



LOSS AND RECOVERY OF NATIONALITY IN IRAQI LAW

Prof. Fadwa Al-kahwaji
Lect Prof. Law and Criminology /
Faculty of Law and Political Sciences of Tunis
kahouajif@gmail.com

Zeyad Tariq Ibrahim
Sfax University Faculty of Law, Tunisia
E-mail: Zeyad.albaitar@uosamarra.edu.iq

A B S T R A C T	KEY WORDS
<p>This study aimed to clarify the provisions of loss and restoration of nationality in Iraqi legislation, by defining the nature of loss of nationality and the cases of loss and restoration of it, where the descriptive and analytical approach was relied upon, and the reason for the loss is due to the will of the individual, which is based on his freedom to change Iraqi nationality and obtain foreign nationality. Or the will of the state by stripping the person who acquired Iraqi citizenship of it or withdrawing his citizenship from the person concerned if the reasons for it are available. Losing Iraqi citizenship has special effects, and the recovery procedure according to Iraqi law is limited to those who had original Iraqi citizenship and lost it due to one of the reasons for the loss. Finally, we recommended that it was It would be better for the Iraqi legislator to stipulate residency in Iraq as a condition for the woman to regain her Iraqi nationality, which she renounced because she acquired the nationality of her foreign husband. This condition will undoubtedly work to re-instill the spirit of loyalty to the state and integration into Iraqi society after the end of the marital bond that required her to renounce her Iraqi nationality. Hence, its spirit of citizenship was weakened and its loyalty to the Iraqi state weakened.</p>	<p>Loss of nationality, restoration of nationality, Iraqi Code of Procedure.</p>

Introduction

Nationality is a bond that a citizen enjoys, and enables him to exercise his legal and political rights in accordance with the conditions specified by the laws that the state sets for this purpose. The right of the state to regulate the methods of acquiring its nationality and to identify its nationals according to

its independent will and what its basic interests require is one of the most important principles approved by the rules of public international law in the field of Nationality was adopted by international jurisprudence and jurisprudence, and was enshrined in international agreements and councils ⁽¹⁾.

Every human being has the right to acquire a nationality, and no person may be arbitrarily deprived of his nationality, nor of the right to change his nationality.” This is what was stated in the Universal Declaration of Human Rights, issued in 1984, where it indicated that for every individual, everywhere in the world, there is the right to have a legal connection to a country (). Every country has the freedom to organize matters of granting and withdrawing nationality according to what it deems compatible with its national security and consistent with international rules, and this is what the Iraqi state has done. This research will be divided into Several aspects of research on an important topic, which is the loss of nationality in Iraqi law.

The first topic

The nature of nationality and its elements

The link of nationality is of great importance in the modern era in both the life of the individual and the life of the state. It is the criterion by which the legal and geographical distribution of individuals between countries is carried out, specifying each country’s share of individuals who constitute the pillar of its people. A corner of the territory has no value without a people who populate it, and there is no ruling authority. Without the existence of a people addressed by the rules set by the authority, the effect of nationality is not limited to the internal entity of the state only, but rather this effect extends to the entire system of the international community. The life of common states requires the existence of a clear standard that defines the boundaries of the people of each of them. ⁽²⁾.

The first requirement

Definition of nationality

Nationality is considered the criterion by which individuals are distributed geographically within the international community that consists of states. These individuals are distributed among these units in the form of groups, and each group of these individuals is a pillar of the people in the state. The state consists of three basic pillars: the territory, the authority, and the people.

Nationality has great importance in the lives of individuals and the state alike, and rights and obligations arise from the bond of nationality between the individual and the state. The matter is not limited to the state’s internal system, but extends to the system of the international community, where nationality is considered one of the topics where these two systems most often meet, as A state's recognition of another state requires its recognition of the freedom of this state in its role to determine the race of its people. Thus, the distribution of individuals internationally on this basis is a site of conflict between the basic interests of these various countries, and it is a situation in which research

1- Fahmy, Muhammad Kamal (1989), The Origins of Private International Law: Nationality, Homeland, Al-Janab Center, Cairo, University Culture Foundation.

2- Al-Hadawi, Hassan (2001), Nationality and its Provisions in Jordanian Law, Amman, Majdalawi Publishing House, p. 5.

arises as to the extent of the state's freedom in matters of nationality vis-à-vis other states, as to whether this freedom is absolute or restricted.⁽³⁾

The general concept of nationality can be defined as a legal and political idea through which an individual belongs to a specific state. It is the standard by which the legal distribution of individuals in the international community takes place and which determines each state's share of individuals who are the pillar of its people.⁽⁴⁾

Nationality is also defined as: a political bond by which an individual becomes part of the permanent constituent elements of a particular state, or it is a legal bond that attaches a person to a specific state, or it is a political and legal bond between an individual and a state that obligates him to be loyal to it and obligates him to protect him and grant him the benefits resulting from this bond.⁽⁵⁾

There is a trend that has focused, in its definition of nationality, on the role that nationality plays in the relationship of the state granting nationality to the individual. Therefore, this trend defines nationality as a quality whose granting by the state results in its personal jurisdiction over the individual, which is invoked before other states. Accordingly, the state is the only one that It creates and grants citizenship, and also has the right to deprive an individual of it, and therefore no body, international organization, or individual may do so.⁽⁶⁾

Despite the differences over the concept of nationality, these differences were not fundamental as much as they were differences over clarifying and expanding the concept of this nationality. The difference is also due to legal scholars originally differing in classifying nationality as a branch of law. Some believe that it is a branch of public law. Others see it as one of the branches of private law, but despite these differences, we find that they are unanimously agreed that nationality is a bond or relationship between a person and a state that has its effects, results, and mutual repercussions on the state and the person, and therefore it is not devoid of being a dependency relationship governed by legal, political, and social considerations that determine it. The countries that created and organized it⁽⁷⁾.

