] This is, at the same time, the ultimate battlefield for the primacy of EU law.

Earlier attempts at such immunisation involved justifications based on arguments concerning a higher level of national protection of fundamental rights, and the CJEU responded by constructing the concept of fundamental rights as part of the common constitutional traditions of the Member States in order to overcome the objection.[17] Later, the adoption of the Charter of Fundamental Rights of the EU resolved the problem by providing an explicit legal basis in EU primary law. Subsequently, Member States' contestation of the primacy of EU law was elevated to arguments based on national constitutional identity, albeit with only limited success.[18]

The concept of constitutional identity[19] was first mentioned in Article F of the Treaty of Maastricht and later made part of Article 4(2) TEU (Lisbon); the case law

[15] Case C-448/23 *Commission v Poland*, ECLI:EU:C:2025:975, para. 180: 'Even though, as is apparent from Article 4(2) TEU, the European Union respects the national identities of the Member States, inherent in their fundamental structures, political and constitutional, such that those States enjoy a certain degree of discretion in implementing the principles of the rule of law, it in no way follows that that obligation as to the result to be achieved may vary from one Member State to another. Whilst they have separate national identities, inherent in their fundamental structures, political and constitutional, which the European Union respects, the Member States adhere to a concept of "the rule of law" which they share, as a value common to their own constitutional traditions, and which they have undertaken to respect at all times (judgments of 16 February 2022, Hungary v Parliament and Council, C-156/21, EU:C:2022:97, paragraphs 233 and 234, and of 5 June 2023, Commission v Poland (Independence and private life of judges), C-204/21, EU:C:2023:442, paragraph 73).' Judgment of the Court (Grand Chamber) of 18 December 2025 available at: ttps://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62023CJ0448

[16] *Commission v Hungary (Values of the Union)* (n 14), para 559.

[17] See Michele Graziadei and Riccardo De Caria, 'The "Constitutional traditions common to the Member States" in the case-law of the European Court of Justice: judicial dialogue at its Finest' (2017) *Rivista trimestrale di diritto pubblico*, Anno7, LXVII7, Fasc.7-2017

[18] See eg Siniša Rodin, 'National Identity and Market Freedoms after the Treaty of Lisbon' (2011) 7 *Croatian Yearbook of European Law and Policy* 11–42 https://www.cyelp.com/index.php/cyelp/article/view/130

[19] Identity is commonly defined as something that defines an object as unique due to its own characteristics and, at the same time, different from everything else. The CJEU has also developed the concept of EU identity, according to which the legal order of the EU has long been considered autonomous and distinct from both the legal order of international law and the legal orders of its Member States.

of the CJEU on the matter is not in short supply. In a functional sense, together with the proportionality and subsidiarity clauses, the provision serves as a safeguard for the Member States against disproportionate encroachments by EU law into their retained competences. Today, it is clear that the Member States cannot successfully rely on national constitutional identity in defiance of Article 2 TEU values.

3. Commission v Malta as an 'exercise of competences' case

Most instances of Member State defiance of the primacy of EU law have one thing in common. They attempt to draw a line of defence against what some may see as the overreach of the EU legal order into national law. In *Commission v Malta*, the hitherto uncontested exercise of national competence in the field of granting national citizenship faced the boundary of solidarity as an Article 2 TEU value. It is in this sense that Commission v Malta is to be seen not exclusively and, possibly, not primarily through the lens of citizenship, but through the lens of values.

Looking at paragraph 80 of the judgment, one can see that the competence of Member States in respect of national citizenship is not contested and, in the Court's own words, '…is to be settled solely by reference to the national law of the Member State concerned.' However, as the Court continued in paragraph 81, it is the well-established law that, even in areas of Member States' exclusive competence, '…those powers must be exercised having due regard to EU law.'

