

Non-Recognition of Dual Citizenship in Iranian Law: A Compendious Survey of Statutory Law

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Abstract

Dual citizenship is a social, legal, political and economic phenomenon which results from various factors; it may cause some problems for the person having two or more nationalities. Thus, some authors oppose dual citizenship. However, the acceptance of dual citizenship has strongly risen in the last twenty to thirty years and at the beginning of the 21st Century already a majority of the countries, for which data exists, accepts or at least tolerates dual citizenship. In Iranian law dual citizenship has not been recognized. In the present paper, the Iranian statutory law concerning dual citizenship, including the Constitutional and Civil regulations, will be discussed.

Keywords: Citizenship, Nationality, Dual Citizenship, Citizen, Naturalization, Iranian Law

1-Introduction

Dual citizenship/nationality, also referred to as multiple nationality, is the legal status held by a person simultaneously in two or more states. There are four ways that one may acquire dual citizenship/nationality: by birth (if one is born in a state whose citizenship is determined by *jus soli* and one's parents were citizens of a different country whose citizenship is determined by *jus sanguinis*); by marriage; by legitimating of illegitimate children; and by naturalization. (Anderson, 2011: 4-5).

Dual citizenship is sometimes incorrectly used synonymously with dual (or multiple) nationality. However, while nationality refers to the membership and subjection to state law and power, citizenship refers to the notion of collective self-determination, the freedoms and rights guaranteed by membership in a political community citizenship. (Østergaard-Nielsen, 2008: 4). Neither "citizenship" nor "nationality" is used to indicate the ethnic origin of the individual concerned: the terms refer only to the legal bond between a person and a state. (Manby, 2010: ix).

While the emergence of dual citizenship is a relatively recent phenomenon, the opposition and downright hostility to it has a longer tradition. (Howard, 2005: 700). In 1930, this opposition to dual citizenship became enshrined internationally by the League of Nations in its "Convention on Certain Questions Relating to the Conflict of Nationality Laws." This "Hague Convention" reflected the view that "it is in the interest of the international community to secure that all members should recognize that every person should have a nationality and should have one nationality only". This position was confirmed by the International Law Commission (of the United Nations), as it determined in 1954 that "all persons are entitled to possess one nationality, but one nationality only".

Dual citizenship has not only become a salient political issue in many countries (e.g. The Netherlands, Germany, Hungary, South Korea) – although in quite a few countries the rising number of dual citizens is not accompanied by a significant political discourse (e.g. in the US, Canada and Great Britain) – it is also a booming field in legal studies and the social sciences. (Blatter *et al.*, 4).

Generally speaking, the proponents of dual nationality in immigration states argue that state authorities need to create favorable conditions for the political integration of newcomers. They emphasize the individual rights necessary for successful incorporation. In a nutshell, the proponents of dual nationality insist, first, on the importance of social integration. Second, those in favor of tolerating dual citizenship point to the requirement of congruence between the people and the resident population.

Third, according to a multicultural perspective, border-crossing ties of persons should or could be tolerated as constituting specific cultural resources which citizens with an immigrant background hold. Such transnational resources form part of the cultural repertoire which immigrants may need to act successfully in public life. (Faist *et al*, 2004: 5).

Non-acceptance of dual citizenship is based upon the unity of nationality principle which is upheld by many authors and has been included in statutes by a lot of States. According to the opponents of dual citizenship, everyone who has more than one nationality faces a difficult situation in international arena and will have an extraordinary position. On the one hand it is unfair to utilize the privileges laid down for the subjects of both States, and on the other, it is difficult for a person to fulfill his/her obligations to more than one State. (Madani, 2005: 67). In contrast to the proponents of dual nationality who uphold the enabling function of states for immigrant incorporation, critics, first, emphasize that the individual migrants themselves need to adjust to the new political environment. They focus on the obligations of naturalizing immigrants who have to give proof of their readiness to adapt and to be loyal to the new state by renunciation of their previous nationality. Second, on the duty side of citizenship, dual nationality involves multiple loyalties and links of citizens across state borders or even within a world society. This has a direct bearing on issues such as dual military service and double taxation and thus pertains to state sovereignty. Third, and more importantly, dual citizenship raises the fundamental question if political membership across borders in democratically legitimated states can be designed in a way that it upholds the feedback loops between the governed and the governing. (Faist *et al*, 2004: 6).