The second requirement

Pillars of nationality

By analyzing the term nationality, it becomes clear to us that nationality is a legal system established by the state to determine the people's position within it and through which the individual acquires the status of belonging to it. It is clear from this definition that nationality is based on three pillars, which are as follows:

The first pillar: The state granting citizenship

The state is considered a party to the bond of nationality, and it is the one that creates and grants nationality. It is the source of nationality, but considering that the state is a party to nationality is a

3- Zanati, Essam Muhammad (1997), Protecting Human Rights within the Framework of the United Nations, Cairo, Dar Al-Nahda Al-Arabiya, p. 13.

4- Riad, Fouad Abdel Moneim (1990), Egyptian Nationality: A Comparative Study, Cairo, Dar Al Nahda Al Arabiya, p. 7.

5- Shawqi, Badr El-Din Abdel Moneim (1995), The Mediator in Private International Law, Cairo, (D.N.), p. 43.

6- Salama, Ahmed Abdel Karim (1993), Al-Mabsut fi Explanation of the Nationality System, Cairo, Dar Al-Nahda Al-Arabiya, pp. 25-26.

7- Al-Hadawi, Hassan (2001), Nationality and its Provisions in Jordanian Law, Amman, Majdalawi Publishing House, p. 55.

pillar of it because that bond decomposes into a binding relationship between the individual and the state that arranges rights for each individual and bears some costs towards the state. Thus, we find that the law The international community does not determine the right to grant citizenship to anyone other than the state and not to other persons under international law. Therefore, international organizations, despite their enjoyment of international legal personality, may not grant citizenship to individuals. For example, the United Nations may not decide universal citizenship for an individual because it does not have the power to impose this type of dependency. This does not change the fact that the United Nations has granted its employees movement passports that allow their holders to travel from one country to another. This passport has limited meaning, as it is merely a document proving the individual's affiliation to the United Nations from a purely administrative standpoint, and in this capacity it is recognized by all countries. It is also a matter of I also ask whether any other regional organization can grant citizenship to an individual ⁽⁸⁾.

The right to establish nationality is limited to the state, as it alone has the right to establish this right and grant it to the individual who lives on its territory and is subject to its sovereignty. The state, as a party establishing the nationality bond, means the political unit that enjoys international legal personality and the status of a state at the same time. It is also defined as a homogeneous group of individuals living permanently. In a specific territory and subject to organized public authority ⁽⁹⁾.

Also, countries or states that unite with each other form a kind of federation, as is the case in the United States of America, and although each state enjoys a kind of administrative and legal independence, it does not have the right to establish its own nationality. Rather, the nationality created by the federation of states extends its effects to all Citizens of the United States. As for the relationship of the individual in each state, it is a pastoral relationship and does not amount to the meaning of citizenship. The same applies to the International Federation, as the individual is a member of the state entering the union. Likewise, the state that has the right to establish citizenship is not required to be fully sovereign, but rather to Countries lacking sovereignty by virtue of occupation still have the right to establish citizenship, as is the case in Palestine, which is subject to the Zionist occupation .()

The second pillar: the individual

Nationality can only be given to a natural person, because natural persons are the only ones who constitute the people element in the state. However, a kind of metaphorical nationality can be applied to some things, such as airplanes, and legal persons, such as companies, so it is said about this plane that it is an American plane, and about this company that it is German, and the goal behind that is Linking this thing or legal person to a specific state in order to subject it to its laws and clarify the rights and obligations arising from it. This is only for economic and material purposes and not human ones, as is the case for a natural person whose right to nationality is linked to the fact that he is a member of the people of this state. ⁽¹⁰⁾.

Also, in order for a natural person to acquire citizenship, it is not required that he have full capacity. Rather, he may be incomplete or lose capacity, as it is sufficient for him to have legal personality.

The third pillar: the existence of a nationality bond between the individual and the state

8- Al-Wakil, Shams Al-Din (2002), Al-Mawjiz fi Nationality and Status of Side, Alexandria, Manshaet Al-Maaref, p. 31.

9- Salama, Ahmed Abdel Karim, previous reference, p. 30.

10- Al-Wakil, Shams al-Din, previous reference, p. 66.

Based on the bond of nationality that the legislator has defined, all the rights that the law has guaranteed to the individual, specified for him, and guaranteed him the right to enjoy them, as well as all the mutual obligations and duties between him and the state whose nationality he enjoys. This means that the individual, once he enjoys the nationality of his state, has many private and public rights, such as the right to own property and the right to vote. He has certain duties that prove his sincerity to this state, such as performing military service, but in return, the state has the burden of defending its members and protecting their legitimate interests inside and outside its borders. ⁽¹¹⁾.

