

Nationality in Private International Law

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Abstract

In the discussions of International Law, nationality (citizenship) is considered as one of the components of personality. Another related concept is personal status which is discussed in Private International Law. Nationality orientation is determined based on how individuals, legal or natural persons, are placed in different countries in the world, their materials and spiritual aspects, their political status and their original or acquired nationality through birth or marriage. The present study is an attempt to examine the concept of nationality, its importance and realization conditions and governing principles in Private International Law.

Keywords: Acquired Nationality, Nationality, Original Nationality, Private International Law

1. Introduction

Nationality implies obedience and a national (citizen) is an individual who belongs to the main population of a country. However, someone who does not live in that country, although he/she lives there, is called stranger or outsider. Possessing a country's nationality, an individual is considered as one of the members of the given country, which is a legal relationship between the two, i.e. the individual and the country. **باتي قول** states that nationality if the individual's belonging to the population forming a country. This definition includes both of those holding original and acquired nationalities. The principle of nationality rule is applicable when there are numerous independent states and it is considered as one of the principles of public law according to the relationship between the individuals and the state.

Like any other legal relationship, nationality involves two sides: the individuals as a national and the state of nationality. However, all humans possess capacity, even those without a nationality. Determining nationality in any country depends on the special law of that country and this is the country's law that specifies the conditions of its nationals according to domestic principles and

rules. A country's nationals benefit from any type of right in their country, which is based on equality. However, there are cases like condemnation, acquisition of nationality, or limitations on the nationals' rights that can cause the individual to lose his/her nationality and deportation. However, naturalization by the state depends on the ability to apply the definition of the state and possession of this position in the international arena. That is, the four components of a government, i.e. territory, population, state and rule, are taken into account. As was mentioned earlier, the present study is a short general review of nationality in private international law.

2. Definition of Nationality

International law scholars have provided numerous detailed discussions on the definition of nationality; however, they have not held a uniform view. However, what is vivid is the political and domestic characteristic of nationality because it is a status or quality that is resulted from the fact that the individual belongs to a nation or state. The simplest and at the same time the most comprehensive definition that can be referred to is: Nationality

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is a political, legal and spiritual relationship that links an individual to a state¹.

3. Properties of Nationality

Based on the definition of nationality, it can be stated that nationality possesses some properties as follow.

1. Nationality is a political relationship because it is caused by the sovereignty right of the state. It is the state that determines who its nationals are and what conditions are needed to acquire the nationality. In fact, nationality creates the individual's political status through the commitment of his/her loyalty toward obedience from the state's law. This obedience is the individual's response to the protection that the state provides him/her with².

2. Nationality is a spiritual relationship because nationals relate a country to a state in terms of their common goals, customs and rituals, which is independent from certain places and times. When someone is considered as a state's national, he is considered as the national of that state, no matter where he/she goes. Therefore, changing the place of residence does not change his/her spiritual relationship with the state of nationality².

3. Nationality and its principles are among highly important issues in private international law because this field deals with the legal relationship between individuals with different nationality and the difference between laws are caused by difference between nationalities and it is nationality that is manifested as the most outstanding sign of geographical divisions of individuals such that it separates the individuals of one state from others.

4. Nationality is a legal relationship because it entails legal effects in the international and domestic system. In the international system, the nationals of a state possess protection diplomatique of their own state outside their country and of all principles accepted internationally (e.g., treaties)².

5. Nationality relationship is internal because in the domestic system, the national, on the one hand, possesses political rights (e.g., right to vote) and on the other hand, he/she benefits from all rights adopted by the civil and commercial laws.

The importance of nationality comes into the light from the fact that the individual does not have a certain position in international law and that states are the means to create this position. Therefore, a protection that the

state can provide the individual with is among the results of nationality.

4. Conditions of Nationality Realization

In order for nationality to be realized in the international arena, some conditions are required, which are presented shortly below.

