

Issues relating to the diplomatic protection of dual nationals

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In recent years, there has been an increasing interest by many individuals in obtaining a second citizenship. In particular, obtaining citizenship and passport from an EU country can give to the holder and his family the possibility of living and working freely in any of the EU countries without need of obtaining any visas.

Dual citizenship can however create some issues when an individual seeks diplomatic protection. The general principle governing diplomatic protection of dual nationals is set forth by art. 4 of the 1930 Hague Convention¹: "**a State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses**".

Even though very few countries have ratified The Hague Convention, this provision (so called non-responsibility rule) has been for many years customarily accepted in international law. The US State Department², for example, underlines that:

"the US Government recognizes that dual nationality exists but does not encourage it as a matter of policy because of the problems it may cause. Claims of other countries on dual national US citizens may conflict with US law and dual nationality may limit US Government efforts to assist citizens abroad".

Other Governments have the same position on the matter. The Australian Government indicates that "**may be limited in its ability to provide you with consular assistance should you seek it.**"³

The Canadian Department of Foreign Affairs outlines that "**Dual citizenship means that you are a citizen of more than one country. While having dual (or multiple) citizenship is legal in Canada, some countries do**

1
CONVENTION ON CERTAIN QUESTIONS RELATING TO THE CONFLICT OF NATIONALITY LAWS THE HAGUE - 12 APRIL 1930

2
<https://register.state.gov/contactus/>

3
<http://smartraveller.gov.au/tips/dual-nationals.html>

not legally recognize dual citizenship. This may limit or even prevent Canadian officials from assisting you, especially if you are incarcerated⁴.

UK Home Office, states that ***“As a dual national you can’t get diplomatic help from the British government when you are in the other country where you hold citizenship. For example, if you hold both British and Chinese citizenship you can’t get diplomatic help from the UK when you’re in China.”***⁵

The non-responsibility rule seems however no longer the prevailing principle applicable to cases where issues arise to conflicting nationalities, and during recent years is being replaced by the principle of "effective nationality" outlined by the International Court of Justice in the Nottebohm case⁶.

In the Nottebohm case, the International Court of Justice stated that:

“International arbitrators have... given their preference to the real and effective nationality, that which accorded with the facts, that based on stronger factual ties between the person concerned and one of the States whose nationality is involved. Different factors are taken into consideration, and their importance will vary from one case to the next: the habitual residence of the individual concerned is an important factor, but there are other factors such as the Centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc.”

The principle has been confirmed by many Tribunals.

The Iran-United States claims Commission, Case No. A-18, for example, stated that the relevant rule that the Tribunal may take into account ***“is the rule that flows from the dictum of Nottebohm, the rule of real and effective nationality and the search for stronger factual ties between the person concerned and the one of the States whose nationality is involved.”***

The same Tribunal in Case n. 296, Bavanati and The Government of the Islamic Republic of Iran, dismissing a compensation case brought by an Iranian-US dual national where the claimant could not establish a dominant and effective US nationality. The Tribunal stated that : ***“evidence shows that since 1974, when***

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<http://travel.gc.ca/travelling/documents/dual-citizenship>

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<https://www.gov.uk/dual-citizenship>

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Liechtenstein v. Guatemala - Nottebohm - Judgment of 6 April 1955 - Second Phase - Judgments [1955] ICJ 1 (6 April 1955)

the claimant moved to Germany, his habitual residence, center of interest, family ties, participation in public life and other attachments have been insufficient to support a finding that Mr. Bavanati's links to United States were dominant over his links to Iran ..⁷

Conclusions

Dual nationals may have a limited diplomatic protection according to the principle set forth by the 1930 The Hague Convention that a State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.

In recent years, however, International Tribunals – starting from the milestone Nottebohm case decided by the International Court of Justice – have started to switching from the “non responsibility” principle set forth in *The Hague Convention* to the principle of “effective nationality”.

When assessing dual nationals' eligibility to diplomatic protection the mere possession of a citizenship is not the only factor to be taken into account but other factors such as the centre of his interests, family ties, participation in public life, attachment shown by the individual for a given country and inculcated in his children, must be taken into account.

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