

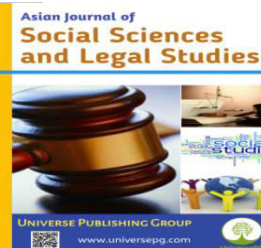


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The Laws Governing Dual Citizenship International Law

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ABSTRACT

The purpose of this research is to investigate the fair trial for people with multiple citizenships in an analytical-inferential research method, and the method for information collecting is library method and note-taking method. The considered statistical group includes people with double or multiple citizenships who need a fair trial in international courts. A partial look at the conditions of proceedings of people with multiple citizenships in Iran and along with it a brief look at the legal field of the research in a way that was done in order to get to know the subject. Regarding this issue, the type of research is in the category of theoretical and descriptive-analytical research. Therefore, the library method will be used considering that the most common method of collecting information in general researches is the library method (documents). And for collecting information note-taking method with note taking from the sources will be used to carry out the research in a practical way. Also, by examining how the international laws of people with multiple citizenships are obtained under fair trial, and by analyzing the legal effects of multiple citizenships, "conclusions" and research proposals and providing solutions are discussed.

Keywords: Citizenship, Multiple citizenship, Fair trial, International law, and Iranian law.

INTRODUCTION:

Citizenship is a legal, political and the spiritual relationship between a person and a government, which entails legal effects. In this case, a person benefits from the support of the respective government for the purpose of citizenship, and the government must be his supporter against the countries and international organizations, and in return, the person guarantees to implement some tasks for his own government. From the point of view of jurisprudence, the issue of citizenship and how a person is related to the Islamic state, due to which a person is considered a member of this state and rights and duties will be assigned to him, are among the most important issues.

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With this definition, although the root of citizenship in customary law is the connection of a person with a certain and determined state and its limits are determined by geographical and the contractual boundaries, but in Islamic laws and regulations, citizenship has a deeper and wider meaning and concept, and its main basis is the acceptance of Islam (Islamic citizenship) or accepting the Islamic system and being a part of it (contractual citizenship). In other words, according to Islamic laws, people are called citizens of the Islamic state who have accepted Islam or accept the Islamic government and follow its laws through a treaty signed with the leader of the Muslims or a member of the Islamic nation. This shows that the

naturalization process and Islamic regulations are very different from the rules found in customary law. The concept of naturalization and its fundamental importance took on a bold and important appearance when in the 17th century (1648), Border lines and nationalism of human nations introduced the concept of an independent state to the world.

Problem statement

Lexically citizenship means to be subservient, to follow and to obey, and trial lexically means to reach the oppressed and deal with the claim of the plaintiff, and in the special sense of the judicial authority to deal with the case, that is, the claims and arguments and demands of the plaintiff in line with issuance of the vote is decisive. The spiritual and legal relationship between governments and people reveals the principle of the right to a fair trial, governments are obliged to take measures in order to maintain the peace and psychological comfort of their society, as well as to prevent conflicts and the occurrence of international crimes. For this purpose, knowing the background and contexts that will express the proceedings judicially, it is necessary to deal with the principles of citizenship not in the form of a introduction, but based on the identification of what requires the ability to verify the issue of multiple citizenships and it in the way will be fair. Also, the characteristics of a fair trial with its in-depth investigations in line with the principles of citizenship require this requirement, so that before paying attention to any regulation, the relationship of the authenticity of the principles of citizenship has been measured and it is demanded on the rights of more just criteria generalized.

The rule of conflict resolution in the issue of fair trial of multi-nationals is when lawsuits are formed between an Iranian and a foreign citizen, according to the existing conditions, the judge may face ambiguities and complex questions before issuing a verdict. Due to the fact that there may be a significant difference of opinion between the law of one country and the law of another country, and it may lead to conflict between the parties of lawsuits and even countries and international relations; Based on the principle of conflict resolution, the judge tries to resolve the problem. Therefore, the conflict resolution rule refers to a rule that only determines the governing law and does not

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include a ruling for the situation raised and will not be a direct settler of claims, but only points to which law is competent to handle. In general, the rule of conflict resolution in the issue of international law is a rule that is examined before the material rules, and then the property rules deal with the direct resolution of the issue.