This limitation rests on several assumptions, the basic one being the distinction between the *allocation* of competences and their *exercise*. The doctrine is akin to the 'dormant commerce clause'[20] under the US Constitution, according to which state regulation, to be constitutional, must not create an undue burden[21] on interstate commerce. As the objectives of the EU go far beyond the regulation of free trade (commerce), the undue burden test applies in respect of the entire body of EU law. There is no rule of Member State law, '…any legislative, administrative or judicial practice,'[22] no national identity guarantee, that may run against the law of the EU as interpreted by the CJEU, including provisions regulating EU citizenship, which,

[20] For more, see eg *Constitution of the United States of America: Analysis and Interpretation* ('Constitution Annotated' or 'CONAN'), ArtI.S8.C3.7.1 Overview of Dormant Commerce Clause https://constitution.congress.gov/browse/essay/artI-S8-C3-7-1/ALDE_00013307/

[21] Interestingly, the expression 'undue burden' encompasses the analytical syntax 'right – restriction – justification.' The burden is imposed on a right and it can be lawful if justified.

[22] Case C-106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SpA* ECLI:EU:C:1978:49, para. 22. Judgment of the Court of 9 March 1978 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61977CJ0106

in the Court's words, also contribute to the process of integration which is the *raison d'être* of the EU.[23]

4. Origins of Solidarity in Commission v Malta

Article 2 TEU was not pleaded in *Commission v Malta*, and the case was not decided on its grounds. However, in paragraphs 96– 99, the Court invoked the concept of solidarity, the same concept that appears in the second sentence of Article 2 TEU.

There is more than one way to understand what solidarity means.

On its face, as is apparent from paragraph 96 of the judgment, solidarity refers to the 'special relationship of solidarity and good faith between that State and its nationals and the reciprocity of rights and duties.' This is the internal concept of solidarity and the basis for the statement that the Court made in paragraph 97 that such solidarity 'forms the basis of the rights and obligations reserved to Union citizens by the Treaties.' In other words, the internal solidarity between a Member State and its nationals triggers the external concept of solidarity in respect of EU citizens, notwithstanding the absence of EU competence and the broad discretion enjoyed by the Member States in the area of national citizenship (paragraph 98). Once the link between internal and external solidarity is established, the CJEU connects solidarity with mutual trust and Article 4(3) TEU, which provides for the principle of sincere cooperation. The Court went to say in pt. 99 that:

> '…a Member State manifestly disregards the requirement for such a special relationship of solidarity and good faith, characterised by the reciprocity of rights and duties between the Member State and its nationals, and thus breaks the mutual trust on which Union citizenship is based, in breach of Article 20 TFEU and the principle of sincere cooperation enshrined in Article 4(3) TEU, when it establishes and implements a naturalisation scheme based on a transactional procedure…'[24]

[23] Opinion 2/13 ECLI:EU:C:2014:2454, para. 172: 'The pursuit of the EU's objectives, as set out in Article 3 TEU, is entrusted to a series of fundamental provisions, such as those providing for the free movement of goods, services, capital and persons, citizenship of the Union, the area of freedom, security and justice, and competition policy. Those provisions, which are part of the framework of a system that is specific to the EU, are structured in such a way as to contribute — each within its specific field and with its own particular characteristics — to the implementation of the process of integration that is the raison d'être of the EU itself.' Opinion of the Court (Full Court) of 18 December 2014 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62013CV0002

[24] The transactional procedure such as described by facts of the case; Commission v Malta (n 3) para. 99.

This analysis establishes competence as belonging to the Member State, restricts its exercise, and justifies that restriction by reference to the value of solidarity and the principle of mutual trust. While the legal basis of mutual trust is clearly found in Article 4(3) TEU, just as the Commission pleaded, the origins of solidarity are less clear. While it appears clear from the judgment that solidarity refers to the relationship between a Member State and its citizens and, by virtue of Article 4(3) TEU, to other Member States and, by extension, to the EU, in my understanding, it is based on the second sentence of Article 2 TEU and was applied implicitly in the case. Notably, that silent application of Article 2 TEU is signalled by the citation of Article 2 TEU in paragraph 3 of the judgment (legal context) and explicitly in paragraph 93, where the Court stated that:

> 'Union citizenship is thus one of the principal concrete expressions of the solidarity which forms the very basis of the process of integration referred to in paragraph 91 of the present judgment, and which is an integral part of the identity of the European Union as a specific legal system, accepted by the Member States on a basis of reciprocity.'[25]

In other words, it can be inferred that the concept of solidarity, which dates to the Schuman Declaration,[26] forms part of the social contract that constitutes the EU legal order and, as such, justifies restrictions on the exercise of national competence, including in the field of national citizenship. That social contract defines the EU as a liberal legal order in the classical sense, where everyone, whether Member State or individual, has a right to determine for itself or himself or herself what it means to live a good life, as long they do not harm others.[27] This is the origin of the analytical syntax 'competence – restriction of the exercise of competence – justification of the restriction' where a restriction is justified by the prevention of harm to others or, in terms of US law, by the prevention of an undue burden.