This bond is a legal and political bond, but the concept of the legal bond between the individual and the state does not mean that it is a contractual bond created by the union of the will of the individual and the will of the state, but rather that its concept is based on loyalty to the state as a political entity.

The second topic

Loss of nationality in Iraqi law

In this study, the loss of nationality in Iraqi law will be shed light, by defining the concept of loss of nationality as follows:

The first requirement

Definition of loss of nationality

Loss is defined as the loss of citizenship from a person's legal life after enjoying it for a period of time for voluntary or involuntary reasons. Therefore, the will of the person plays a role in determining the nature of the loss, and accordingly the loss is divided into two types:

First - voluntary loss (loss by change)

It is the loss of nationality from a person by his will. In light of this loss, the will is directed toward acquiring the nationality of a country, and the effect of that loss is to prevent dual nationality, meaning that the acquisition of a new nationality is a reason for losing the old nationality. Legislation has differed regarding the mechanism for the loss to occur. Some legislation It stipulates that when a person acquires a foreign nationality, he loses his previous nationality by force of law without the need for the approval of the state whose nationality was lost. The loss is achieved here as a direct effect of entering into the new nationality, as the legislation stipulates that the acquisition of nationality must have occurred at the request of the person or based on his desire. Or by his choice or will. Indeed, some legislation stipulates that a person loses his previous nationality by force of law if he acquires another nationality, whether by his will or otherwise, while other legislation stipulates that the loss occurs after the person fulfills some obligations towards his country, such as performing educational service or obtaining... Obtaining previous permission from the government of his country and submitting a request to renounce citizenship ⁽¹²⁾.

1. Second: Involuntary loss (loss by stripping)

2. It is the loss of nationality from a person's life by an act beyond his control. Most often, loss in this situation comes with an administrative procedure that leads to stripping the person of his nationality. The Iraqi legislator expanded the previous law on cases of involuntary loss and attributes the reason for this to the fact that the regime previously prohibited work and Opposition political activity and every work for the benefit of a state or entity outside Jordan is described as an illegal act,

11- Al-Wakil, Shams al-Din, previous reference, p. 74.

12- Al-Wakil, Shams al-Din, previous reference, p. 33.

and expresses weak loyalty to the state, and every person who joins it and practices it is out of loyalty, and therefore not worthy of continuing to hold Iraqi citizenship. The Egyptian legislator was part of this trend in the law Citizenship No. 26 of 1975, amended, as well as the Iraqi legislator.

3. Involuntary loss occurs in two ways: withdrawal and projection.

4. Withdrawal: It is an administrative measure most often taken by the executive authority in the state concerned with nationality affairs. It stipulates that a person or group of people be stripped of their national citizenship for performing an act that expresses weak loyalty. It is a measure directed at original patriots, while some of them limit this procedure to Emergency nationals, and the legislative texts regarding withdrawal apply to specific cases, but not as an example, due to the danger involved in withdrawal, as it leads to the person being forcibly removed from the nationality of the state.⁽¹³⁾

5. Revocation: It is an administrative measure taken by the executive authority competent in the state with regard to nationality affairs and in the face of persons that the state determines are not worthy of holding its nationality. We find, more often than not, that this measure is arbitrary, dictated by political considerations, and is mostly directed towards original and emergency citizens, and is used by the authority concerned with matters of nationality. Nationality according to the political position of the state towards some people without there being clear legislative texts. Revocation is a procedure that is not based exclusively on pre-determined legislative texts as in withdrawal, but rather it is based on administrative decisions dictated by immediate political considerations, and cases of revocation change according to the political position of the people.⁽¹⁴⁾

Loss of nationality also affects the person and his family members:

1- Individual effects

After a person loses his national citizenship, he is treated as a foreigner with regard to civil and political rights and his movement and movement across international borders. He is subject to the procedures of entry, exit and residence of the foreigner in relation to the country whose nationality he held, and every country whose nationality he does not hold is either treated as an absolute foreigner in relation to For all countries of the world in the case of being stateless after loss, the most exposed to this situation are those whose nationality has been revoked, so jurisprudence urges the necessity of avoiding revocation and minimizing its effects. The person who has lost nationality may be treated as a foreigner in proportion to the state whose nationality he does not hold, and his national status is in relation to the state whose nationality he has. He holds its nationality, and the foreigner is also subject in all cases to the procedures for granting an entry visa and residence permit. If he owned a property before the loss and became a foreigner after that, he must sell it by consent or judgment. If he is an employee, his services will be terminated because he lost one of its conditions, which is holding the state's nationality. If If he is a retiree, the payment of his retirement benefits will be stopped. All of these consequences resulting from the loss of citizenship come after his registration in the civil status registry is upgraded and the citizenship document is withdrawn. The person who has lost citizenship after that also may not practice professions or businesses except after obtaining the approval of the competent authorities in the state and in Iraq. These approvals are granted by the

13- Salama, Ahmed Abdel Karim), previous reference, p. 41.

14- Al-Wakil, Shams al-Din, previous reference, p. 39..

Ministry. Work and social affairs through the relevant departments. He may not reside for more than the period specified in the decision to lose nationality or stated in his passport if he enters the country after losing its nationality. Exceeding the period of residence will result in fines and deportation procedures.