However, the acceptance of dual citizenship has strongly risen in the last twenty to thirty years and at the beginning of the 21st Century already a majority of the countries, for which data exists, accepts or at least tolerates dual citizenship. This represents a dramatic turn-around since from the mid-19th century to the mid-20th century dual citizenship was conceived as an evil which had to be prevented. (Blatter *et al*, 4).

In Iranian private international law the sense and meaning of Articles [41] and [42] of the Constitution and various regulations of Civil law indicates that dual citizenship has not been recognized. The words of Articles [41] and [42] of the Constitution are as follows:

Article [41]: “Iranian citizenship is the indisputable right of every Iranian, and the government cannot withdraw citizenship from any Iranian unless he himself requests it or acquires the citizenship of another country”.

Article [42]: “Foreign nationals may acquire Iranian citizenship within the framework of the laws. Citizenship can be withdrawn from such persons if another State accepts them as its citizens or if they request it”.

Pursuant to both Articles, Iranian citizenship will be withdrawn from an Iranian subject if he/she acquires the citizenship of another State. It means that one’s acquisition of a foreign nationality will amount to his/her deprivation of Iranian citizenship.

In the following, the regulations reflecting non-acceptance of dual citizenship in Iranian law will be discussed.

2-Non-Recognition of Iranian Citizenship for Foreign Inhabitants of Iran

Article [976] of Civil Code provides: “The following persons are considered to be Iranian subjects...” According to Clause [1] of this Article: All persons living in Iran except those whose foreign citizenship is indisputable; the foreign citizenship of such persons are considered to be indisputable whose documents of nationality have not been objected by the Iranian Government.

Considering the meaning of Clause [1], the supposed rule is that every person living in Iran is deemed to be an Iranian subject, unless the contrary is established. In other words, a person whose foreign citizenship is indisputable is not considered as an Iranian subject, because this Clause does not apply to those who have foreign citizenship. In fact, for being considered as a foreigner, it is not necessary that the validity of the person’s documents of nationality has been confirmed by the Iranian Government; not to object to those documents by the Government will suffice, because the confirmation of such documents necessitates reviewing them upon the foreign Acts which is a task beyond the competence of the Iranian authorities. (Arfania, 1997: 67) The above-mentioned provision impedes dual citizenship by non-recognition of Iranian nationality for those inhabitants of Iran whose foreign citizenship is indisputable.

3- Rejection of Patrilineal Foreign Citizenship

In accordance with the single-clause Bill enacted in 2006, every person who is born in Iran of an Iranian mother and a foreign father will be accepted as a subject of Iran after reaching the full age of 18 years, provided that he/she does not have any criminal or security record and has rejected his/her patrilineal foreign citizenship.

Although the Bill was intended to avoid the pending status of a group of children born in Iran, laying down a provision by which the rejection of their patrilineal foreign citizenship is essential to obtain Iranian nationality shows the Iranian legislator's determination to prevent dual citizenship.

4-Remaining of Patrilineal Foreign Citizenship

The provision which seeks to avoid dual citizenship by remaining of patrilineal foreign citizenship is Clause [5] of Article [976] of Civil Code which refers to "Persons have been born in Iran of a father of foreign citizenship and having resided in Iran for at least one more year immediately after reaching the full age of 18 ..." Article [977-b] states that: "If persons mentioned in Clause 4 of Article 976 after reaching the full age of 18 years wish to remain of the citizenship of their fathers, they must, within a period of one year, submit a declaration to the Ministry of Foreign Affairs to which they should annex a certificate from their father's national Government indicating that the said Government would recognize them as its own nationals." On the one hand the certificate mentioned in this Article ensures the avoidance of statelessness, but on the other, it prevents dual citizenship, because it gives the person concerned the option to remain of his/her father's citizenship or abandon the patrilineal citizenship and obtains Iranian citizenship. Thus, one cannot have two nationalities at the same time.

5- Non-application of a Father's Acquired Citizenship to His Children who have attained the Full Age

Article [985] of Civil Code provides that: "Adoption of Iranian citizenship by the father by no means affects the nationality of his children who have attained the full age of 18 at the date of his/her application for naturalization." As the age of maturity in Iranian law is 18, the person who has attained this age is considered as an adult and thus will not obtain Iranian citizenship following his/her father's acquisition of Iranian citizenship.

