
LEGAL REGULATION OF THE POLITICAL RIGHTS OF PEOPLE WHO HAVE ACQUIRED IRAQI NATIONALITY

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Abstract

Human rights were granted with the interest of countries of different orientations and regardless of its governance systems. They decided to approve these rights in their national constitutions, and among these rights is the right to nationality, as it is one of the basic rights of the individual that cannot be dispensed with and according to which the rights of the individual and his national character are determined. Therefore, the laws have stipulated various cases for acquiring nationality, including acquiring it through filiation and naturalization after certain conditions are met. It is not permissible to deprive him of it arbitrarily, but in Iraq, the individual enjoys it. He has civil and political rights when he acquires Iraqi nationality. Among the civil rights that he acquires is the right to life, which is considered one of his natural rights that may not be infringed upon or deprived of. As for his political rights, they include his right to elect and nominate, on the basis of which a foreigner who has acquired Iraqi nationality can be distinguished. About the Iraqi National

Keywords: Acquired nationality, constitution, political rights, original nationality, Iraqi nationality law.

Introduction

Most countries are starting to pay attention with human rights and regardless of its governance systems. They decided to approve these rights in their national constitutions, and among these rights is the right to nationality, as it is one of the basic rights of the individual that cannot be dispensed with and according to which the rights of the individual and his national character are determined. Therefore, the laws have stipulated various cases for acquiring nationality, including acquiring it through filiation and naturalization after certain conditions are met. It is not permissible to deprive him of it arbitrarily, but in Iraq, the individual enjoys it. He has civil and political rights when he acquires Iraqi nationality. Among the civil rights that he acquires is the right to life, which is considered one of his natural rights that may not be infringed upon or deprived of. As for his political rights, they

include his right to elect and nominate, on the basis of which a foreigner who has acquired Iraqi nationality can be distinguished. About the Iraqi National.

Research Objective

Since the Iraqi legislator addressed the issue of rights The political rights of those who acquired Iraqi nationality. Therefore, the aim of this research will be to determine the rights of those who acquired Iraqi nationality in accordance with Iraqi legislation and to differentiate between them and those holding original nationality.

Research problem

what is the position of Iraqi legislation on those who acquire Iraqi citizenship? Were they granted all political rights, were they treated on an equal footing with those holding the original nationality , or are there rights from Incomplete?

Research Methodology

In writing this research, I relied on the descriptive approach by describing nationality, its pillars and cases of acquisition , then discussing rights The political policy granted by the Iraqi legislator to those who acquired Iraqi nationality .

Research structure

The nature of this research requires dividing it into two sections. In the first section, we address the concept of nationality in two requirements. The first section includes the concept of nationality and its elements, and the second section includes acquired nationality and the cases of its acquisition . As for the second section, it was devoted to explaining the political rights of those who acquired Iraqi citizenship and was divided into two demands, the first dealing with the right to citizenship (the right to nationality) and the second dealing with the right to hold public positions.

The first topic : the concept of nationality

Studying nationality provisions is one of the most important topics Which sparked the interest of jurisprudence This is due to its importance in the life of the individual and the state, as through it the legal status of the individual in the state and the international community as well is determined It is the best means by which the majority of countries can identify the individuals who make up their population. Therefore, citizenship has reached an important place in the lives of individuals as a human right, and this is what we will explain in our first section.

The first requirement : Definition of nationality and its pillars

Definition of nationality : There are many definitions provided by private international law for the subject of nationality and its meaning . These are definitions that multiply the nature of this bond and its basic pillars . The first trend went to define the concept of nationality as representing a bond linking an individual to a state, or it is the political and legal bond that attaches a person to a state. The two previous definitions are considered. To citizenship as an

agreement or contractual act based on the agreement of two wills that describes the will of the person on an equal footing versus the will of the state, even the supporters of this trend. They entered into a focused legal discussion on giving priority to the legal nature of the nationality bond, the second trend went to defining nationality as a person's quality granted by the state *Per capita* (Al-Taie, 2016, 22). Jurisprudence also differed in defining the meaning of nationality. There are those who defined it as a political bond between the individual and the state, on the grounds that nationality links the individual to a political unit that is the state, and that its meaning is the control and sovereignty of the state and the determination of the people's position in it, and this bond is binding between two parties, and this definition lacks the quality of obligation, some have defined it as a legal bond between the individual and the state, ruling out describing it as a political bond, so their interest focused on