In the case of someone whose nationality has been revoked, his burial in the state's lands entails paying some fees. The state does not interfere after a person loses its nationality in protecting him diplomatically abroad because his contact with it has been cut off due to his losing its nationality. He can be extradited for a crime to a country that claims him if there is an agreement. Between his country of residence and that country, it orders the extradition of criminals. The country of residence may also expel and deport him if he violates the rules of order and security.⁽¹⁵⁾.

2- The collective effects of loss of nationality

The effects of a person losing his nationality extend to his family members, including his wife and children. For the wife, after losing her nationality as a result of her husband losing his nationality under the traditional trend, she has now become, under the modern trend, independent in the matter of her nationality, as in acquiring it, as well as in losing it. If her husband loses his nationality She does not lose her nationality by consequence, but rather her loss of her nationality depends on her will. If she wants to keep it, she keeps it, and if she wants to abandon it and enter into her husband's nationality, then this loss will result. This was the position of the Iraqi legislator, as well as most legislation in this direction.⁽¹⁶⁾.

As for children, we differentiate between adults in ruling. The father's loss of his nationality has no effect on their nationality. They are independent of their nationality because they possess a will independent of the father's will and a capacity that enables them to act independently.

As for immature children, they lose nationality depending on the father's loss of his nationality. In most cases, immature children are affected if they reside with the father.

There is one case of loss that applies to all family members, including a wife and adult and non-adult children, which is the case of loss due to obtaining citizenship based on false statements, forged statements or information. If a person obtains citizenship through this method and all members of his family enter with him based on his nationality, If the father loses it because he obtained it in this way, everyone who entered with him will lose it as a result of him. As for those who did not enter with him because of fraud, but rather obtained it due to a valid reason and real information, they are not affected by the father losing his nationality, even if they are not yet adults.⁽¹⁷⁾.

The second requirement

Loss of nationality in Iraqi law

The Iraqi legislator specified four cases of loss of nationality in Nationality Law No. 26 of 2006. The Iraqi legislator stated in Article (10/1) that states: "An Iraqi who acquires a foreign nationality shall retain his Iraqi nationality unless he declares in writing that he has renounced his Iraqi nationality." This means The acquisition of a foreign nationality does not entail the loss of his Iraqi nationality,

(Salama, Ahmed Abdel Karim, previous reference, p. 44.

(Al-Wakil, Shams al-Din, previous reference, p. 41.

)Salama, Ahmed Abdel Karim, previous reference, p. 47..

that is, the acquisition and loss do not occur at the same time, as was the case in the repealed law (11/1). The conditions of the text are:

1- That an Iraqi, an original or accidental citizen, acquires foreign nationality, whether inside or outside Iraq, and that the text is absolute. We believe that the acquisition in most cases is achieved after legal residence on the territory of a foreign country, meaning that the acquisition is abroad, just as it is the same as acquiring the nationality of an Arab or non-Arab country. Because what is meant by the term foreigner is non-Iraqi, which includes Arabs and foreigners. In addition, it is not acceptable for an Iraqi to renounce his Iraqi nationality if he does not acquire a foreign nationality so that he does not fall into statelessness.

2- To declare in writing his renunciation of Iraqi nationality. This means submitting a request declaring the renunciation and withdrawal of Iraqi nationality to Iraqi consulates and embassies abroad. In most cases, the text does not apply, and therefore the Iraqi does not lose his nationality if he verbally announces renunciation, because the text is limited to Abandonment is in writing, but the text does not specify the legal period for submitting the application.

3- The Minister of Interior's approval of the renunciation request after referring it to him from abroad. This means that the written request for renunciation does not automatically lose the Iraqi's nationality except after it is coupled with approval. The Iraqi loses his Iraqi nationality from the date of the Minister's approval, and he is treated like a foreigner from this date. This also means that the date of acquiring foreign citizenship does not coincide with the date of losing Iraqi citizenship, just as the date of submitting the renunciation request does not coincide with the date of losing Iraqi citizenship, as the loss occurs from the date of the Minister's approval of the renunciation request

The third topic

Cases of recovery of Iraqi citizenship

Iraqi citizenship is restored under the Iraqi Nationality Law in two cases. The first is to restore Iraqi nationality after losing it by choice, and the second is to restore Iraqi nationality after losing it by law.

The first requirement

Recovering Iraqi nationality after losing it by choice

Iraqi nationality is regained after losing it by choice in two cases: the first is the recovery of Iraqi nationality after losing it by choice in order to acquire a foreign nationality, and the other is the woman's recovery of her Iraqi nationality after she lost it by choice in order to acquire her husband's nationality. We will discuss each of the two cases in a separate section as follows:

The first section: Reclaiming Iraqi nationality after losing it by choosing to acquire a foreign nationality.

The second section: The woman regains her Iraqi nationality after losing it by choice because she acquired the nationality of her foreign husband.

First branch

Recovering Iraqi nationality after losing it in order to acquire a foreign nationality

Paragraph (Third) of Article 10 of the Iraqi Nationality Law stipulates this case for the recovery of Iraqi citizenship. In order to recover Iraqi citizenship in this case, the following conditions must be met.¹⁸:

The first condition: An Iraqi must voluntarily renounce his Iraqi nationality in order to acquire a foreign nationality exclusively in accordance with the provisions of Paragraph (First) of Article Ten of the Iraqi Nationality Law. However, if he lost Iraqi nationality for another reason, the person who lost it cannot regain Iraqi nationality in accordance with Paragraph (Third) of Article Tenth of the Iraqi Nationality Law. In this regard, it is equal that the person acquired foreign nationality while residing in Iraq or residing in the foreign country whose nationality he acquired or in another country.¹⁹.