In addition, while minor children of those who obtain Iranian citizenship will be recognized as Iranian nationals, but they will have the right to abandon their nationality within one year after reaching the full age of 18.

According to Article [984]: "The wife and minor children of those who obtain Iranian citizenship in accordance with this Act will be recognized as Iranian nationals but the wife, within one year of the date of issue of nationality papers to her husband, and the minor children, within one year after reaching the full age of 18, can submit a written declaration to the Ministry of Foreign Affairs accepting the former nationality of her husband or their father as the case may be, provided that the certificate mentioned in Article 977 is attached to the declaration of the children whether male or female."

Upon this provision, the person who has obtained Iranian nationality on the basis of his/her father's naturalization, cannot remain of Iranian nationality and accept the former nationality of his/her father at the same time. Such a person should abandon Iranian nationality in order to accept patrilineal foreign nationality. Thus, dual citizenship in such a case will be avoided. However, the last passage of Article [984] is intended to prevent statelessness. The certificate mentioned in Article [977] is "a certificate issued by the national Government of their fathers to the effect that the said Government would recognize them as their own nationals."

6-Right of a Married or Widow Woman to Choose a Single Citizenship

In the framework of the Iranian law a woman who has married an Iranian man, cannot have her nationality and obtain her husband's citizenship at the same time, but she has to choose one of them. There is no difference between Iranian and foreign women in this respect.

Article [986] provides that: "A non - Iranian woman who may have acquired Iranian citizenship by marriage, can revert to her former citizenship after divorce or the death of her husband, provided that she informs the Ministry of Foreign Affairs in writing of the fact, but a widow who has children from her former husband cannot take advantage of this right so long as her children have not attained the full age of 18. In any case, a woman who may acquire foreign citizenship according to this Article cannot possess immovable properties except within the limits fixed for foreign nationals.

If she possesses immovable properties more than those allowed for foreign nationals, or if subsequently she comes into possession by inheritance of immovable properties exceeding that limit, she must transfer somehow to Iranian nationals the surplus amount of those properties within one year from the date of her renunciation of Iranian nationality or within one year from the date of her acquiring the inherited property. Failing this, the properties in question will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to her after the deduction of the expenses of sale.”

Concerning the purport of this Article the woman’s renunciation of nationality does not need the leave of the Ministry of Foreign Affairs, but informing the Ministry of the decision will suffice. If the woman does not inform the Ministry of Foreign Affairs the renunciation of nationality will be considered as illegal and Article [989] will apply to her.

With regard to Iranian women who marry foreigners, there are two provisions in Article [987] the first of which is as follows:

Article [987]:“An Iranian woman marrying a foreign national will retain her Iranian nationality unless according to the law of the country of the husband the latter’s nationality is imposed by marriage upon the wife. But in any case, after the death of the husband or after divorce or separation, she will re - acquire her original nationality together with all rights and privileges appertaining to it by the mere submission of an application to the Ministry of Foreign Affairs, to which should be annexed a certificate of the death of her husband or the document establishing the separation.”

Regarding the Article, the Ministry of Foreign Affairs is not entitled to disagree with the woman’s application of reversion to Iranian nationality. By the way, the expression “original nationality” shows that the right of reversion to Iranian nationality in Article [987] is limited to those women who had possessed original nationalities before marriage and thus, a woman who had obtained acquired nationality before marriage and has obtained the nationality of the country of her husband after marrying him, cannot revert to Iranian nationality simply by presenting an application after the death of her husband or divorce, but she must, like other foreign applicants apply for Iranian nationality in accordance with the relevant provisions. Such an application may be accepted or rejected by the Iranian Government.

The second provision regarding Iranian women who marry foreigners is mentioned in Note [1] of Article [987] as follows:

Note [1]:“If the law of nationality of the country of the husband leaves the wife free to preserve her former nationality or to acquire the nationality of her husband, the Iranian wife who opts to acquire the nationality of the husband and who has proper reasons for doing so can apply in writing to the Ministry of Foreign Affairs and the Ministry can accord her request.”

The purport of Article [987] and its first Note shows that the Iranian legislator does not accept that a woman either married or widow has the nationalities of both her country and the country of her husband. Giving her the option to choose a single nationality in such a case is a way to prevent dual citizenship.