4.1 There Should be a State

A state possessing all conditions required for a state in accordance with international law, i.e. the three components of population, political power (government and sovereignty) and territory and formally known as a state in the international community can give nationality to individuals. Within the framework of laws, regulations, circulars and bylaws of nationality, states are obliged to decide on the requirements of admission, withdrawal and denial of nationality³.

4.2 There Should be Individuals as Nationals

An individual who has the nationality of a certain country is called a national. The state of a country will be realized when it had nationals and population and a country without nationals and population will have no outside existence. In fact, a country's nationals formulate a state and the state determines who has its nationality or can acquire it³.

4.3 It Should have a Specified Territory

Territory is a geographical area with relatively fixed boundaries. A country is considered as a state in the international arena when it possesses political power and independent sovereignty³.

4.4 It Should have Political Power and Independent Sovereignty

Population and territory are among factors that are necessary for formation of a country; however, they cannot construct a country alone. They need another factor that help individuals affiliated to a group reside a specific territory and govern and lead it. Leadership of this group

requires application of power that is called political power³.

5. Legal Effects of Nationality

Legal effects of nationality can be studied from different perspectives:

5.1 Political Protection

In public international law, nationality relationship causes the individual to have the political protection of his/her state of nationality. A country can provide the individual with the protection that can be in the form of interfering in favor of the individual in case of his/her dispute in another country, providing interests through treaties, preventing from other countries' interference in his/her personal life, etc. To apply political protection, there are three significant principles including:

1. Presence of an official bond between the protecting state and the damaged plaintiff,
2. Initial proceeding through of local courts by the plaintiff and
3. The plaintiff's honesty³.

In regard with political protection from a natural person, the state of nationality is a state that the individual has its nationality through birth, marriage, nationality request, displacement of nationalities, or any other way that is not against international law.

States can only provide their own nationals with political protections in the international arena and nationals of a state include natural and legal persons. Regarding legal persons, political protection is only possible through authentication of the legal person's relationship with the state of nationality.

However, there are cases in which the possibility of political protection vanishes, e.g., when the relationship between the national and the state of nationality is lost or distorted. When an individual does not have the nationality of any state, political protection cannot be applied. And if an individual has dual nationality, this protection cannot be applied against the states of nationality.

5.2 The Nationals' Benefit from the Rights

In private international law, the law governing the individual's personal status such as capacity, marriage, heritage and personality is determined based on the

nationality factors and the individuals' identity documents are validated through his/her nationality and the consulate officials are responsible for issuing the individual's identity documents. For the In return for benefiting from these rights, a country's nationals have responsibilities and duties such as observance of the regulations of the state of their nationality, participation in the country's public expenditures by taxpaying and doing military service in order to defend his/her nation³.

6. Principles Governing Nationality

- A) Everyone should have a nationality (negation of statelessness).
- B) Having not more than one nationality (negation of dual nationality).
- C) The right to change nationality⁴.

6.1 Types of Nationality

Depending on the fact that a type of nationality was imposed to an individual or he/she has requested it at his/her will, nationality is divided into original and acquired nationalities that are explained in the following paragraphs.

6.1.1 Original Nationality (Nationality by Origin)

A type of nationality that the law gives to an individual based on his/her birth is called original nationality. This nationality can be based on the rule of descent or blood or the territory.

In the rule of descent or blood method, nationality is imposed to the child by the descent or belonging to its family. The parents' former nationality has no effect on the child's nationality and if both or even one of them have a special nationality at the child's birth, the child can be given that nationality⁵.

6.1.2 Acquired (Derivative) Nationality

Acquired nationality, also called subordinate or derivative nationality, refers to a type of nationality that the individual obtains immediately after his/her birth that can be the result of marriage, residence, etc. Acquire nationality, in fact, is a type of nationality that is resulted from acceptance of the nationality of another country. To draw the distinction line between acquired and derivative nation-

alities, it can be stated that derivative nationality is given to the individual from his/her birth till death, which can be obtained as a result of applying his/her personal rights or his/her legal representative's, like obtaining nationality due to marriage. Subordinate nationality refers to a nationality given to an individual because of hi/her marriage or to a child who is too young⁶.