The importance and necessity of research

The important point is that just as nationals must follow the laws of the country they are a citizen of, the aforementioned countries must also observe all aspects to respect the rights of the functions they accept and help them within the framework of the laws. How are the criminal and civil lawsuits of a multi-citizen in a third country investigated in order to fulfill the concept of fair trial. How are the criminal and civil lawsuits of a multi-citizen person in one of the countries with citizenship reviewed in order to fulfill the concept of fair trial. In terms of the importance of this issue, it is enough that the issue of citizenship is not investigated widely in the world of humanity and partially in third world countries, and it is hoped that this issue will be investigated as a new issue and cause more attention to multi-national people in become international affairs.

Research objectives and questions

The main objective

The main objective of this research is to determine the role of multi-nationals in order to inform all multi-nationals for a fair trial so that they can be aware and close to the global standard in order to receive their rights in the international context, and also international courts pay more attention to these people and put the communication in a pact.

Sub- objectives

1. Diagnosing and predicting problems that will be faced by multi-national people.
2. Identifying and predicting the possible abuses of people who commit crimes by obtaining citizenship, and in order to obtain a second citizenship, they consider themselves entitled to escape from a punishment that the first citizenship has considered a more severe punishment for them.

The main question

How much have the criminal and civil lawsuits of people with multiple citizenships and their fair

proceedings been recognizable and efficient in one of the countries of citizenship or in a third country?

Sub-questions

How much can a fair trial be effective for multi-national prisoners?

How much can the government and individuals reconcile the issue of multi-nationality with international law?

Theoretical foundations and previous researches

Principles of trial

Principles is the plural of principle and literally means roots, bases, foundations (Amide, 2005) rules and laws. Trial in the word means the principles of trials, order and method of proceedings and rules and regulations that must be followed by courts and litigants to deal with legal and criminal claims.

The concept of trial

Trials in its special sense means "delivering right to the oppressed" (substantive concept) and in the general sense it means "process related to a civil dispute" (formal concept) and has three conditions: the existence of a dispute, its plan (lawsuit) and the beneficiary of the plaintiff.

Fair trial

Fair trial means the general guarantees that are provided in the judicial mechanism in order to respect the rights of the parties in the trial process of all types of lawsuits before a competent, independent, impartial and predictable court. These guarantees if happening, will limit the authority of the government towards individuals and, as a result, protect the rights of individuals more appropriately. Divine religions, especially Islam, throughout history have been heralds of the principles of fair trial, including the independence and impartiality of the judge, supervision of the proper conduct of the trial, the principle of the legality of crimes and punishments, the principle of possession permission, the principle of equality, the principle of publicity of trial, the principle of acquittal, the principle of interpretation was in favor of the right holder and such cases. This is despite the fact that the term fair trial as a human right has been introduced to the subject systems since two centuries ago. Global and regional human rights documents such as the Universal Declaration of Human Rights adopted

in 1948 and the International Civil and Political Covenant have recognized the right to a fair trial, and governments are obligated to implement and guarantee this right for all people.

History of fair trial

Hammurabi's law is considered as one of the historical trends of ancient times regarding the protection of people against harassment and arbitrary punishment. During the time of ancient Greece and Rome, the execution of people without conviction and punishment without trial was considered against justice (Fazaeli, Falsafi, 2018:96). Judging and trial based on justice has also been one of the goals of various religions, and various religions including Judaism and Christianity, have emphasized on fair and just judgment, proceedings and trial (ibid, 94-104)

The principle of contrast or correspondence

Two-sided defense and the possibility of opposing the defense of each party by the other are necessary elements of a fair trial. In criminal trials, this requires informing the accused of the type and causes of the accusation legally and having sufficient opportunity to prepare a defense (Abbasi, 2011)

Legal foundations of fair trial

Human dignity, natural rights, rule of law and procedural (natural) justice are considered the legal foundations of fair trial, which we discuss in this section (Hosseini, 2014; Sutradhar R., 2023).

The concept of citizenship

Citizenship means: the political, legal and spiritual belonging of a natural or legal person to a specific government which is a result of the right of the government's sovereignty which is presented in two ways: "original citizenship" and "acquired citizenship". In other words, citizenship is a credit concept in expressing a person's dependence on a political system, which is the source of a person's rights and obligations towards his/her own country.