The third condition: The person must reside in Iraq after returning to it for a period of no less than one year, starting from the date of his return to Iraq. This residence must be legal in accordance with the provisions of the Foreigners' Residence Law. The purpose of this residence is to ensure that the person's connection with Iraqi society returns again. In this regard, it is not required that the person sever his relationship with the country of his foreign nationality during his stay in Iraq.

Fourth condition: The person must declare in writing his desire to regain his lost Iraqi nationality before the end of the one-year period required for his residence in Iraq, after his return. He may submit a request to restore Iraqi nationality during the aforementioned period, but if this period expires without submitting an application Recovery: In that case, his right to claim the recovery of Iraqi citizenship will be forfeited, and in that case he must leave Iraq if his residency period expires and return there for another period of residence for a full year for the purpose of submitting a request to restore Iraqi citizenship.

Fifth condition: The competent authority represented by the Minister of Interior must approve the request to recover Iraqi nationality submitted by the person who lost it, because recovery in this case and in accordance with the text of Paragraph (Third) of Article Ten of the Iraqi Nationality Law does not take place automatically by virtue of the law and once its conditions are met, but rather must be approved by the Minister Interior, and this authority granted to the latter is permissible and not obligatory, as the Minister of Interior has the authority to approve the request, and his rejection is subject to appeal before the administrative courts, which requires the Minister of Interior to cause his decision to reject the request to restore Iraqi citizenship. . In this regard, the Minister of the Interior has the right to delay the decision on the request to recover Iraqi nationality to the extent he wishes, because the legal text does not restrict him to a specific period in this regard. In fact, the researcher criticizes the position of the Iraqi legislator in not obliging the Minister of Interior to decide on the request to recover Iraqi nationality within A certain period, which paves the way for the competent authority to procrastinate in responding to the restitution request, whether by approval or rejection. It would have been better for the Iraqi legislator to restrict the Minister of Interior and oblige him to

()Paragraph (Third) of Article Ten of the Iraqi Nationality Law stipulates that: "An Iraqi who has renounced his Iraqi nationality may regain it if he returns to Iraq legally and resides there for not less than one year, and the Minister may consider him, after the expiry of that period, as having acquired Iraqi nationality from The date of his return if he submits an application to regain Iraqi citizenship before the end of the aforementioned period, and he does not benefit from this right except once.

.(Badr al-Din Abdel Moneim Shawqi - International Private Relations - Third Edition - Al-Ashry Press - Cairo - 2005 - pp. 222 et seq.

decide on the restitution request within a specific period of time. Conversely, the applicant is considered to have regained his Iraqi nationality, which he had previously lost.

It is noted in the text of Paragraph (Third) of Article Ten of the Iraqi Nationality Law that it gives anyone who has lost his Iraqi nationality the right to regain it only once. Therefore, if the person who lost Iraqi nationality regains it and then loses it by choice again, he does not have the right to request its restoration a second time, and he did well. The Iraqi legislator, in this regard, is to achieve the required and necessary stability and constancy in citizenship according to public principles, and so that Iraqi citizenship is not a cause for trembling and lack of confidence in it when an individual can give it up and regain it more than once.

Returning to the text of Paragraph (Third) in Article Ten of the Iraqi Nationality Law, it becomes clear to us the clear confusion in the linguistic and legal formulation that the Iraqi legislator entered into in the following aspects:

.1The Iraqi legislator notes that he is unique from the rest of the legislators in the Arab countries with a legal text that has no equivalent in comparative Arab nationality legislation. The Iraqi legislator did not explicitly keep up with the trend that decides to grant the competent authority the power to restore citizenship to the person who lost it after submitting a request to do so, nor did he explicitly keep up with the trend. The other trend decides to regain citizenship by the person who lost it by force of law once some conditions are met.

.2It is noted in the Iraqi text that it allowed the person who lost Iraqi nationality to regain it if he submitted a request to do so after returning to Iraq legally and residing there for no less than one year, but at the same time it allowed the Minister of Interior to approve the request to recover Iraqi nationality or not, and it was up to the Iraqi legislator either. To give the person who has lost Iraqi nationality the right to regain the lost nationality by law as soon as the previous conditions are met, or to give the minister the power to decide on the recovery request by approving it or not, rather than clarifying the two rights within the text of a single law.

.3It is noted that the Iraqi text gives the person who has lost Iraqi nationality the right to regain it, then gives the minister the right to consider him as having acquired Iraqi nationality. It is known that there is a vast difference between acquiring nationality and recovering it. The first means the naturalization of a foreigner with the nationality of the state for the first time after the availability of one of the naturalization cases mentioned in the text. It is limited to the Iraqi Nationality Law and does not include restoration. As for the latter, it means the return of a person to a nationality that he had previously lost. Cases of restoration are also included exclusively in the Iraqi Nationality Law and do not include the acquisition of nationality. It is clear from the above the difference between restoration and the acquisition of nationality and he was free. The Iraqi legislator should unify the terminology in the legal text under discussion and abbreviate the term (recovery) instead of adopting terminology that would lead to a clear legal flaw and confusion.

