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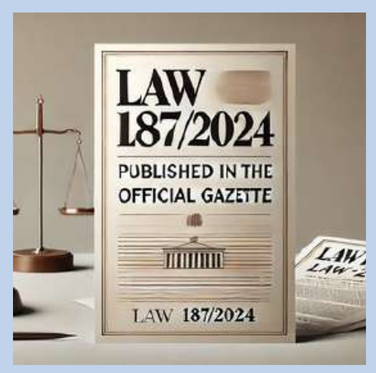


Italy Introduces Stricter Rules for Family Reunification Key Changes Under Law 187/2024

Business Trips to Italy: Do I Need a Visa?

INDEX

The EU’s Stance on Citizenship by Investment: A Closer Look

Italian Citizenship by Descent: the Court of Bologna proposes a generational limit. Is it really feasible?

Dual nationality and abuse of right

Italy Introduces Stricter Rules for Family Reunification Key Changes Under Law 187/2024

Yesterday, law 187/2024 was published in the Official Gazette, introducing significant changes to the rules for family applications by foreign nationals. The law, which is now in effect, imposes stricter requirements for family reunification in Italy.

Under the new regulations, foreign nationals can bring eligible family members—including spouses, disabled adult children, and parents under specific conditions—only after completing at least two continuous years of legal residence in Italy. This change applies to most foreign nationals, with the exception of those holding residence permits for international protection, who remain unaffected by the new waiting period.

Importantly, the rule does not apply to minor children under 18, who remain eligible to join their parents without the two-year residence requirement.

The introduction of these new criteria is expected to affect future family applications, though there is still uncertainty about how the rule will be enforced. Further clarifications from Italian authorities are expected, especially regarding potential exceptions for Blue Card holders, ICT workers, and investors.

Business Trips to Italy: Do I Need a Visa?

Which countries are part of the Schengen Area?

All EU countries are part of Schengen except for Ireland, which has opt-outs, as well as Cyprus which is due to join Schengen at some point in the future. In addition, four non-EU countries are also part of the Schengen area: Iceland, Norway, Switzerland and Liechtenstein.

How long can you stay?

If you are a Visa national and you have been issued a visa, you can stay for the duration indicated in the visa

How to read your visa sticker

(1) Visa number: top right corner of your visa sticker.

(2) Countries permitted: the phrase 'VALID FOR', is set before the name of the countries allowed to visit. 'SCHENGEN STATES' means that the visa is valid in all Schengen Member States, while the visa is restricted to certain countries, the sticker (i) will list the country permitted to enter with the letters A, B, CH, CZE, D, DK, E, EST, F, FIN, GR, H, I, IS, LI, L, LT, LVA, M, N, NL, P, PL, S, SK, SVN (Schengen Member States that can be visited); or (ii) the following label: 'SCHENGEN' (country initial); (iii) a sticker that just has, 'name of country', means the visa is valid only for the respective territory listed.

(3) Validity: the labels 'FROM', list the first day permitted to enter the Schengen Area, and the labels 'UNTIL', stipulate the date by which the Schengen Area must be left.

(4) Visa type: the label 'TYPE OF VISA', indicates the type of visa which may be: Label 'A' stands for the A type visa, an Airport Visa, that does not permit the holder to travel past the international airport zone; Label 'C' — stands for the C type visa, or the standard short-stay visa, allowing you to stay up to three months in the Schengen Area.

(5) Number of entries: the label 'NUMBER OF ENTRIES' indicates the number of times allowed to enter the Schengen Area. The label 'MULT' — means that the holder is authorized to enter the Schengen Area as often as they wish, during the period for which the visa is valid. The label '1' means that the holder is authorised to enter the Schengen Area once. The label '2' — means that the holder is authorizsed to enter twice.

(6) Duration of stay: the label 'DURATION OF STAY' and the one immediately next to it with the words 'DAYS' tell the number of days the individual can remain in the Schengen Area on each visit.

Which activities can you do if you enter with a business visa?

Business ("affari") is defined by Decree 850/2011 as:

- to make contacts
- to conduct economic or commercial negotiations
- to learn or verify the functioning of machinery purchased or sold under commercial and industrial cooperation agreements with Italian company or for the relevant professional refresher training
- to visit the Italian company facilities
- to participate in exhibitions and trade fairs in Italy

Is there any clarifications on how to define "business"?

A definition of what can be considered "business" can be found in the EU Directive 2021/1883 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment.

'Business activity' means a temporary activity directly related to the business interests of the employer, including attending internal or external business meetings, attending conferences or seminars, negotiating business deals, undertaking sales or marketing activities, exploring business opportunities, or attending and receiving training.

