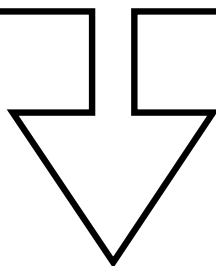


Naturalization by children, a new trend in the provisions of nationality



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الملخص:

القاعدة العامة في الجنسية هي ان جنسية الأب أو الأم تكون سببا لتمتع الأبناء بالجنسية الوطنية بناء على حق الدم المنحدر من الأب أو الأم، وهي الحالة التي تسمى بالجنسية الأصلية. ويليهما حالة كسب الجنسية بالتبعية حين يتحصل الاب أو الام على جنسية دولة ما فان الابناء غير البالغين سن الرشد يكون لهم الحق في الحصول على جنسية الاب أو الام الجديدة. فرضية البحث هنا تقوم على تساؤل مهم يتكون من تصورين وعلى النحو التالي: التصور الأول: ماذا لو ان الابن غير البالغ سن الرشد قد تحصل على جنسية دولة ما هل يمكن للأب أو الأم هنا من الدخول في تلك الجنسية؟ اما التصور الثاني هو: ماذا لو ان الابن البالغ سن الرشد قد تحصل على جنسية دولة ما هل يمكن للأب أو الأم هنا من الدخول في تلك الجنسية؟

Abstract

The general rule in nationality is that the nationality of the father or mother is a reason for children to enjoy with the nationality based on the right of blood descended from the father or mother, which is the case called the original nationality. This is followed by the case of acquiring the nationality by dependence, when the father or the mother acquires the nationality of a country, the children who are not of the age of mature, have the right to gain the new nationality of father or mother.

The research question here is based on an important question consisting of two scenarios, as follows: The first scenario: What if a child who is not yet of the age of mature may acquire the nationality of a country, can the father or mother here gain that nationality? The second scenario is: What if a son who has reached the age of mature may acquire the nationality of a country, can the father or mother here gain that nationality?

Key words : *nationality , relationship , birth , original*

1. Introduction :

Most of the nationality laws in the countries of the world contain almost identical provisions regarding the original nationality and

how it is imposed, whether by the father or the mother, or both, or what is related to naturalization and its multiple forms such as general naturalization or naturalization through mixed marriage or acquiring nationality by dependence (the dependency of the minor to the parents). The idea on which the research is based here is a new hypothesis based on the opposite direction of the previous provisions of nationality, which is the extent to which the son may be a reason for the mother or father to enjoy the nationality of another country.

We do not find a single legal reason that could prevent the realization of this idea, especially since the purpose of the nationality provisions is to regulate the relationship between an individual and a state on the one hand, and on the other hand, the stability of the same family within the scope of the unification of the nationality of its members.

II. First: the original nationality and the scope of the hypothesis:

if the original nationality is based on the blood descended from the father or the mother¹, according to the law of each country, then the basis here is childbirth, and there is no harm if proof of the occurrence of childbirth is delayed as long as it can be proven even after a while, because once the birth is proven, the individual's right to enjoy the original nationality becomes a standing right described by the rule of law.

The discussion here is the normal situation. As for our discussion, it is heading in another way. It is the answer to the following question. If the child can obtain the original nationality of a country through his mother or father, can the father or mother enjoy the nationality of the son?

We give an example for clarification, if the mother has Iraqi nationality and she also has French citizenship and the birth was in France, then the result before us is that the child will enjoy the Iraqi

and the French nationality at the same time, the question now is, can a father obtain French citizenship through his son?

Of course, some people think that there is no need for this way the father can obtain French citizenship through marriage because marriage is one of the ways to acquire a nationality, but this perception is not about us, for two reasons, sometimes we are facing a case of divorce between the spouses, this is the first case. As for the second case, the birth took place one year of marriage, for example, while the wife's nationality law allows for naturalization through marriage after a period of no less than five years has passed, and here it becomes clear the importance of the research idea.

With regard to the original nationality, we here exclude the hypothesis that the son is a reason for the father and mother to enjoy this nationality, and the conversation here if the terms remain the same, in another word more clear, if the term used remains (original nationality)² because this term means that the original (which is here the father or mother) is the one who grants citizenship to the newborn. But in the research hypothesis here is that the meaning on which the term (original nationality) is based is the right of blood that descended from the origin to the branch, which we can do in the sense of the opposite, That is, the right of blood that extends from the newborn to the father or the mother, and it is a hypothesis that fulfills the goal of continuing the bond between parents and children from the original. We must mention information that some people claim to call it the nationality of lineage, the nationality of blood, or filiations.