.4It is noted that the Iraqi text includes a general rule stating that a person who has lost Iraqi nationality has the right to regain it if he returns to Iraq legally and resides there for no less than one year. This means that he regains nationality after a period of one year has passed since he resided in Iraq legally and then the Iraqi legislator returns. He decided as an exception to the general rule that the Minister of Interior has the right to consider a person who has lost Iraqi citizenship as having acquired (recovered) citizenship from the date of his return if he submits an application to regain citizenship before the end of the one-year period. The truth is that the legal text addresses an issue

that is very clear in terms of the problem and the solution, and the matter cannot be stipulated in a general rule and an exception in one legal text, in addition to the confusion and anxiety that this leads to in the position of the person who has lost Iraqi nationality, as he does not know whether he will regain Iraqi nationality after the year has passed based on the rule. Or will he be considered to have acquired Iraqi nationality from the date of his return based on the exception established under the text? It would have been better for the Iraqi legislator to abolish such an exception and be satisfied with the general rule only as in comparative Arab nationality legislation.

.5It is noted that the Iraqi text allows a person who has lost Iraqi nationality to submit an application to regain Iraqi nationality before the end of the one-year period required for his legal residence in Iraq. Accordingly, the Minister of Interior may accordingly consider him, after the expiration of the one-year period, to have acquired (recovered) Iraqi nationality from the date of his return.

The truth is that all of this is completely illogical. It is unreasonable for the legislator to decide that a person who has lost Iraqi nationality must reside in Iraq for at least one year in order to be able to request the restoration of Iraqi nationality, and then come back and decide in the same text that it is permissible for a person who has lost Iraqi nationality to submit a restoration request. Before the expiration of the aforementioned period!

The researcher wonders about the feasibility of requiring residency in Iraq for at least one year if a person who has lost Iraqi nationality can submit a recovery request before the end of a year?

What is the point of considering a person who has lost Iraqi nationality regained it after the one-year period necessary for his residence in Iraq has passed if he can regain it from the date of his return to Iraq if he submits a request to do so before the end of the one-year period?

In order to answer the previous two questions, the researcher believes that it would have been better for the Iraqi legislator not to allow the person who has lost Iraqi nationality to regain nationality before at least one year has passed since his legal residence in Iraq, and to also close the door to the competent authority to use this exception whenever he wants or not, regardless of whether or not he wants. Certain controls.

6.The exceptions stipulated in the legal text will undoubtedly lead to harm to the interests of well-intentioned third parties who deal with the person who has lost Iraqi nationality as a foreigner during the one-year period during which he resides in Iraq, which is necessary for him to regain Iraqi nationality, and then they are surprised by the decision of the Minister of the Interior, considering him as having acquired it (Reclaimed Iraqi citizenship from the date of his return to Iraq after submitting an application for this within the period of one year.

In our opinion, the interests of good-faith third parties are more important to be taken care of than the interests of the person who lost Iraqi nationality who renounced it willingly, and this care requires canceling this exception and adopting the general rule that determines the permissibility of recovering Iraqi nationality from the date of submitting the application after returning to Iraq and residing there for not less than one illegal year. .

Based on all of the above, we propose to the Iraqi legislator to amend the text of Paragraph (Third) of Article 10 of the Iraqi Nationality Law so that the wording after the amendment becomes as follows: (An Iraqi of Iraqi origin who has renounced his Iraqi nationality has the right to regain it if he returns to Iraq and resides there lawfully for a period of time. It shall not be less than one year after an application is submitted to the Minister of the Interior and a decision is issued by him, or after a

period of six months has passed since the application was submitted without a decision being issued, and this right may only be used once.

Second section

The woman regains her Iraqi nationality after losing her choice by acquiring the nationality of her foreign husband

This case for the recovery of Iraqi nationality is stipulated in Article (13) of the Iraqi Nationality Law, and it is noted in the introduction to this article that it indicates that a woman who renounced her Iraqi nationality in accordance with the provisions of Clause (Third) of Article (10) of the Iraqi Nationality Law has the right to regain it. Her Iraqi nationality is granted after certain conditions are met.

We would like to make the following comments on this introduction, as follows:

.1After an Iraqi woman loses her Iraqi nationality, she is no longer considered an Iraqi, but a foreigner. Therefore, the Iraqi legislator had to refer to the woman without describing her as Iraqi, because she has given up Iraqi nationality and does not enjoy it.

.2The truth is that the researcher does not see any connection between a woman's renunciation of her Iraqi nationality and Clause (Third) of Article (10) of the Iraqi Nationality Law. This clause relates to the recovery of Iraqi nationality by the person who lost it, and has nothing to do with the woman losing her Iraqi nationality. Rather, the text The relevant law is Article (12) of the Iraqi Nationality Law.

.3The researcher believes that what the Iraqi legislator indicates about the necessity of having certain conditions to regain Iraqi nationality in this case are not in fact conditions, but rather cases for a woman to regain her Iraqi nationality, as evidenced by the legal wording of clauses (first) and (second), as each of the two clauses refers to an independent case. To restore the woman to her Iraqi nationality.

