



Nationality at Islamic republic of Iran

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Abstract. The subject of nationality includes to study a set of regulations based on which an individual nationality status to a certain government can be determined. The regulations are ordained by each country separately to determine its citizens. As a consequence, if someone is not considered as a citizen in territory of country and based on the regulations, he/she is considered as a stranger whether the nationality of another country can be related to him or not. Therefore, the major consequence of these regulations in the country is to isolate the citizens from the strangers. In the present study, a brief description of the nationality principles and description of various types of nationality are given in addition to investigating the legal systems governing the nationality which are divided into two main sections including the blood system and soil system. Also, the reasons of advocacy of these two nationality systems have been discussed and compared separately.

Keywords: Nationality, Citizens, Legal systems governing the nationality, Blood system, Soil system.

1. INTRODUCTION

The first issue for every government is to separate the people who belong to the government from the others. Therefore, the subject of nationality is the most obvious manifestation for geographical division of the people. Nationality is political since it is resulted from the power between the person and government. (First, it is a governmental relationship and dominance of a government that considers a person as its belonging, hence, in some countries, the laws of nationality are mentioned in constitution. Second, this relationship is spiritual since, it is not related to the place where the person lives. For instance, an Iranian person is remains Iranian forever and keeps him/herself in touch with Iran although he/she lives in another country. In other words, there is a spiritual relationship between him/her and his/her country and considers him/herself belonged to Iran. A person who has nationality of a country, he is called citizen. A citizen is a person who has nationality of a country.

Realization conditions of nationality are not provided unless between a person and a government (government means a public legal personality which is recognized by the other civilized governments of the world).

Therefore, the first condition is that, a government exists. Government is a legal personality that is considered is the public international law as the official representative of people. Government is an empirical concept which means that, it is the governments' societies that decide if a land forms a government with its inhabitants or not.

In contrast, the concept of government is the concept of existing nation which includes a group of people who live in the and without joining their government and have common race, language, religion and wishes. In terms of legal, the concept of nation is a racial mindset while, government is political mindset. The concept of nation is realized when a group of people wish independence (a collective life).

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Iranian lawyers have defined the nationality as a political and spiritual relationship, a political-legal relationship, relationship between a person and legal systems of a nation, political-legal relationship between the people and government and spiritual political and legal relationship of the citizen and government.

The western lawyers also consider nationality as a situation that links a person to a country; also, the nationality determines political situation of a person in the necessity of loyalty to a government and is a link between a person and a certain country in order to having the support by the country and on the other hand, the legal duties of the person are determined and considered. Also, in the nationality, the people status is determined as a member of a certain government to which they are loyal. The nationality is an eternal and indestructible task.

2. MATERIALS AND METHOD

2.1. Principles and foundations of nationality

About the foundations of nationality, three important principles are considered:

First, everyone must have a nationality.

Second, nobody can have more than one nationality.

Third, nationality is a political relationship which links the person to a government so that, his main rights and duties are generated by that. The nationality may be involuntary like the original nationality or may be voluntary and contract basis.

Various types of nationality include: 1- territorial 2- original 3- acquired 4- derivative 5- consequential which are explained in continue:

1- Territorial nationality: it includes the way by which the people nationality considering their birth place and it is also referred to the nationality of birth place as well as soil system.

2- Original nationality: it includes the nationality which is given to a person based on the birth. This nationality can be based on the blood system or be related to the soil system or birth place of children.

3- Acquired nationality: is a nationality which is resulted from accepting the nationality of another country. This nationality is also called derived nationality.

4- Derivative nationality: is a nationality that may be resulted from legal actions of a person or his/her legal representative after his/her birth date until the person is alive. For instance, nationality due to a certain period of residence in a foreign country or the acquisition of nationality by marriage.

5- Consequential nationality: is a nationality which is given to a person due to marriage and also, it is given to an underage child.

2.2. Legal systems governing the nationality

Upon the birth, everyone is dependent to two legal systems that determine his original nationality. The two systems include: 1- Blood system 2- Soil system

1- Blood system

Transmitting the nationality of parents or one of them to the child after birth is possible based on the blood system. The blood system is divided into two types including absolute and relative.

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Based on the absolute blood system, the parents can transmit their nationality to their child; but, according to the relative blood system, only father can transmit his nationality to the child. This relative system has been accepted by Islam. Most of Islamic countries follow the blood system. This system has been accepted due to the emphasis of Islamic law.

A number of Islamic lawyers believe that, if the blood system is accepted and the child who has an unknown father, gives his/her nationality from his/her mother, it will cause prevalence of sexual intercourse. It means that, if the mother is known and the father is unknown, transmission of nationality from the mother can start male-female relationships outside the family ties and marriage. But it seems that, the Mother's nationality in private international law is legal solution to prevent apartheid people. It means that, if at least the Iranian nationality of the child becomes clear without giving any right such as child rights to the child who has an unknown father.

2- Soil system

Every person that is born in the territory of a country shall have the nationality of the country. Generally, the soil system includes two sections: 1) absolute system and 2) conditional system.

A) Absolute soil system

Upon a person is born in a country, he/she has the nationality of the same country and giving the nationality is not conditioned to legal limitations. Basically, absolute soil system is performable based on national interests of countries. Sparsely populated countries can increase their population by accepting this system. Accordingly, the soil system can be useful for the countries with large area and low population such as Canada, Australia due to the need for work force.