On the legal aspect of nationality on the basis that it is a subject of private international law. Another side of jurisprudence went. It is defined as a political and legal bond between the individual and the state that entails mutual rights and obligations between them (Taher, 2011, 31). One side of jurisprudence was also limited to describing citizenship as a bond between the individual and the state without specifying the nature of this bond, while another side of jurisprudence attempted to define its nature. Some described it as a bond of a legal or political nature, or that combines both characteristics.

1. Nationality as a political bond: Part of jurisprudence tends to focus on the political aspect of nationality, defining it as the political bond according to which the individual becomes one of the components of a state. Focusing on the political aspect of nationality helps distinguish it from other ideas. The other
2. Nationality as a legal bond: Part of contemporary jurisprudence tends to define nationality as a person's legal dependence on the population that makes up the state.
3. Nationality as a legal and political bond: Part of jurisprudence tends to define nationality as a political and legal bond at the same time. It is a political bond because it links the individual to a political unit, which is the state, and because it is based on the rule of state control and sovereignty in determining one of its pillars, which is its people. It is a legal association because it is governed by a rule. It is legal and has legal implications. Both the political description and the legal description are important in defining nationality (Al-Haddad, 2005, 18). We believe this is the most likely trend that takes into account all aspects of citizenship, as citizenship is defined as a legal, political, social and spiritual relationship between the person and the state and entails rights and obligations. Mutual (Al-Aboudi, 2005, 18)

Pillars of nationality

Can be derived from its definition, which says that it is a legal and political bond between an individual and a state, which makes that person subordinate and belonging to it. Hence, it becomes clear to us that the pillars of citizenship are (1- The individual 2- The state 3- A bond between the individual and the state.

Firstly: State: It is an ordinary person under public international law that has its own recognized international personality. Now It is required that the state have complete

independence in order for it to have the right to establish nationality. The state may lack sovereignty or be politically linked to other states and it has the right to enjoy its nationality. Likewise, the smallness or largeness of the state does not affect its ability to grant its nationality to people, nor does it prove that the state One nationality is more than one nationality, whether it is a simple state or a complex state. Each of them has one nationality, and its nationality cannot be multiple due to the multiplicity of states. The state is the only person who has the right to grant nationality, and this right is not established for other persons under international law (Hadawi, 2001, 19). The state is also considered the most important party in the nationality bond, as the state restricts its population through it, since nationality is the political system through which states place their stamp on individuals (Hafez, 2009, 36)

Second: The individual: Citizenship aims to determine the basic pillar of the state, which is the population consisting of the group of people belonging to it. And people Natural people are the only ones who make up the people of a state and therefore they are the only ones who can enjoy B Nationality Since nationality is a means of distributing individuals internationally, therefore every individual has the right to The international community must belong to one of the countries and have the capacity to enjoy a nationality.

Third: A link between the individual and the state: It means the integration of several people into one group whose goal is a common goal, which is political independence. Therefore, the relationship of nationality must be understood as a characteristic. The legal status of a member of a state that makes him one of its nationals, affiliated with it, and known by its name. The bond has two aspects: rights and duties, and then it is the responsibility of the state to defend its people and protect their interests, whether they are inside or outside the state. In return, it is the responsibility of the person to respect the state and be loyal to it in implementing its laws .

The second requirement

Acquired nationality and cases of acquisition

The first section : The concept of acquired nationality

Acquired citizenship is citizenship after birth Because a person acquires it during his life and after his birth, as the elements of its acquisition are not legally complete once born , but rather are completed later, and therefore it is called the subsequent Or emergency or granted . This nationality is granted to the person by the competent authority, as in Iraq, and is not imposed by law immediately after birth like the original nationality. Nationality is considered acquired even if birth Sometimes a factor in acquiring it is that it is... It does not change its acquired character because it requires the availability of elements to complement it at a later date Also, the conditions for granting it and its requirements It varies from one country to another, and it can also be withdrawn from the individual who acquired it, so it is also called emergency citizenship . Youssef , 2003, 16) .