Returning to the conditions for granting the original nationality in most countries' laws, we find that they are based on two basic conditions, which are the realization of the occurrence of childbirth and the consequences thereof of establishing paternity, and there is no value for the place of birth, whether it is or outside the country, (noting that some countries require that the birth took place in the

country if the birth was the mother), which is a different matter from one country to another with regard to equality between the father and the mother in the conditions for granting nationality to children. By referring to the research hypothesis here, we find that the two conditions are fulfilled or at least can be fulfilled with regard to the granting of nationality from the newborn to the parents by the aspect of verification of birth, proof of lineage and place of birth. The question here undoubtedly will be what is the impediment after all this from parents enjoying the original nationality of the newborn when its conditions are met?

What has been mentioned above is a discussion about a newborn who is not of the age of mature when its above conditions are fulfilled, and this leads us to present an important perception as well. Some may ask and say that the rule in the normal case is that the newborn enjoys the original nationality of his mother or father as soon as the birth is achieved, As decided, for example, Article third of the Iraqi Nationality Law)³ that it is considered an Iraqi who is born to an Iraqi father or mother.

As for here, in front of the research hypothesis, the only beneficiary is the father because it is not possible to conceive of birth without the mother ,indeed, this point can be answered by saying that we are facing a case that the birth took place in the presence of the parents in a country that grants the original nationality on the basis of birth on the region ,and here Parents will benefit together ,the other case is that the birth is in the absence of the father at the moment of the birth of the child and also in a country that grants citizenship on the basis of birth on its territory, and there is nothing that prevents the father from obtaining the new nationality of his child.

In the case if a person is stateless, for example, or a refugee enjoys the right to asylum without knowing his original nationality, then a

child was born to him from his marriage to a British woman, for example in Britain, here according to the law, the British nationality will be established for the child, The question here is, can a father enjoy the nationality of his child? We do not see any hindrance to a father's enjoyment of the nationality of his child in comparison to the normal situation. Meaning that a child born to an Iraqi father or an Iraqi mother, for example, immediately enjoys the Iraqi nationality based on the concept of blood right, What prevents the idea from being reversed in the interest of the father or mother with the same cause and reason available?

On the one hand, and on the other hand, we notice that when the child is born, he is stateless, and this is a strange paradox, in other words, that the child at birth, it is at that particular moment that will start talking about whether or not he has a nationality⁴, so the child is in his mother's womb and before birth even moments, he is stateless, but moments after birth, the question will be about his nationality. We give an illustrative example of this case. If a woman was pregnant during her last days of pregnancy and days before childbirth her husband died and then the birth took place .. Here in most countries' laws the division of inheritance depends on the birth of the child alive or dead..and if mere pregnancy was a cause of inheritance, the division of inheritance would not depend on the birth and the life of the child ..In the sense that the child at the moment of conception is neither an heir nor is he a non-heir .. rather, it is merely a reason for delaying the division of the heir among the heirs .. If the birth took place while he is alive, the heirs will be determined in a way that differs from that which if the birth took place and the child is dead. Based on the above, the child also at the moment of conception while he is in his mother's womb cannot be said to have the nationality of a country, with the evidence that one of the conditions for the child's enjoyment of the nationality of his mother or father is that the birth takes place and that the child is alive at that moment. The consequence of this idea

here is that the child When he is born in a country that grants citizenship on the basis of birth on the territory and the nationality of the child is established at that moment at a time when the father or mother may be stateless according to the aforementioned saying, there is nothing that prevents the father or mother from enjoying the nationality of the child .. As for the other and most important result, it can be To say that this idea has been formed N is one of the causes of eliminating the status of statelessness in some cases, which many international conventions and national legislations attempt to address and reduce⁵. If a woman was pregnant during her last days of pregnancy and days before childbirth her husband died and then the birth took place .. Here in most countries' laws the division of inheritance depends on the birth of the child alive or dead..and if mere pregnancy was a cause of inheritance, the division of inheritance would not depend on the birth and the life of the child ..In the sense that the child at the moment of conception is neither an heir nor is he a non-heir .. rather, it is merely a reason for delaying the division of the heir among the heirs⁶ , if the birth took place while he is alive, the heirs will be determined in a way that differs from that which if the birth took place and the child is dead. Based on the above, the child also at the moment of conception while he is in his mother's womb cannot be said to have the nationality of a country, with the evidence that one of the conditions for the child's enjoyment of the nationality of his mother or father is that the birth takes place and that the child is alive at that moment. The consequence of this idea here is that the child When he is born in a country that grants citizenship on the basis of birth on the territory and the nationality of the child is established at that moment at a time when the father or mother may be stateless according to the aforementioned saying, there is nothing that prevents the father or mother from enjoying the nationality of the

child , as for the other and most important result, it can be to say that this idea has been formed N is one of the causes of eliminating the status of asexuality or statelessness in some cases, which many international conventions and national legislations attempt to address and reduce. We are going to call the above case (reflective mirror), by it, we mean that the case of the child obtaining nationality immediately after his birth from his father or mother is the same may be a reverse case when the child is a reason for the father or mother to obtain the nationality of the child.

