



27.3.2024

NOTICE TO MEMBERS

Subject: Petition No 0452/2020 by Olga Delezhanova (Bulgarian) on restricted choice of language exam to obtain long-term resident status in Malta

1. Summary of petition

The petitioner alleges that Maltese Subsidiary Legislation 217.05 on the status of long-term residents, and in particular its Article 5 (3) (b), may be in breach of Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. The above-mentioned Subsidiary Legislation requires third-country nationals to obtain “a pass mark of at least sixty-five percent (...) equivalent of Malta Qualifications Framework Level 2 in Maltese” in order to be eligible to apply for long-term resident status.

While the petitioner acknowledges that Article 5 (2) of Council Directive 2003/109/EC allows Member States to “require third-country nationals to comply with integration conditions”, she questions the legality of the Maltese language requirement on the following grounds:

- Article 5 (2) of the Constitution of Malta states that “The Maltese and the English languages (...) shall be the official languages of Malta...”.

- A restricted choice of language exam (Maltese) contradicts other Maltese legislation, which recognises the similar status of Maltese and English for integration purposes in society, namely:

- 1) Chapter 188, Article 10 (1) (c) of the Maltese Citizenship Act, which requires applicants for citizenship by naturalisation to have “an adequate knowledge of the Maltese or the English language”;

- 2) Guideline 5 of the 2018 Policy regarding Specific Residence Authorisation provides, among other things, for “Certification in the Maltese or English languages obtained in Malta”.

- The English language is widely used in society, and often is the only language that may be used to obtain essential information. For example, several official government websites, including the website of the Ministry for Home Affairs, National Security and Law Enforcement, are available only in the English language.

- The Court of Justice of the European Union (Case C-579/13, P, S v Commissie Sociale

Zekerheid Breda and others) has ruled that Directive 2003/109/EC does not preclude an “obligation to pass a civic integration examination, (...) provided that the means of implementing that obligation are not liable to jeopardise the achievement of the objectives pursued by that directive...”.

2. Admissibility

Declared admissible on 2 September 2020. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 8 March 2021

Article 5(2) of Council Directive 2003/109/EC¹ concerning the status of third-country nationals who are long-term residents allows Member States to require third-country nationals who wish to acquire long-term resident status to comply with integration conditions, in accordance with national law. This means that Member States have certain discretion in establishing the content of such integration conditions, while always being subject to the obligation of respecting the principle of proportionality and not undermining the effectiveness of the Directive. In 2014, Malta decided that full integration of third-country nationals could only be achieved through the knowledge of the Maltese language.

The Court of Justice of the European Union has clarified that the acquisition of knowledge of the language of the host society falls within the scope of the integration conditions set out in Article 5(2). In particular, in its judgment in case C-579/13 (P&S) the Court stated that “the acquisition of knowledge of the language and society of the host Member State greatly facilitates communication between third-country nationals and nationals of the Member State concerned and, moreover, encourages interaction and the development of social relations between them” and that “the acquisition of knowledge of the language of the host Member State makes it less difficult for third-country nationals to access the labour market and vocational training”.

As regards the compliance of integration conditions with the principle of proportionality and the need not to deprive the Directive of its effectiveness, in the above-mentioned case, the Court of Justice of the European Union held that the obligation to pass an examination does not, by itself, jeopardise the achievement of the objectives pursued by Council Directive 2003/109/EC, but may on the contrary contribute to their achievement. It also stated that “the means of implementing that obligation also must not be liable to jeopardise those objectives, having regard, in particular, to the level of knowledge required to pass the civic integration examination, to the accessibility of the courses and material necessary to prepare for that examination, to the amount of fees applicable to third-country nationals as registration fees to sit that examination, or to the consideration of specific individual circumstances, such as age, illiteracy or level of education”.

The Commission, in the context of case EU Pilot (2017)9262, already asked the competent Maltese authorities for clarification on the implementation of this Article, in terms of compliance with the principles of proportionality and effectiveness in light of the above Court judgment. Based on the information provided by the Maltese authorities, the Commission

¹ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.1.2004, p. 44–53.

concluded that the means of implementing the Maltese language test for the acquisition of the long-term resident status were proportionate. However, the petitioner introduced a new piece of information that was not available to the Commission at the time, i.e. that for the acquisition of Maltese citizenship by naturalisation an adequate knowledge of Maltese *or* English language is required. This information raises doubts about the consistency of the way in which the Maltese legislation pursues the objective of ensuring the integration of third-country nationals through the knowledge of the Maltese language, as third-country nationals who acquire Maltese citizenship through naturalisation are not subject to that requirement.

Conclusion

Based on the information provided by the petitioner, the Commission will contact the Maltese authorities to seek clarification on the proportionality of requiring the knowledge of the Maltese language to acquire long-term resident status, while this knowledge is not required for the acquisition of citizenship by naturalisation.

4. Commission reply, received on 27 March 2024

In light of the facts alleged in petition No 0452/2020, the Commission launched infringement proceedings against Malta and, on 6 June 2021, issued an additional letter of formal notice to Malta in the framework of infringement procedure INFR(2020)2123 launched on 2 July 2020². In the additional letter of formal notice, the Commission stated that the relevant Maltese law is not compliant with the principles of proportionality and effectiveness with regard to the transposition of Article 5(2) of Council Directive 2003/109/EC³. Under the applicable Maltese legislation, applicants for an EU long-term resident status must prove a certain level of knowledge of the Maltese language, while applicants for Maltese citizenship by naturalisation have the choice between providing evidence of their Maltese or English language skills.

On 5 August 2021, Malta sent a reply to the Commission in this regard, where it defended its legislation and disagreed with the assessment made by the Commission.

Following the assessment of the aforesaid reply, the Commission sent to Malta a reasoned opinion on the basis of Article 258 of the Treaty on the Functioning of the European Union on 26 January 2023. The Commission deemed that the arguments adduced by Malta did not address the issues raised in the additional letter of formal notice.

Malta sent a reply to the Commission on 4 April 2023. This reply is currently being analysed by the Commission services.

Conclusion

Depending on the outcome of the assessment of Malta's reply, the Commission will either refer the case to the Court of Justice of the EU or close the case.

² This additional letter of formal notice extends the scope of the [initial infringement procedure](#) opened on 2 July 2020.

³ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, *OJ L 16, 23.1.2004, p. 44–53*.