Section Two : Nationality acquired within the framework of Iraqi legislation

Firstly: Acquiring nationality through filiation : The positions of nationality legislation in the countries of the world differ on the issue of acquiring nationality on the basis of adoption.

While the laws of some countries go to Acknowledgment Due to the impact of the adoption status on the nationality of the adoptee , another group of legislations explicitly decided not to consider adoption as a reason for changing the nationality of the adoptee in an absolute manner. The laws of most Islamic countries have been completely silent on this issue, and this silence has been interpreted by these laws rejecting adoption as a basis. No acquisition of nationality. The repealed Iraqi Nationality Law No. 43 was not mentioned of 1963 and Law No 26 of 2006, which applies to adoption as a reason for acquiring Iraqi citizenship. However, the Iraqi Juvenile Welfare Law No. 76 For the year 1983 It allows the spouses to submit a joint application to the juvenile court for annexation A child of unknown parentage or without parents He must not be more than nine years old .

Second: Acquiring citizenship by proving a certain relationship Between a person and his mother's place : The law of a particular country may make birth in its territory and residence therein until reaching the age of majority a factor for granting citizenship on the basis of proving the connection between the person and the place of his mother. In this case, citizenship is granted not on the basis of the right to the territory alone , but also with proof of the person's connection to the place of his mother by settling there and residing. Until the age of majority, even if the father is a foreigner, this is the basis

Nationality means being born in the territory of a country and residing in it. Therefore, the conditions for its acquisition differ from the conditions for nationality acquired by naturalization. However, it is not an original nationality, as it is determined by law when the conditions stipulated in the law are met. The law without submitting an application, unlike naturalization , which requires submitting an application after the conditions are met .

Third: Acquiring Iraqi nationality by naturalization : A foreigner, whether he has a certain nationality or does not have one, may wish to obtain Iraqi nationality. If this desire is not met with the approval of the Iraqi government and after fulfilling the conditions required for this person to gain Iraqi nationality through naturalization, then naturalization is the granting of Iraqi nationality. By the government to a foreign person who requests it. The Iraqi legislator has stipulated naturalization as a reason for acquiring Iraqi nationality. Article 10 stipulates the conditions necessary for naturalization by saying : “ Whoever fulfills the following conditions , other than minors, may request Iraqi nationality in the following manner - 1 - That it be after reaching puberty.” He has attained the age of majority and made his habitual residence in Iraq for a period of three years prior immediately before his request - 2 - That he be of good moral character - 3 - That he undertakes to reside in Iraq) . As for Article Eleven, it clarifies the authority of the Minister of the Interior as it states : “ The Minister of the Interior has an absolute choice to accept or reject the naturalization application when he deems it to be in the public interest, and there is no objection to his decision in this matter.” Al-Khasos (Hadawi, 1992, 65)

Fourth: Acquiring nationality due to dependency : In this case, we mean granting Iraqi nationality to individuals who are minors, i.e. those who have not yet reached the age of majority, the nationality of their father on the condition that they reside with him in Iraq, in order to ensure the unity of nationality in the family, preserve its cohesion, and continue the father's care . To his minor children. The legislation of countries differs in the conditions

required for granting subsidiary nationality. Some of these legislations grant minor children the nationality of their father. Legally and by force of law, as is the case in the Iraqi Nationality Law No 43 of 1963, which was repealed as stated in the first paragraph of Article 13 On it (If the foreigner acquires Iraqi citizenship, he becomes a child Iraqis) This law did not stipulate any other conditions except that the minor be young and be of established lineage to his father in accordance with the provisions Iraqi law .