6.1.3 Advantages of Nationality

- A) It is a factor for the individual's national identity.
- B) It causes to benefit from civil rights.
- C) It results in having political and occupational rights and political positions.
- D) It leads to legal and political protection of the states from the nationals' interests.
- E) Based on the obligations, the individuals are responsible for fulfilling military service, taxpaying and defending the country.

7. Ways to Create Statelessness

There are individuals that are not considered as nationals by any states according to their laws and regulations. Although one of the principles of nationality is that everybody should have a nationality (negation of statelessness), in some cases individuals can have no nationality.

There are many ways for individuals to lose their nationality. United Nations High Commissioner for Refugees has mentioned different causes for statelessness of individuals, including: conflict of laws, independence of the territory, regulations of marriage, administrative performances, discrimination, and regulations of birth registration, application of blood principles, deprivation from nationality, nationality abandonment and loss of nationality due to specific regulations.

A few cases that cause an individual to lose his/her nationality or experience apartheid are presented here.

1. Nationality deprivation as a type of punishment: Some countries utilize depriving their nationals from the nationality as the main or subordinate penalty in their law and as a result of enforcing this law; the individual loses his/her nationality although he/she has not yet gained another state's nationality.

2. As a result of asylum and immigration: An individual may lose his/her original nationality as a result of immigration and asylum while he/she has not yet obtained a new state's nationality; therefore, he/she will be stateless.

3. Loss of nationality at the individual's will: In is possible that after abandoning a country's nationality, the individual attempts to acquire that of a new state; therefore, he/she will be stateless. Or, the law makes it possible for an individual to select from two nationalities and he/she does not choose any of them. In this case, the individual is considered as stateless. This principle is called optional protocol.

4. As a result of law: It is possible that a country predicts specific conditions that cause a national to lose his/her nationality in case of occurrence, or it may be probable that an individual is born without nationality due to difference between the countries' regulations and laws. According to the law of the state of nationality, the child's parents have accepted the principle of territory; therefore, the child will have no nationality at birth.

8. The Effects of Statelessness

In the 1951 Geneva Convention on stateless persons, it is stated that: Stateless individuals are those that are not considered as nationals by any states and re treated like refugees.

Statelessness brings about unfavorable effects and numerous problems for the individuals including:

1. Deprivation from social rights,
2. Deprivation from political rights and
3. Deprivation from the states' protection.

However, it should be noted that international treaties have been adopted in order to avoid statelessness. One of these treaties is the Article 15 of the Universal Declaration of Human Rights, in which it is stated that all individuals possess the right to have nationality and no one will be deprived from his/her nationality arbitrarily.

9. Conclusion

Private international law is a branch of law that deals with the individuals' relationship with one another and the states outside the domestic territory and in the international arena. Its scope includes nationality, residence, the foreigners' status and the conflict of laws and courts. Nationality mostly focuses on the personal aspect and is in fact a bond that links an individual to a state in order for him/her to benefit from the protection of that state. Possession of a state's nationality means the legal conditions of that state are collective for the individual.

Therefore, nationality is a legal relationship between the individual and the state, which causes the individual to be considered as a member of the state in a territory. As a result of acquisition of nationality, acquired or original, the individual will be provided with political and international protection. And since private international law and domestic law are related, the individual will have to observe some obligations whose violation can cause the individual lose his/her nationality and he/she will be stateless until he/she obtains another state's nationality. Nationality specifies the individual's national identity and as was referred to, the individual will benefit from the civil rights as a result of his/her nationality. He/she can also benefit from political rights like occupation right, political positions, etc. inside the state of nationality, which in turn brings about some responsibilities for the individual. Finally, private international law has binding rules in the relationship between states and individuals and observance of such rules causes responsibilities and obligations

and within private international law, the discussion of nationality is not an exception for this principle.

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