In this light, it can be concluded that the principle of solidarity justifies restrictions on the exercise of national competence whenever such exercise inflicts harm on others, in a concrete situation, on other EU citizens by diluting the substance of

[25] Commission v Malta (n 3) para 93

[26] 'Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.' The Schuman Declaration was presented by French foreign minister Robert Schuman on 9 May 1950. The text of the Declaration is available at: https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_en

[27] John Stuart Mill, *On Liberty*: 'the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.', (Walter Scott Publishing Co., Ltd., 2011) 18 https://www.gutenberg.org/files/34901/34901-h/34901-h.htm

their EU citizenship rights and on other Member States by breaching mutual trust, all because of the transactional nature of the investment citizenship scheme.

This brings me to my proposition as to how to understand the two-sentence structure of Article 2 TEU and how to apply it in legal analysis.[28]

5. Structure of Article 2 TEU and how to apply it?

Article 2 TEU features two sentences and reads:

> 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.
>
> These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'[29]

In a 2024 interview in Berkeley Law's CJEU Series, the president of the CJEU, Koen Lenaerts, noted: 'When you count all these values, you come to the number of 12. And I always told my students in Leuven, these are the 12 stars of the European flag.'[30] He explained that the 12 stars on the EU flag symbolise perfection and completeness (unlike the US flag's state-by-state stars) and represent the shared values that Member States must uphold to belong to the EU's common legal order.

While the twelve-star metaphor is reasonably apt, I would like to propose a different reading of Article 2 TEU by reference to Aristotle's distinction between substance and accidents (Aristotle, Categories), a distinction that can also be found in the writings of St Augustine (The Trinity).[31]

According to Aristotle, substance (οὐσία) is the primary category of being. It refers to what exists in itself, or 'in its own right', and serves as the underlying subject or bearer of properties. Substances are independent entities that do not depend on anything else for their existence in the way that properties do.[32]

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28 This is my personal reading of Article 2 TEU, which has not been tested in practice.

29 Treaty on European Union (n 5) art 2.

30 Katerina Linos and Mark Pollack, 'European Union Court of Justice Series: Interview with President Koen Lenaerts' https://www.law.berkeley.edu/podcast-episode/european-union-court-of-justice-series-interview-with-president-koen-lenaerts/

31 St Augustine, *The Trinity* (2nd edn, Works of Saint Augustine: A Translation for the 21st Century, Kindle edn), loc 5231

32 In *Categories* Aristotle does not explicitly refer to accidents, but makes a distinction between primary substances and additional categories, namely quantity, quality, relation, place, time, position, state, action,

Accidents (συμβεβηκός) are properties, qualities, or attributes that inhere in, or are present in, a substance. They exist only by depending on a substance; they cannot exist independently. Accidents modify or qualify a substance but do not change what kind of thing the substance fundamentally is. In another interpretation, '[b]eings that are present-in others are accidental, while those that are not present-in others are non-accidental.'[33]

St Augustine, speaking of God, asserts that He, being substance, has no accidents. God is not good; God is goodness. To say that God is good would mean reducing Him to the accident of goodness and implicitly accepting the possibility of Him not being good.

How does this apply to the analysis of Article 2 TEU? Are the Article 2 TEU values substantive or accidental in nature, and what does the answer imply for the interpretation of EU law? Let us take the example of democracy, a value stated in the first sentence. Obviously, and as a matter of fact, there are accidents of French democracy, German democracy, Greek democracy, Hungarian democracy, and so on. These are all accidents of the substantive concept of democracy. The question is this: If Article 2 TEU has any normative value at all, which I think is the case, how is it possible to tell which accident of democracy, or any other EU value, is valid and which is not according to the standards of Article 2 TEU?