Fifth: Acquiring Iraqi nationality through mixed marriage: Mixed marriage is defined as a marriage in which the nationality of both spouses differs at the time of its conclusion or on that date . Marriage in this case is considered one of the reasons for acquiring nationality, as it affects the woman's nationality in most legislation, some of which include A foreign woman married to a national may enter into the nationality of her national husband, while others achieve that entry by provisions Legislation: The Iraqi Nationality Law adopted the idea of mixed marriage to grant citizenship to either the husband or the wife. Here, a distinction must be made between two cases :

first case : Acquiring Iraqi nationality on the basis of mixed marriage by the distinction of a non-Iraqi married to an Iraqi woman in accordance with Article 7 of the Iraqi Nationality Law in force under the same conditions stipulated in Article 6 In all its paragraphs, provided that the length of stay is not less than For five years, with the continuation of the marital bond, according to Art 7 states The Minister may accept the naturalization of a non-Iraqi married to an Iraqi woman, provided that the period of residence is not less than five years and the marital bond continues.

The second case: Acquiring Iraqi nationality through mixed marriage for a non-Iraqi woman married to an Iraqi in accordance with Article 11 From the Iraqi Nationality Law in force, which stipulates that a non-Iraqi woman married to an Iraqi may acquire nationality under the following conditions , which is submitting an application to the Minister of the Interior, and this means that she enjoys your hope. Eligibility , five years have passed since their marriage, her residency in Iraq, and the continuation of the marital bond until the date of submitting the application. This excludes those who are divorced or whose husband has died and who has a child from her ex-husband or from her deceased husband. And to take the oath during 90 One day before the competent director of citizenship from the date of submitting the application

Sixthly: Acquiring Iraqi citizenship through multiple births : She and birth The son and his foreign father are in the territory of the state. In this case, the nationality of the father is not taken into account , but rather the fact that he was born in the territory of the state is taken into consideration , as stated in Article 5 Of the Iraqi Nationality Law applicable to the case of acquiring Iraqi nationality through multiple births, it states : The Minister may consider anyone who was born in Iraq and has reached the age of majority to be considered an Iraqi He had a father other than A. Raqi, who was also born there and was residing there As usual

upon the birth of his child, provided that the father submits an application to grant him Iraqi citizenship .

Seventh: The acquisition of Iraqi nationality by a non-Iraqi through naturalization on the basis of lawful long-term residence : Article 6 of the new Iraqi Nationality Law stipulates this case and allows the naturalization of a non-Iraqi if the following stipulated conditions are met, including that the naturalization applicant must be of non-Iraqi nationality, and by non-Iraqi we mean a foreigner who does not He enjoys Iraqi nationality, whether he is an Arab or a foreigner. The new Iraqi nationality law has replaced the word The foreigner is compared to the non-Iraqi because he is more inclusive in terms of equality between the foreigner and the Arab, while the previous laws for Iraqi nationality distinguished between the foreigner and the Arab in terms of equality, so he was made equal to the Iraqi. Among the conditions are also that the non-Iraqi be of the age of majority and that he arrived in Iraq legally. In accordance with the Foreigners' Residence Law No 118 For the year 1978, and he must have resided in Iraq legally for a period of not less than ten consecutive years after submitting the application, and he must have a clear means of livelihood, and he must be of good behavior and reputation, and he must be free from diseases . transitional period and submit a written request to the Minister of the Interior .

The second topic

Political rights resulting from the acquisition of nationality

Political rights are among the oldest types of rights that constitutional jurisprudence has paid attention to. They mean the right of citizens to participate in managing the affairs of society. These rights are granted to citizens, not foreigners Because the principle of sovereignty is accepted by some systems and not by others, and no matter how much the system expands in promoting political rights based on the principle of popular politics, it cannot From h foreigners Because it is related to the authority to rule in the state , and this authority cannot be assumed by anyone other than citizens , (Al-Jazairi, 2002, 27) as Political rights mean the citizen's participation in political activity through ... Election Nomination , as we mean by the term political rights , is the consecration of that group of rights that establish the individual as a member of a specific political group so that he can participate in managing the affairs of the society to which he belongs and to which he is linked by the bond of nationality, and this group and rights are not established for individuals. Foreigners who may happen to be within the territory of the country In any capacity . (Hassan, 2009, 178) Political rights are characterized by the following characteristics

Firstly: it is not It is decided to satisfy the personal interest of the individual : Rather, it is intended to achieve the interest of the nation and raise its status among other nations through cooperation with others.