7-Renunciation of Iranian Citizenship without the Observance of the Law

Considering Articles [41] and [42] of the Iranian Constitution, there is a right for Iranian nationals to abandon their Iranian citizenship whether original or acquired. However, two basic considerations must be taken into account: first, the existence of all conditions stipulated by law and second, the Iranian Government’s approval to the applicant’s request for the renunciation of nationality. It goes without saying that the Government is entitled to disagree with the request, even if all necessary conditions are met, because taking a decision on nationality whether naturalization or renunciation is a discretionary determination which is fully within the powers of the Government. Regarding illegal renunciation of Iranian nationality Article [989] of Civil Code provides as follows:

“Every Iranian subject acquiring foreign citizenship after the solar year 1280 (1901) without the observance of the provisions of law, his/her foreign citizenship will be considered null and void and he/she will be regarded as an Iranian subject. Nevertheless, all his/her immovable properties will be sold under the supervision of the local Public Prosecutor and the proceeds will be paid to him/her after the deduction of the expenses of sale. In addition, he/she will be disqualified to attain the position of Cabinet Minister or Assistant Minister or of membership of the Legislative Assemblies, Provincial and District Councils and Municipal Councils, or any other governmental positions.

Note - The Council of Ministers may on the basis of certain considerations, upon the request of the Ministry of Foreign Affairs, recognize the foreign citizenship of those persons who are subject to this Article. Such persons may be given, with the approval of the Ministry of Foreign Affairs, leave to visit or reside in Iran.”

The reason of referring to the solar year 1280 in this Article is that the first regulations on nationality were enacted in that year and since then Iranian subjects would have to observe the legal rules of nationality. (Saldjoughi, 2005: 101). For the purpose of this Article, “subject” means every person who has Iranian nationality whether original or acquired.

A focal point is that though the Article describes the foreign nationality as null and void, but it simply means that such a nationality cannot be invoked before Iranian authorities and it is by no means equivalent to the invalidity of the nationality, because such a nationality is considered as valid in the foreign country which has naturalized the person concerned. Additionally, in a third country, the effective nationality is preferred. (Almasi, 2001: 163).

Considering the precedent of the Iranian Government, Article [989] can be considered as an obsolete provision. In other words, it seems that the Government upon expediency ignores the acquisition of foreign nationality, unless the relevant or third persons invoke the nationality. (Arfania, 1997: 118).

There is a difference of opinion as to the Note of Article [989]. According to some authors, the last passage of the Note of Article [989] which stipulates that *such persons may be given, with the approval of the Ministry of Foreign Affairs, leave to visit or reside in Iran*, indicates that one’s Iranian nationality is deemed to be lost as a result of the recognition of foreign nationality. (Arfania, 1997: 118-119). The other view is that such recognition is only equivalent to the approval to foreign nationality and thus the continuance of one’s Iranian nationality is implied in the Note. (Saldjoughi, 2005: 101) However, considering the general approach of Iranian private international law which does not accept dual nationality and the sense of Articles [41] and [42] of the Constitution, the first view upon which Iranian nationality is being annulled as a result of the recognition of foreign nationality, seems to be correct.

8-Conclusion

The consideration of Iranian private international law through the constitutional and civil law indicates that dual citizenship is not recognized by Iranian legislator. There are several reasons for this non-recognition. First, in accordance with Articles [41] and [42] of the Constitution, one’s Iranian citizenship will be withdrawn by the Government, if he/she acquires a foreign citizenship. In fact, if the Iranian Government recognizes the foreign citizenship of the person concerned, his/her Iranian citizenship will become void. On the contrary, if the Government does not recognize one’s foreign citizenship, it will be considered as null and void and the person concerned remains of Iranian citizenship. The Note of Article [989] of Civil Code also affirms the rule. Second, the general rule that every inhabitant of Iran is considered as an Iranian subject, does not apply to those whose foreign citizenship is certain and indisputable. This rule and its exception are mentioned in Clause [1] of Article [976] of Civil Code. Third, those who are born in Iran and are qualified to acquire Iranian citizenship, will be granted Iranian nationality only if they abandon their patrilineal citizenship. This requirement has been stipulated by Article [977] of Civil Code and the single-clause Bill enacted in 2006. Fourth, non-application of a father’s or a husband’s Iranian acquired nationality to his wife and/ or children who have attained the full age of 18 indicates that Iranian law seeks to prevent dual citizenship.

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