B) Conditional soil system

In some countries such as Iran and France, the nationality is not given upon to the birth in the country's territory but also, regulatory approval is required in addition to the approval of the Cabinet. Reaching legal age, submission of application and approval of the government to the nationality are some terms of naturalization.

3. CONCLUSION AND DISCUSSION

The blood system fans are divided into two categories:

- 1) The people who are the system fans due to racism such as Zionism, Fascism and Nazism that are the fans of the blood system invasive view. This offensive and aggressive comment is doomed by Islam.
- 2) The fans that look at the subject from legal dimension and have a defensive view in accepting the blood system. They believe that, if a country has inappropriate economic conditions and is faced with the dilemma of increasing population, can prevent racial mixing among their nationals and strangers by legal limitations. The defensive system is defensible despite the invasive system.

Reasons of the blood system fans

The lawyers have presented some theories to defend blood system including: A) self-interested theory B) racial-national theory and C) strategic theory as below:

A) Self-interested theory

Acceptance of blood system is a factor to control population growth in populous countries. In China, the number of immigrants is higher than the foreigners who come to China for various

reasons; therefore, acceptance of soil system cannot meet the national interests of this country since, the immigrants children cause to increase China population based on applying the soil system. Also, acceptance of the soil system is not useful for small and populous countries.

B) Racial-national theory

According to the theory of "Montesquieu" the French lawyer, inheritance has an important role in transmission of the genetic traits from parents to the children. The parents can transmit their morality and civility to their children through blood system. Love for the homeland also can be transferred through inheritance from the parent to child. Hence, it is better the child takes the parents' nationality from the blood system.

But, a drawback of this theory is that, inheritance cannot absolutely influence the behavior of individuals in a society; since, the environment affect the human behaviors too. On the other hand, nationality is a political link which is related to the governments' will. The government can accept or reject a person's nationality. So, the nationality is not related to genetic factors.

C) Strategic Theory

Acceptance of the blood system causes to rehabilitate national honor among the citizens of a country. This is considered as a strategic reason for preservation of national culture in overseas. Preservation of Iranian nationality by the Iranian people living in the foreign countries causes to export the Iranian culture; while, acceptance of the soil system can lead to elimination of Iranian culture in the foreign countries.

But, this view is quite optimistic. Promotion of the culture by all people who live in a foreign country is a relative task and needs to be investigated and it cannot be accepted generally.

Totally, no reasons of the blood system fans cannot be fully accepted and each of them has its own specific drawbacks. Also, the reasons of the blood system cannot be absolutely accepted since, their reasons are relative too.

Reasons of the soil system fans

The reasons of the soil system fans consist of three theories. A theory guarantees presenting a hypothesis which needs analysis to be rejected or approved.

A) Theory of soil system conformity with the principles governing international relations.

This theory have three introductions including: The first introduction: the governments have sovereignty over their territory and can accept a foreign citizen and give him/her citizenship. The second introduction: A person who is born in a country territory, he is dominated by the government. Therefore, the political sovereignty dominates the birth place and birth place nationality although; the child has been born in another country. The third introduction: the soil system preserves predominance of a county over country residents.

The soil system is formed based on the principle of non-interference in the countries' affairs. As a stranger cannot enter Iran without permission of the government, a foreign country also cannot dominate a person who has been born in Iran, without permission of political sovereignty of Iran government. While, acceptance of the blood system can cause interference of a country in internal affairs of the other countries.

B) Supportive theory of soil system

According to Vitoria's theory; a Spanish priest, a person who is born in a place, the birth country must support him/her. Can it be expected that, a person who has been born in Spain to be supported by a foreign country?

Consequently, the birth place is the cause of political support for a person. Of course, it seems impossible that, the blood system can preserve interests of the children who have been born in a foreign country; while, the birth place is a factor to cover their personal, political, economic and social support.

C) Theory of resorts similarity and soil system

Basically, a person who is born in a country. Have two specific advantages:

First: nationality of the birth country and political support of the country; second, enjoyment of residence law of the country. This theory proposes the similarity of soil system to domicile. A person, who is born in the US, will have the US nationality based on the soil system, and also, he/she will be subject to the law of domicile. Wherever the soil system exists, the domicile law is performed. Wherever the blood system does not exist, the domicile law is not performed. Consequently, the domicile law preserves the interests of the person born in a country territory; while, a person having French nationality, must be subject to the law of his/her country. Hence, the soil system fans prefer the soil system to the blood system considering the similarity of soil system and domicile. But, it seems that, this theory is not a rational reason for the priority of soil system to the blood system; since, the blood system also can have the support by the born child's country based on the law of his/her father or mother's country.

4. CONCLUSION

The subject of nationality includes to study a set of regulations based on which an individual nationality status to a certain government can be determined. The regulations are ordained by each country separately to determine its citizens. As a consequence, if someone is not considered as a citizen in territory of country and based on the regulations, he/she is considered as a stranger whether the nationality of another country can be related to him or not. Therefore, the major consequence of these regulations in the country is to isolate the citizens from the strangers. Generally, it should be mentioned that, the existence of various governments is the effective factor to generate the current regulations of nationality and development of this concept. Hence, there is a relationship between the nationality and international law. Therefore it is recommended that, nationality which is an important topic and related to all the world people to be taught in all field of study so, the people get familiar to their rights in this field. Therefore, the study that is conducted in this field, must be comprehensive.

REFERENCES

- [1] Sheikh Al-Islami, S. M. Private international law.
- [2] Nasiri, M. Private international law.
- [3] Advocacy, information and investigation of the latest legally binding rules.