On this basis, we will consider the woman's recovery of her Iraqi nationality, which she had previously renounced because she acquired the nationality of her foreign husband, in two cases stipulated in Article (13) of the Iraqi Nationality Law, as follows:

First: The woman regains her Iraqi nationality so that her husband becomes naturalized with Iraqi nationality or her marriage to an Iraqi national.

This case for the recovery of Iraqi citizenship is stipulated in the first paragraph of Article (13) of the Iraqi Nationality Law. To recover Iraqi citizenship under this case, the following conditions must be met:

The first condition: that the woman renounces her Iraqi nationality by choice in order to acquire the nationality of her foreign husband in accordance with the provisions of Article (12) of the Iraqi Nationality Law. However, if the woman loses her Iraqi nationality for reasons other than marriage, she is not covered by this paragraph and cannot regain her lost Iraqi nationality in accordance with it, and within this scope The marriage must be valid and effective in accordance with the Iraqi Personal Status Law No. (188) of 1959, based on the fifth paragraph of Article (19) of the Iraqi Civil Code, which stipulates that Iraqi law applies to marriage if one of the spouses is Iraqi at the time of the marriage. It also applies that The Iraqi nationality renounced by the woman shall be original or acquired.

The second condition: That her foreign husband acquires Iraqi nationality through one of the methods of acquiring Iraqi nationality, or that she marries a person who has Iraqi nationality after the end of

her first marital relationship, which was the reason for her acquiring a foreign nationality and abandoning her Iraqi nationality, and the Iraqi nationality that the husband enjoys in this case must be equal. The latter is an original or acquired nationality.

The third condition: The woman must declare her desire to regain her Iraqi nationality in a written form, with a request submitted to the Minister of the Interior, and her lost Iraqi nationality will be restored to her by law, starting from the date she submits the restoration request, without the need for the approval of the Minister of the Interior or the requirement of her residency in Iraq or any other procedure.

Second: The woman regains her Iraqi nationality due to the end of her marital relationship

This case for the recovery of Iraqi citizenship is stipulated in the second paragraph of Article (13) of the Iraqi Nationality Law. To recover Iraqi citizenship under this case, the following conditions must be met:

The first condition: That the woman voluntarily renounces her Iraqi nationality in order to acquire the nationality of her foreign husband. In this regard, we refer to what was previously presented in the first condition of the first case of the woman regaining her lost Iraqi nationality.

The second condition: That her marital relationship with her foreign husband ends with his death, her divorce from him, or the annulment of their marriage contract.

The Iraqi legislator is criticized for stating these reasons by which the marital bond ends exclusively. Therefore, if the marital bond ends for a reason other than the reasons mentioned in the text, such as its termination by divorce or judicial separation, then this text finds no scope for application, and therefore the woman cannot regain **her lost Iraqi nationality**.²⁰.

The third condition: After the end of the marital bond, the woman must disclose her desire to regain Iraqi nationality in a written form through a request submitted to the Minister of Interior. This requires that she be present in Iraq when submitting the recovery request. Conversely, the request will not be accepted if it is submitted through Iraqi representations during her residence. Outside Iraq, her lost Iraqi nationality will be restored to her by law as of the date she submits her recovery request without the need for the approval of the Minister of Interior or any other procedure.

It is noted that the Iraqi legislator only stipulated that the woman be present in Iraq at the time of submitting the restitution request and not reside there. This means that she can return to Iraq to submit the restitution request to the Minister of Interior and regain Iraqi citizenship and then return to her place of residence outside Iraq as long as the Iraqi legislator. There is no stipulation that it must reside in Iraq.

The researcher believes that it would have been better for the Iraqi legislator to stipulate residency in Iraq as a condition for the woman to regain her Iraqi nationality, which she renounced in order to acquire the nationality of her foreign husband, because this condition will undoubtedly work to revive the spirit of loyalty to the state and integration into Iraqi society after the end of the marital bond that required it. She gave up her Iraqi nationality, thus weakening her spirit of citizenship and weakening her loyalty to the Iraqi state.

.(Majid Al-Halawani - Al-Wajeez fi Private International Rights - Arts and Sciences Press - Damascus - 1965 - p. 205 et seq.

Based on this, we propose to the Iraqi legislator to amend the text of the second paragraph of Article (13) of the Iraqi Nationality Law so that the wording after the amendment becomes as follows: (If the marital bond ends, Iraqi citizenship will be restored to her from the date she submits an application for that, provided that she is a resident of Iraq. When submitting the application).

The second requirement

Recovering Iraqi citizenship after losing it by law

Iraqi nationality is regained after losing it by law in two cases. The first is: the child recovers his lost Iraqi nationality as a result of his father losing his Iraqi nationality, and the other is the recovery of lost Iraqi nationality for political, racial, or sectarian reasons. We will discuss each of the two cases in a separate section, as follows:

The first section: The child regaining his Iraqi nationality after losing it due to his father.

The second section: Recovering Iraqi nationality after losing it for political, racial, or sectarian reasons.