Secondly : The exercise of these rights should not be viewed as mere rights , but rather they go beyond that to become rights and duties at the same time. The right to vote is a national duty that cannot be neglected.

Third: These rights are not granted to all citizens, but are subject to certain restrictions that must be met by the citizen in order to be able to It can be carried out under the condition of age and not committing crimes against honor . (Farhat, 2017, 69)

First requirement:

Right to citizenship (citizenship)

right to citizenship is considered at the forefront of political rights . Accordingly, citizenship is the legal and political bond that links the individual to the state and determines his loyalty and national affiliation . , (Hassan, 2018, 189) Whoever does not have the nationality of the country in which he resides is considered a foreigner. He does not have the right to exercise certain rights and does not bear the duties that normally fall on the shoulders of a citizen or a holder of nationality. The Universal Declaration of Human Rights , in Article 151, confirms this right by saying (Everyone has the right to enjoy... A nationality (this right was once again decisively stated in the International Convention on Civil and Political Rights in the third paragraph of Article 24) (Every child has the right to a nationality) It is worth noting that this nationality bond is not eternal and accompanies the individual from his birth until death. Rather, the individual has the right to change his original nationality and acquire another nationality. However, this right is not absolute, but is subject to restrictions. Such as a requirement for eligibility , leaving the territory , or obtaining special permission from the state to acquire citizenship...etc . (Farhat, 2017, 69) Since the individual has the right to change his nationality, he also has the right to keep it so that he does not lose it unless he chooses Because it is one of the ideal principles of nationality that an individual should not be deprived of his nationality arbitrarily except for a legitimate reason and by a judicial ruling. This is because the lack of nationality places a person in a region of legal nothingness and deprives him of the reassurance of belonging to a country . It should be noted that some countries are working to establish sufficient guarantees to respect the right to nationality and to ensure its protection from all abuse. They refrain from revoking nationality and do not take it except within the narrowest limits , as they take it in Cases that are discovered with conclusive evidence of the domicile's ineligibility to retain her nationality due to his betrayal or lack of sincerity and loyalty to her . Nationality is a person's enjoyment of citizenship and belonging to a homeland and the other rights that result from it, such as political and social rights . The individual's right to shelter Linked to his possession of his nationality Because the state is not obligated to accommodate any individual who does not hold its nationality, and if it allows him to enter its territory, this does not mean that he has the right to settle in this country . The region can deport anyone it wants as long as it does not hold its nationality .

As for citizenship, it differs from the concept of nationality . Nationality is the factor that determines the specific geographical place that bears a specific name, and thus it differs from citizenship, which means a sense of belonging to the homeland and loyalty to it . The concept of citizenship also differs from the concept of nationality. Citizenship is a legal relationship between the state and the person under which the person is granted special rights and responsibilities. It does not mean nationality. For example, a person in Mexico can obtain

citizenship by birth , but he does not obtain citizenship until after completing the age of eight . Ten years old .

However, nationality and citizenship can coincide and agree in the set of rights and duties that citizenship grants to a person .

Secondd requirement

The right to hold public jobs (right to employment)

It means the right of every individual who meets certain conditions to hold public jobs in his country, whether this job is political, such as membership in regional or political councils , or an administrative job in the various state departments. This right is supposed to guarantee equality of opportunities for all citizens without causing differences . Origin , language, opinion, or any other reason for excluding someone from holding public office since the conditions set by the law were met. The importance of this right comes in that the right to hold public office in the past was restricted by conditions related to class, religion, political or regional affiliation , or Sectarianism, especially in the old monarchy regimes . The Universal Declaration of Human Rights affirmed this right by saying (Every person has the same right as everyone else to hold public office in the country), as well as the International Covenant on Civil and Political Rights (that every citizen is generally equal with all others). His opportunity to hold public jobs in his country) . It is worth noting that most constitutions in the world limit public jobs to citizens and allow foreigners who have acquired citizenship to hold them except in cases where Exceptionalism is justified by the fact that the public job requires sincerity , dedication, and eagerness to advance it . In addition, it is fair that citizens have the right to employment, excluding foreigners . Because they alone bear many duties towards their homeland that it does not bear The foreigner . The conditions for employment must be general and free in a way that provides all citizens with equal opportunities to occupy public positions. It believes that achieving the principle of equality between citizens in the right to hold public positions requires the establishment of a private body that undertakes the process of selecting applicants to fill those positions by setting general rules that ensure the most efficient selection. Elements to join this career field, apart from personal favoritism, is what was applied in Iraq by establishing the Federal Service Council as an independent body, and it has succeeded in recent years in appointing thousands of citizens to various jobs in a professional and smooth manner Federal Service Council Law , 2009, 116)