Multiple citizenship

Multiple citizenship is actually a relationship that a person may have with two or more states and has violated the principle of single citizenship. This type of citizenship arises because governments have the right to determine the conditions under which a person

becomes one of their nationals. Multiple citizenship may be deceptive at first glance because it allows people to choose from several countries to obtain an event and passport, but the reality is completely different because citizenship, while having rights or benefits, also burdens duties and obligations. (ibid)

Previous researches

The background check of the conducted research is often on the aspect of double or multiple citizenships of people and their material-spiritual and political rights, and the extension of these relationships that multiple citizenships and rights that demand a fair trial, as an issue that depends on the principles of litigation and investigation of the justice that originated from it is not discussed. Therefore, the summary of the stated titles is generalized in the form of the background of the theoretical framework of the research. Regarding multi-citizenship, it is important that throughout history there have been no specific laws based on the principle that a person can never be multi-citizen, but sometimes even developing countries offer attractive opportunities to obtain a second citizenship is provided for citizens of other countries.

- 1) Although in Iran, double citizenship is not recognized by the government, and for this reason people with double or multiple citizen-ships in Iran cannot be employed in official positions, but in international law, double citizenship is not considered a crime, however, citizenship is always based on this principle. It is firm that the principle of unity is permanent citizenship and every human being should have the citizenship of a country (Amide, 2005).
- 2) Foreign nationals can acquire Iranian citizenship within the limits of the laws, and it is possible to revoke the citizenship of such persons if another government accepts their citizenship or if they request it themselves.
- 3) Pursuant to Article 11 of the Constitution of Iran, citizenship is the inalienable right of every Iranian person, and the government cannot deprive any Iranian of his citizenship except at his own request or if he becomes a citizen of another country.
- 4) After the revolution in Iran, almost all businesses such as banks and organizations became state-owned, but according to Article 11 of the Con-

stitution, it was decided that some units should be handed over to the private sector, so 11% of the shares of centers such as these banks do not belong to the government and are considered almost semi-state. In my opinion, this law should be enumerated because, again, the multiple citizenship of these people can be a problem in sensitive cases. On the other hand, in cases where the judge is forced to issue a verdict, he takes into account the nationality of the judicial authority.

METHODOLOGY:

Regarding this issue, the type of research is in the category of theoretical and descriptive analytical research. Therefore, the library method will be used considering that the most common method of collecting information in general research is the library method (documents) and the upcoming research has an innovative nature through a library method, hence from books, periodicals, electronic resources, theses, the resources collected on the compact disc and internet sites will be used, and the data collection tool will be the chip, which will be used to conduct the research in a practical way by extracting the chips from the available sources.

Novelty and innovations of the research

The issue of multi-nationality and the proceedings of their claims in international law have been examined either because it was only a study of their legal status, which was studied only with Iranian laws, or because it was only to examine the legal protection of people with two or more citizenships given and studying and examining the solutions and identifying how to conduct fair proceedings for multi-nationals by simultaneously examining the international laws and Iranian laws, which will include all the international rights of Iranian and non-Iranian nationals, has not been addressed as it should be and requires detailed analysis and investigations will have to get close to the right ones.

RESULTS AND DISCUSSION:

Legal effects of citizenship

The legal effects of citizenship can be examined from various aspects

In general international law, the relationship of citizenship allows a person to have the political

support of his/her respective government. The support that a country can provide to a person can be in the form of intervention for the benefit of a person in case of a dispute with another country, securing benefits through treaties, preventing other countries from interfering in a person's daily life, etc. In the articles compiled by the International Law Commission regarding political support, which was submitted to the United Nations General Assembly in 2006, the definition of political support is stated:

"Political support is a set of measures that one government takes in front of another government in order to compensate and repair the damages caused to one of its nationals, either real or legal, as a result of committing an act against the rights of a foreign government."

The implementation of political support by a government is subject to the fulfillment of three basic conditions:

- 1) The existence of an official relationship between the sponsoring government and the damaged claimant (nationality);
- 2) Preliminary proceedings of local courts on behalf of the claimant;
- 3) Purity of the claimant.

In 1930, the principle of political support was interpreted as follows by the Permanent Court of International Justice in the case of "Maurmetis":

"It is a fundamental principle in international law that a government protects its citizens. When another government commits acts against international law and the affected party is not able to claim their rights in any other way. The affected party requests the assistance of its respective government by appealing to political support or international judicial opinions."

Political protection has traditionally been recognized as an exclusive right of the government, which means that the state exercises political protection as its own right, because the damage done to its citizens is considered as damage to the government itself.