In my suggested reading, instead of understanding the twelve concepts mentioned in Article 2 TEU as co-equal values, it is possible to look at the first and second sentences separately. In that way, accidents of values from the first sentence of Article 2 TEU could be considered valuable, only insofar as they comply with, are contained in, or, technically speaking, fall within the scope of the substantive concepts mentioned in the second sentence, namely, pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. A non-pluralist democracy is still an accident of democracy, but it does not qualify as valuable. The German idea of the *Unrechtsstaat* introduced by Gustav Radbruch[34] describes exactly

and affection, which are generally present in a primary substance. Those additional categories came to be referred to as accidents. Aristotle, *Categories* (translated by E. M. Edghill, eBooks @Adelaide, 2007). See also Stanford Encyclopedia of Philosophy, *Aristotle's Categories* https://plato.stanford.edu/entries/aristotle-categories/#Sub

[33] ibid.

[34] Gustav Radbruch, Fünf Minuten Rechtsphilosophie (1945) https://www.uzh.ch/dam/jcr:00000000-1923-2bf2-ffff-ffffcb676869/Gustav_Radbruch_FuenfMinutenRechtsphilosphie.pdf accessed 5 May 2026. Radbruch introduced what became known as *Radbruchsche Formel*, a proposition that even unjust and inefficient positive law prevails over justice because of legal certainty, except where a contradiction between positive law and justice becomes intolerable unjust law (Ger.: unrichtiges Recht),

such a non-valuable historical accident, an intolerant, discriminatory and non-pluralist legal regime, opposite to the valuable concept of the rule of law.

According to the same reading, only valuable accidents of concepts mentioned in the first sentence of Article 2 TEU would have normative force within the EU legal order, and their value, or absence thereof, would be determined by the substance of the concepts mentioned in the second sentence. Certainly, this requires some basic consensus about the substance of the second sentence of Article 2 TEU, which is, at a minimum, possible to define in negative terms, namely, as the absence of authoritarianism, intolerance, injustice, selfishness, and discrimination. A belief in that substance provides the necessary consensus that makes the existence of a society possible.

6. Conclusion

The CJEU did not apply the structure of analysis of Article 2 TEU explained above, and *Commission v Malta* was not decided in that way. The case was decided on grounds of solidarity as an EU value closely related to mutual trust, which imposes limits on the exercise of Member States' competences.

Nevertheless, the concepts of mutual trust and solidarity employed across the judgment can be understood as accidents of the substantive concept of solidarity contained in the second sentence of Article 2 TEU. Namely, understood, at a minimum, as the absence of selfishness, the concept of solidarity does not operate exclusively between a Member State and its citizens, but also among European citizens at large and, in the light of mutual trust, among the Member States.

Understood in this way, Article 2 TEU solidarity applies to the concept of national grants of citizenship and informs us that EU law restrictions on the exercise of Member State competences can be justified by the second sentence of Article 2 TEU whenever the result of such exercise contradicts one of the values enshrined therein. Therefore, when a Member State exercises its competence to grant citizenship by naturalisation or by special recognition based on, hypothetically speaking, sporting achievements, such an exercise of competence would apparently not be incompatible with the second sentence of Article 2 TEU. By contrast, commodification of citizenship is incompatible with that provision because it is selfish, inflicts harm on others and, therefore, does not fall within the scope of the EU value of solidarity enshrined by the second sentence of Article 2 TEU.

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see Gustav Radbruch, 'Statutory Lawlessness and Supra-Statutory Law' (1946) (translated by Bonnie Litschewski Paulson and Stanley L. Paulson) (2006), 26(1) *Oxford Journal of Legal Studies* 1-11

The broader implications of this approach for the exercise of Member State competences in any area are also imaginable. The analytical syntax 'exercise of Member State competence – restriction of that exercise – justification of the restriction' can be applied in any area, beyond national citizenship. In essence, any exercise of Member State competence may be tested in the light of the values enshrined by Article 2 TEU.