First branch

The child regains his Iraqi nationality after losing it due to his father

Paragraph (Second) of Article (14) of the Iraqi Nationality Law stipulates this case for the recovery of Iraqi citizenship. In order to recover Iraqi citizenship in this case, the following conditions must be met:

The first condition: That a person who has not reached the age of majority loses his Iraqi nationality due to his young age, as a result of his father losing his Iraqi nationality for any reason, whether that is by abandoning it or by acquiring a foreign nationality in accordance with the first paragraph of Article 10 and Article (12) of the Iraqi Nationality Law, or stripping the naturalized person of it. As a punishment for committing an act that disturbs the security of the state in accordance with Article (15) of the Iraqi Nationality Law

The researcher believes that if the father lost his Iraqi nationality due to fraud, forgery, or error in accordance with Article (15) of the Iraqi Nationality Law, his young children who lost their Iraqi nationality as a result of it cannot recover it. This is because their father was not Iraqi as a basis for the invalidation of his nationality, and what is built on falsehood is False.

The second condition: The child who has lost his Iraqi nationality must return to Iraq and reside there for one year.

It is noted that the Iraqi legislator stipulates that the child must return to Iraq and reside there for one year, while forgetting that a child who has not yet reached the age of majority cannot return to Iraq alone and individually without a guardian or guardian, and this is also the case with regard to his residence in Iraq. It is not legally permissible for this foreign child to enter Iraq and residency there since he is incapacitated and his affairs are handled by his legal representative.

The researcher notes that the Iraqi legislator considers the child who submits the restitution request to be an Iraqi from the date of his return to Iraq, and it would have been better for him to consider him as an Iraqi from the date of his submission of the restitution request, since that is in line with the legal logic of restoring citizenship to someone who has lost it whenever he requests it, in addition to the fact that there is no justification for considering him as an Iraqi. The date of his return to Iraq, especially since the Iraqi legislator did not stipulate that the return to Iraq must be legal.

The researcher also believes that the text of Paragraph (Second) of Article (14) of the Iraqi Nationality Law needs to be presented and reformulated from a linguistic standpoint due to the weakness of the text.

Based on the above, we propose to the Iraqi legislator to amend the text of Paragraph (Second) of Article (14) of the Iraqi Nationality Law so that the wording after the amendment becomes as follows: (If an Iraqi loses his Iraqi nationality, his children who have not yet reached the age of majority lose it as well, and they may recover it based on Upon their request if they return to Iraq and reside there legally for not less than one year from the date of reaching the age of majority...).

It is worth noting that children of Jews whose Iraqi nationality has been removed under the provisions of Law No. (1) of 1950 and Law No. (12) of 1951 do not benefit from this case to regain Iraqi citizenship.

Second section

Reclaiming Iraqi citizenship after losing it for political, racial or sectarian reasons

Article (18) of the Iraqi Nationality Law stipulates this case for the recovery of Iraqi citizenship. In order to recover Iraqi citizenship in this case, the following conditions must be met:

The first condition: That a person loses his Iraqi nationality by having it revoked for political, racial, or sectarian reasons. This loss of nationality must be original or acquired, and there is no difference in that between all Iraqis. The text includes every Iraqi whose nationality has been revoked, regardless of religion, sect, nationality, or nationality. Sect.

The second condition: The person who has lost Iraqi nationality must express his desire to regain his lost nationality in writing, through a request submitted to the Minister of the Interior, and Iraqi nationality is returned to him by law without the need for the approval of the Minister of Interior or any other procedure. However, in the event of the person's death before submitting a request to restore his nationality. Lost Iraqi nationality: His children who lost their Iraqi nationality through their father have the right to request its recovery.

It is worth noting that no one who loses his Iraqi nationality will benefit from regaining Iraqi nationality after losing it for political, racial, or

Conclusion:

At the end of the research, we find that citizenship is an association that a citizen enjoys, and that enables him to exercise his legal and political rights in accordance with the conditions specified by the laws that the state sets for this purpose. The right of the state to regulate the methods of acquiring its nationality and to identify its nationals according to its independent will and what its basic interests require is one of the most important principles. approved by the rules of public international law in the field of nationality, and we find that the Iraqi legislator has regulated everything related to the acquisition and loss of nationality in an independent law, and they have created convincing reasons related to the national security of both countries. If those reasons are met, then nationality will be withdrawn.

References

1. Fahmy, Muhammad Kamal (1989), The Origins of Private International Law: Nationality, Homeland, Al-Janab Center, Cairo, University Culture Foundation.
2. Al-Hadawi, Hassan (2001), Nationality and its Provisions in Jordanian Law, Amman, Majdalawi Publishing House.
3. Zanati, Essam Muhammad (1997), Protecting Human Rights within the Framework of the United Nations, Cairo, Dar Al-Nahda Al-Arabiya.
4. Riad, Fouad Abdel Moneim (1990), Egyptian Nationality: A Comparative Study, Cairo, Dar Al Nahda Al Arabiya.
5. Shawqi, Badr El-Din Abdel Moneim (1995), Mediator in Private International Law, Cairo, (D.N.(.
6. Salama, Ahmed Abdel Karim (1993), Al-Mabsut fi Sharh Al-Nahda System, Cairo, Dar Al-Nahda Al-Arabiya.
7. Al-Hadawi, Hassan (2001), Nationality and its Provisions in Jordanian Law, Amman, Majdalawi Publishing House.
8. Al-Wakil, Shams Al-Din (2002), Al-Mawjiz fi Nationality and Status of Side, Alexandria, Manshiet Al-Maaref.