International jurisprudence since the 1930s

The conclusion of the 1930 Convention (on some issues related to the conflict of nationality laws) left a significant impact on international jurisprudence and is

considered the most important turning point in the history of developments in the laws related to the conflict of nationality. Therefore, according to the Hague Convention of 1930, the jurisprudence after the convention in 1930.

International jurisprudence from 1930 to 1955

From 1930 onwards, in all international decisions regarding double citizenship, the principle contained in Article 4 of the Hague Convention was followed, and the simple reason for this was the conformity of the Convention with customary international law. It is appropriate to mention a case here. In the famous "Salem" case, which was filed by the United States against Egypt, the first arbitration court recognized the American citizenship of Mr. Salem.

International jurisprudence since 1955

Examining the international jurisprudence is important because it clarifies whether the governments in international relations have followed the principle of effective or dominant citizenship or the principle of equality of sovereignty of governments and their lack of responsibility. For this purpose, it should be noted that the western countries, with the exception of the United States of America, countries such as England, France, Holland, Germany, Switzerland, etc., supported the principle that regarding the issue of double citizenship, no government can oppose its nationals. Another government, of which the said persons are considered to be its citizens, should be given political and consular support.

Legislator's statement to exempt refugees

The definition of a refugee is: a person who, due to a justified fear of being in a country related to race, religion, nationality, membership in a social group, or having a specific political opinion, is outside of his/her home country and cannot or does not want to be under the protection of that country, or if he is stateless and after such incidents, and is living outside the country of his permanent residence, and cannot or does not want to return to that country due to fear (Hashemi, 2005).

Lack of laws to oblige stateless persons

Those who have commented on the requirement of stateless persons have often made the legal document of their opinion related to obtaining support from the

nationals of foreign governments (Shams, 1386). While in none of the relevant articles, it is not specified the necessity of obtaining security from stateless persons. Therefore, the requirement of stateless persons has no legal documentation. It may be said, the concept of the word "alien" is vague and uncertain; In response, we can say: Legal ambiguity is also an undeniable fact, but the mechanical application of laws should not force the judge to make unfair decisions, and the judge's freedom in using legal ambiguity should not replace his personal will and taste with the will of the legislator (Ansari, 2006).

Legal analysis of articles 976 and 989 of Iran's Civil Code and Principles 41 and 42 of the constitution

Principle 41: The citizenship of Iran is the inalienable right of every Iranian, and the government cannot deprive any Iranian of his citizenship except at his own request or in case he becomes a citizen of another country.

Principle 42: Foreign nationals can be granted Iranian citizenship within the limits of the laws, and the citizenship of such persons can be revoked if another government accepts their citizenship or they request it themselves.

Article 976 of the Civil Code contains some points regarding the citizenship of the Iranian government.

This legal article stipulates:

The following persons are considered Iranian citizens:

All residents of Iran, except for those whose foreign citizenship is certain, the foreign citizenship of those whose citizenship documents are not contested by the Iranian government is certain.

Those whose father is Iranian, whether they were born in Iran or abroad.

Those who were born in Iran and their parents are unknown.

Those born in Iran from foreign parents, one of whom was born in Iran.

Those who were born in Iran from a father who is a foreign citizen and have resided in Iran for at least one full year immediately after reaching the age of 18, otherwise their admission to Iranian citizenship will be according to the regulations according to the law for gaining Iranian citizenship is required.

Every foreign woman who marries an Iranian husband. Any foreign citizen who has acquired Iranian citizenship.

Iran's treatment to double citizenship

The spokesperson of the Ministry of Foreign Affairs, in response to the issue of the nationality of the former CEO of Melli Bank, says: double citizenship is against the constitution of our country. Emphasizing that there is no legal justification if one of the officials has double citizenship, Ramin Mehmanparast said in response to a question about the action of the Ministry of Foreign Affairs to provide a list of officials who have double citizenship and to review the extradition of the accused from Canada to Iran. Having the citizenship of another country, he must comply with the legal provisions regarding the relinquishment of his citizenship.

Gaining foreign citizenship

The laws of our country have chosen the blood system in the issue of citizenship; This means that those whose father is Iranian, regardless of whether they were born in Iran or abroad, have Iranian citizenship. In addition, in some cases, Iranian citizenship is created for individuals by using the soil system. The soil system means that those who are born in the soil of Iran have Iranian citizenship.