Such an interpretative approach affirms an understanding of values that leaves the Member States with regulatory discretion in respect of a 'valuable' exercise of national competences and defines 'harm to others' as a red line.

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DRŽAVLJANSTVO, IDENTITET I VRIJEDNOSTI: RAZMIŠLJANJA O PREDMETU KOMISIJA PROTIV MALTE

Prezentacija održana na Pravnom fakultetu Sveučilišta u Bologni 27. veljače 2026. na konferenciji „Građanstvo EU-a kao element europskog identiteta"

SAŽETAK

Na prvi se pogled predmet C-181/23 Europska komisija protiv Republike Malte čini kao slučaj o stjecanju nacionalnog državljanstva u kontekstu prava EU-a što on nedvojbeno i jest. Jedini tužbeni zahtjev koji je iznijela Europska komisija odnosi se na kršenje odredbi o građanstvu EU-a. Naime, Komisija je u postupku tvrdila da je Malta uvođenjem „sheme investicijskog državljanstva" u kojoj se malteško i automatski, kako je i reklamirano, građanstvo EU-a moglo steći uz značajnu financijsku naknadu, propustila ispuniti svoje obveze prema pravu Europske unije. Ovaj članak tumači članak 2. Ugovora o Europskoj uniji na način koje nadilazi pitanje njegove primjene u konkretnom predmetu i sugerira da je presuda u predmetu C-181/23 Europska komisija protiv Republike Malte, ako ništa drugo, barem implicitno, utemeljena na vrijednostima EU-a, posebno, ali ne isključivo, na solidarnosti.

Pozivajući se na Aristotelov koncept akcidencije, to jest svojstava koja mogu biti prisutna ili odsutna bez promjene supstancije (biti), autor predlaže interpretaciju vrijednosti navedenih u prvoj rečenici članka 2. Ugovora o Europskoj uniji u svjetlu supstancije (biti) navedene u drugoj rečenici članka 2. Ugovora o Europskoj uniji. Na taj način vrijednosti iz druge rečenice određuju značenje vrijednosti iz prve rečenice.

Takav pristup zahtijeva određeni osnovni konsenzus o suštini značenja druge rečenice članka 2. koju je, u najmanju ruku, moguće definirati u negativnom smislu, to jest kao odsutnost autoritarizma, netolerancije, nepravde, sebičnosti i diskriminacije.

Ključne riječi: državljanstvo EU-a, solidarnost, nacionalni ustavni identitet, Aristotelovi koncepti supstancije i akcidencije

Siniša Rodin rođen je u Zagrebu, gdje je 1987. diplomirao pravo na Sveučilištu u Zagrebu. Nastavio je sveučilišno obrazovanje u Sjedinjenim Američkim Državama, gdje 1992. stječe Master of Laws na sveučilištu University of Michigan. Nakon povratka u Hrvatsku nastavlja obrazovanje na Sveučilištu u Zagrebu, gdje 1995. postaje doktor prava. Od 2001. do 2002. boravi u Sjedinjenim Američkim Državama kao Fulbright Fellow i Visiting Scholar na sveučilištu Harvard University. Svoju profesionalnu karijeru započinje 1987. na Sveučilištu u Zagrebu kao asistent. Od 2003. ondje je zaposlen kao profesor prava Europske unije te je od 2006. predstojnik Katedre Jean Monnet, na kojoj 2011. postaje nositelj ad personam. Godine 2012. postaje gostujući profesor na Cornell Law Schoolu (Pravni fakultet Sveučilišta Cornell, Sjedinjene Američke Države). Tijekom sveučilišne karijere objavio je mnoge radove o pravu Unije u Hrvatskoj. Od 2006. od 2011. godine bio je dio hrvatskoga tima koji je definirao okvir za pregovore i postupak pristupanja Hrvatske Europskoj uniji, pri čemu je od 2009. do 2010. bio član hrvatskog povjerenstva za reformu Ustava i predsjednik radne skupine za pristupanje Hrvatske Europskoj uniji. Prvi je hrvatski sudac imenovan na Sudu EU-a te tu dužnost obnaša od 4. srpnja 2013. godine.