Some may go to raise an issue that may be discussed against the above idea, which is that in the original nationality, it is imposed on the young person without his will, and that the legislator always uses the expression (considered or prepared ...) to denote that this nationality is imposed by the force of law and not granted by The competent authority, and that this perception does not match the status of the father or mother, being they are of the age of mature first, and secondly because they are able to either reject or accept. It gained into the will of the individual in it ,, etc., but the other vision is far from that, and it is based on the basis that the original nationality always tries to protect or achieve the best interest of the individual (the child in this description) and this description can be extended to include the father or mother in the hypothesis of research Because it achieves their interest as well, and then the matter will be in the first and last in their hands, either as a rejection or acceptance, because the text that we proposed goes in that direction.

III. Second / acquired nationality and the scope of the research hypothesis:

The above is a discussion about the possibility of parents enjoying the original nationality of the child , the hypothesis here is about the possibility of the parents obtaining the nationality of the son , we mean here the case of acquisition. In the normal situation..the provisions of nationality, which are similar in most of the state's

legislation, is that if a father acquires the nationality of a state, then his children who are not of adulthood will have the right to the nationality of that country , which is the path known as dependency , and this is the case justified by most of the legislations and stipulating conditions, one of those justifications is to protect the family from being separated and because young children need care , Among its conditions are that the child is not of the age of mature, and that he resides with the father, and other conditions set by the legislator in order to ensure the proper implementation of the provisions of this paragraph as it relates to the status of granting citizenship.

Before dealing with this hypothesis in its details, we must clarify the provisions for acquiring nationality in order to find out the most important thing related to the hypothesis of research. We speak here about two cases: the case of a young person who is not of the age of mature acquiring the nationality of another country, and the case of acquiring the nationality of an adult at the age of another country, either by naturalization or by marriage.

IV.1 . The first point / the case of acquiring a young person who is not of adulthood, the nationality of another country and the research hypothesis:

Article 14 / First of the Iraqi Nationality Law stipulates that (If a non-Iraqi acquires Iraqi nationality, his children who are not of adulthood will become Iraqis on the condition that they reside with him in Iraq). Iraqi and he had children who are not adults at the age of mature, so the law here determines their enjoyment of the Iraqi nationality, and the purpose of the law here is to preserve the family and its survival with each other and the need for young people to take care of parents, noting that this text includes the father and mother together, meaning the application of the provisions of this article in the case that the father or the mother has acquired Iraqi

nationality for any of the reasons for acquiring Iraqi nationality. This case is called gaining Iraqi nationality by dependency, and it is intended to subordinate children to fathers in gain the nationality of another country⁷.

The research hypothesis here can be clarified in a way to reformulate the above-mentioned article in the following manner (if a non-Iraqi child of adulthood acquires Iraqi nationality, his parents shall acquire Iraqi nationality on the condition that they reside with him in Iraq). To clarify the above hypothesis, we give an example of that .. An Egyptian woman residing in Braille gave birth to a child. The child enjoys Brazilian nationality immediately after birth, based on the fact that the Brazilian Nationality Law grants nationality on the basis of the exclusive or abstract right of the region. The question presented by the hypothesis here is whether an Egyptian mother can obtain Brazilian nationality based on the nationality of her child ? Does this hypothesis apply to the mother, regardless of his nationality?

We see, according to the hypothesis that we adopt here, is the possibility that the father or mother may acquire the nationality of the child who is not of the age of mature acquired by the child, and we base that a question to prove and why not ? Why not? The reason for the legislation on which the legislator relied in approving Article 14 of the Iraqi Nationality Law is found in the hypothesis that we presented here.

IV.2.Second / The case of the adult acquiring the nationality of another country, either by naturalization or by marriage:

The hypothesis here are divided into two axes, the first axis related to the state of naturalization of the son with the nationality of another country and the possibility of the father or mother acquiring the new nationality of their son, and the second axis related to the son's acquisition of the nationality of another country due to marriage.

The first axis: naturalization of the son with the nationality of another country:

This hypothesis is the case that a son, after attaining the age of adulthood and being independent by himself, was able to acquire the nationality of another country based on the availability of the required conditions for that. To clarify, we say, according to Article 6 of the Iraqi Nationality Law, that the minister may accept the naturalization of a non-Iraqi if there are a set of conditions mentioned in the above article. It is noticeable here that the conversation is directed to the son who is of the age of adulthood, and the question raised by the hypothesis of research here is whether parents to acquire the nationality of their child that he obtained by naturalization? for example: If a German citizen has acquired Iraqi nationality in accordance with the provisions of Article Six of the Nationality Law, can his German parents gain into Iraqi nationality based on the nationality of their child? We think that there is no objection to achieving this, especially since allowing this hypothesis to materialize will inevitably lead to two important results, the first is to close another door in the Statelessness dilemma ... and the second result is to preserve family reunification and the continuation of family ties between parents and children , If naturalization is a grant from the authorities that they decide to whomever it wants, then granting the person's nationality to the competent authority is evidence that he is a good person and fulfills the conditions for integration into society, that he has become a member in that society, and that his social stability is one of the duties of the new state, and one of the reasons for stability is to bring the person together with his family and the closest of his family. His parents are to him if he is not married, noting that marriage is another way to gain the nationality of a

country, and it is the second axis to talk about the extent to which the research hypothesis has been fulfilled.