Legal treatment of double citizenship

But if someone takes the citizenship of another country without complying with these legal conditions, what is the duty? In practice, Iranians do not take the pain of doing these things to obtain the citizenship of another country, and they obtain the citizenship of another country without giving up their citizenship. In this situation, according to the constitution, the government cannot deprive people of their Iranian citizenship. So how should one deal with double citizenship and what is Iran's reaction to people who have studied for a second citizenship? Article 989 of the Civil Code gives the answer to this question as follows: Any Iranian citizen who has acquired foreign citizenship without complying with the legal regulations, his foreign citizenship is invalid and he is recognized as an Iranian citizen.

Iran's legal measures against double citizenship

- 1) Paragraph 1- Loss of Iranian citizenship in case of acquiring another citizenship
- 2) The second paragraph - It is forbidden to acquire key positions
- 3) Ways to create double citizenship in Iran
- 4) The first paragraph - the difference in the way governments think about acquiring citizenship
- 5) The second paragraph - acquiring a new citizenship without leaving the first citizenship
- 6) The third paragraph - Marriage with foreign nationals
- 7) The fourth paragraph - military occupation
- 8) Paragraph 5- Emigration of elites from Iran
- 9) The sixth paragraph - Iran's migratability

Suggestions

A- It is suggested that similar to this issue at the national level and examples with a larger volume and scope, initially in the form of university reviews and approvals at the country level, and then to create international agreements to present the issue of citizenship and individual rights as best as possible and enable society in the global arena.

B- According to the results of this research and the impact of the current laws and international organizations in relation to the issue of citizenship, it is suggested that in future researches, the value of citizenship, instead of only being investigated in the direction of fair proceedings, should be focused on its function in identifying the truth of citizenship and achieving the standards that in the first place involves the issue of multi-nationality and along with it proceedings in international courts, should be questioned and evaluated.

C- It is suggested that since according to the precedents, the prohibition factor in the structure of double citizenship has been identified, in order to improve the level of citizenship and the formation of the legal balance of people of multiple citizenships in international dimensions and to remove the motivation of corruption in obtaining multiple citizenships, the present issue to be reviewed and deeply examined in powerful organizations that oversee international standards.

D- Conflict in the issue of fair trial of multi-nationals is a challenging issue in international law and

domestic law of countries. Now, if it is raised in a fragile situation, it can be useful to use international standards to solve conflicts related to double citizenship.

E- It is suggested that by providing first-class general conditions and world standards, foreign nationals who wish to obtain Iranian citizenship should use all their capacities to make progress in the entire country if they use scientific matters and invest in the Islamic Republic of Iran.

CONCLUSION:

Regarding citizenship, countries have different opinions because each of them has taken steps based on their own interests to meet their needs, because the relationship between citizenship and the government is a legal relationship that makes a person one of the members of the constituent population in a land. It should be considered that the systems of granting citizenship are different in different countries and this difference is caused by the different social, economic and cultural views of the countries and these factors sometimes cause double citizenship for individuals and create problems for governments and individuals that are currently This problem has existed and has caused the positive and negative conflict of citizenship in countries, which results in multiple citizenships and statelessness of people. Applying conflict of law rules makes the courts busy with their efforts to resolve so that they can apply the applicable law and describe the case in some way. Double citizenship is the result of a kind of international legal vacuum and the lack of unity of action of different countries, as well as the lack of an international organization to organize this issue. We can hope to reduce its cases when different governments work together more harmoniously. Since the causes of the emergence of double citizenship are almost clear, it seems that the prevention of its creation by governments and especially by international organizations is not far from reach. Also, according to Article 41 of the Islamic Republic of Iran, the Iranian citizenship of any Iranian citizen who accepts the citizenship of another country will be revoked. Currently, no agreement has been implemented to resolve double citizenship between countries, and as a result, as long as there is adherence to the systems of soil and blood, unity and differen-

tiation of citizenship, there is also double citizenship based on the acquisition of citizenship. Commenting on the decision of the Court of Arbitration in case A-18, since the issuance of the aforementioned decision, not many opportunities have been given to international judicial and arbitration institutions to evaluate the influence of this decision and its follow up in customary law. In general, it can be said that there is no specific international organization to prevent and create double citizenship, but several conferences and conventions have emerged in this regard, and the domestic laws of countries have also implicitly referred to it.

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CONFLICTS OF INTEREST:

The author declared no conflict of interest.

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