The Permanent Iraqi Constitution of 2005 also stipulated that Iraqis are equal without discrimination based on gender, race, nationality, color, origin, religion, sect, belief, opinion, or economic or social status (1), and that equal opportunities are a right guaranteed to all Iraqis. The state guarantees that the necessary measures are taken to achieve this (2). The Iraqi Constitution also addresses the issue of assuming sovereign positions, as it stipulates that an Iraqi may have multiple nationalities, and whoever holds a high sovereign or security position must renounce any other acquired nationality (3). It also defines the status of a member of the Iraqi parliament as He is Iraqi, but he did not clarify the nature of the Iraqi nationality, whether it is original or acquired. By referring to the previous paragraph, we conclude that the Constitution specifies the nationality of the parliamentary member to be original, but the effective Iraqi Nationality Law No. 26 of 2006 stipulates in Article 9/Second

the possibility of appointing a naturalized non-Iraqi. With Iraqi nationality, with the rank of minister or member of a parliamentary body, after a period of ten years from the date of his obtaining Iraqi nationality (4). As for the President of the Republic, it was decided that he must be an Iraqi by birth and of Iraqi parents (5). Therefore, the President of the Republic must hold the original Iraqi nationality and This is because of the symbolism and importance of this position, as he is the head of state, the symbol of the unity of the nation, and the protector of the constitution (6). As for the Prime Minister, the conditions of the President of the Republic apply to him, which means that he must hold the original Iraqi nationality (7) and it applies to the minister and the vice presidents of the republic. The deputies of the Prime Minister shall have the specifications and conditions that apply to the member of Parliament (8). This was stipulated by the Iraqi Civil Service Law No. 24 of 1960, provided that only those who are Iraqis or have been naturalized for a period of not less than five years shall be appointed to state positions. And that Being deprived of foreigners Who holds public office It aims to preserve the interest of the state itself (9)

Results:

Through the above, we reached the following results:

First: One of the most important reasons for multiple nationalities is the freedom and desire of the legislator for independence to regulate the affairs of his nationality according to what meets the political vision and in a way that is compatible with the interests and goals of the state in general.

Second: The non-Iraqi who obtains Iraqi nationality enjoys all the rights and freedoms guaranteed to a citizen with original nationality, in accordance with the permanent Iraqi constitution of 2005 and all other applicable laws.

Third: The Iraqi citizen who holds another foreign nationality enjoys all rights and privileges without restriction or derogation, except for security and high-ranking positions that require renouncing foreign nationality.

Fourth: A non-Iraqi who holds Iraqi citizenship may not be nominated to the rank of minister or member of a parliamentary body except after a period of ten years has passed since he obtained Iraqi citizenship, based on the effective Iraqi Nationality Law No. 26 of 2006, in addition to other conditions specified by House of Representatives Law No. 45. For the year 2013, these are conditions that express the extent of the candidate's competence and deservingness to be a representative of a large segment of the Iraqi people.

Recommendations:

Based on the above, we have come to a set of recommendations, which we mention below:

First: Emphasizing the need for the candidate to renounce his second nationality in order to be able to carry out his job duties according to the mechanism drawn up by the permanent constitution, in order to avoid dual loyalty to more than one country.

Second: The necessity of tightening the conditions for holding senior positions for dual nationals, with the requirement that they be proficient in the Arabic language, both written and spoken, and that they be subjected to a comprehensive test related to the laws, regulations, and instructions in force in Iraq to demonstrate the extent of their culture and knowledge, given the importance and sensitivity of the positions they occupy.

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