The second axis: the son's obtaining the nationality of another country because of marriage:

Mixed marriage, as some call it, is one of the ways to gain the nationality of a country, when an Iraqi marries a Romanian woman, and with certain conditions fulfilled, that woman can obtain Iraqi nationality, and vice versa in this example. The original research hypothesis regarding this part can be clarified by saying that a person who acquires the nationality of another country because of his marriage to a foreign woman may raise the question, which is the extent of the possibility of parents acquiring the new nationality of their son? Before searching for an answer to this question, an important point must be clarified, which is that some people may think about the difference between this case and the one that preceded it in the first axis , to clarify, we say, yes, we agree that both of them here are of the age of adulthood, and that there are conditions that must be met related to the period of stay and that the approval of the competent authority must be agreed ... But nevertheless, the situation in the first axis differs in the period in terms of its amount from the second axis .. this First, and secondly, in the first axis, the person himself is the basis for granting citizenship. As for the second axis, marriage to a national woman is the basis for granting nationality, and we also reinforce the hypothesis of research by answering this question through an important point, which is that if marriage is a reason for granting citizenship and the purpose behind it is the survival of the spouses together and the keenness to reunite that family consisting of the spouses, It is a matter of priority for the parents to be covered by these reasons and motives, especially if the father or mother needs care from the son because of old age, illness, or other reasons.

Conclusion /

The research idea came with a new hypothesis or trend in the provisions and texts of the nationality laws in the countries of the world, which almost agree on the basic and basic guidelines regarding the acquisition of nationality and the reasons for acquiring it, because the idea of the research goes further than that through what we call the idea of (the reflective mirror), which is the possibility of the son shall be a reason for granting nationality to the parents, whether he is not of adult age, or after he has reached the age of mature through normal naturalization or through marriage. The research did not find a legal obstacle that was mentioned in the nationality law of any country, rather we believe that the case has been silenced for not searching.

References :

¹- Although most of the world's constitutions tend to leave the details and provisions of nationality to a law issued by the legislative authority, other world constitutions have included important details about nationality in the heart of the constitution itself, including, for example, the Iraqi constitution of 2005 in Article 18 thereof, and the constitution of Egypt

² - Firas Karim She'an, The Principles for Determining the Original Nationality, published on the World Wide Web website
<http://www.uobabylon.edu.iq/uobcoleges/lecture.aspx?fid=7&depid=2&lcid=6897>

³- This is what is decided by most nationality laws in the countries of the world, including, for example, the Romanian Nationality Law No. 21 of 1991 in Article 5, as well as the Tunisian Nationality Code No. 55 of 2010 amended by Article 4 thereof.

⁴- With regard to this point, we support our opinion with what was stipulated in the Convention on the Rights of the Child of 1989, specifically in Article 7, paragraph 1, which stipulates (the child is registered immediately after his birth and has the right from birth to a name and the right to acquire a nationality), and also the second paragraph that affirms (States parties shall guarantee the implementation of these rights in accordance with their national law ... especially where the child is considered stateless.

For example : The United Nations Convention Relating to the Status of Stateless Persons of 1954. Also : The United Nations Convention on the Reduction of Statelessness of 1961. -⁵

⁶- Note, for example, in the Iraqi Personal Status Law No. 188 of 1959, as amended, specifically in Article 2, C / 2 /, that one of the conditions for inheritance is the fulfillment of the life of the heir after the death of the inheritor

⁷- - In this regard, it is noted that there are two trends for the jurists: the one that adopts the theory of choosing the minor for the subsequent nationality, which requires the consent of the minor or his legal representative, and the theory of the collective effect of acquiring subsequent nationality, which provided a set of evidence to support its opinion, including the ease of determining the applicable law or the desire of the donor country ... we find that the search for an acceptable reason for granting citizenship to an individual without his consent in relation to a non-adult is a matter that diverges from the purpose of granting citizenship .. because our point of view is whether or not the availability of satisfaction is not what the case here is based on as far as looking at the purpose of Grants, which are the best interest of the child. For more information about the attitudes of the jurists, see Dr. Iyad Mutashar Sihoud, Foundations of Private International Law, Dar Al-Sanhouri, Lebanon, 2018, p. 65.