The EU's Stance on Citizenship by Investment: A Closer Look

Obtaining citizenship by investment is far from a modern idea

The practice of selling citizenship dates back to antiquity. For instance, the Romans used it as a method to generate revenue, and a well-known Biblical account highlights this tradition. In Acts 22:22-23:11, a Roman centurion who detained Saint Paul the Apostle stated, "I had to pay a lot of money for my citizenship."

Citizenship by Investment (CBI) schemes, or "golden passports"

have sparked debate in the EU due to concerns over security, money laundering, and tax evasion. While EU institutions largely oppose these programs, citing, for example, risks to the single market, proponents highlight financial benefits, including €25 billion in foreign direct investment.

The European Commission's Position

The European Commission has consistently opposed CBI schemes, citing risks related to security, money laundering, tax evasion, and corruption. In January 2019, the Commission published a report highlighting these concerns and called for increased transparency and oversight of such programs.

In September 2022, the Commission referred Malta to the Court of Justice of the European Union (ECJ) over its CBI scheme, arguing that granting EU citizenship in return for predetermined payments or investments "without a genuine link" to the Member State is incompatible with EU principles. The ECJ's final ruling is pending and may have significant implications for the future of CBI programs within the EU.

The European Parliament's Position

In March 2022, the European Parliament issued a resolution proposing Member States to phasing out of CBI schemes and implement stringent checks for investor residence programs, emphasizing that CBI schemes are objectionable from an ethical, legal and economic point of view and pose several serious security risks for Union citizens, such as those stemming from money-laundering and corruption.

The Position of Council of the European Union

The Council does not have a favorable position regarding CBI schemes either. For example, in March 2024, the Council agreed start negotiating on a draft regulation to update the mechanism for suspending visa-free access for third countries under specific circumstances. One such circumstance includes the operation of investor citizenship schemes, where citizenship is granted in exchange for predetermined payments or investments without any genuine link to the country in question.

The European Court of Justice's Position

The ECJ has been involved in assessing the legality of CBI programs within the EU. In October 2024, Advocate General Anthony Michael Collins issued an opinion advising the Court to dismiss the European Commission's case against Malta's CBI program. He argued that EU law does not define or require the existence of a "genuine link" for acquiring or retaining nationality, thereby supporting Malta's discretion in determining its citizenship criteria.

While the Advocate General's opinion is influential, it is not binding; the ECJ's final ruling is expected by early 2025.

But is the practice of CBI really so bad?

Some authors defend the sale of citizenship, arguing that it is less arbitrary and more transparent than other methods of acquiring citizenship, such as those based on the principles of jus soli (right of soil), jus sanguinis (right of blood), or discretionary naturalization.

Both traditional criteria for granting citizenship are, in fact, arbitrary: one relies on the accident of birth within particular geographical borders, while the other depends on the sheer luck of descent.

Why should those who have citizen parents or who were born within a state's territory have a stronger moral claim to citizenship than foreigners who are willing to pay or invest?

Furthermore, monetary investment can be seen as a way to contribute to the common good of a political community and should not be summarily dismissed as a legitimate basis for acquiring citizenship.

Acquiring citizenship by investment is not a modern concept

The sale of citizenship dates back to ancient times. For example, the Romans used to sell citizenship as a means to raise funds, and a famous anecdote from the Bible illustrates this practice. In Acts 22:22-23:11, a Roman centurion who apprehended Saint Paul the Apostle remarked, “I had to pay a lot of money for my citizenship.”

Similar practices continued during feudal times, where the link between money and membership in the polity often served a dual purpose: to exclude certain groups while granting additional rights and privileges to the wealthy.

Why are CBI schemes so controversial?

CBI schemes have raised concerns about certain inherent risks, particularly regarding security, money laundering, tax evasion, and corruption. Many scholars have equated CBI/RBI schemes with a form of commodification of citizenship.

Some have highlighted that these schemes represent a particularly stark manifestation of the 'commercialisation of sovereignty,' a trend that has intensified since the economic crisis of the late 2000s. If citizenship still carried the same meaning it once did—representing sociological ties—then CBI schemes would not exist. In the past, such programmes would have been inconceivable.

Placing a price tag on citizenship, regardless of the amount, has a corrosive effect on non-market relationships, eroding the bonds that connect us and reshaping our understanding of what it means to belong to a political community.

By linking wealth with privileged access to political membership, CBI schemes threaten not only the practical implementation of the ideal of citizenship but the ideal itself. Exchanging a higher-value good (citizenship) for a lower-value good (money) not only diminishes the value of citizenship but also corrodes public trust in the institution in ways that naturalisation on other grounds does not.

Examining the Advantages of CBI Schemes

Some authors defend the practice of granting citizenship by investment, highlighting several potential advantages:

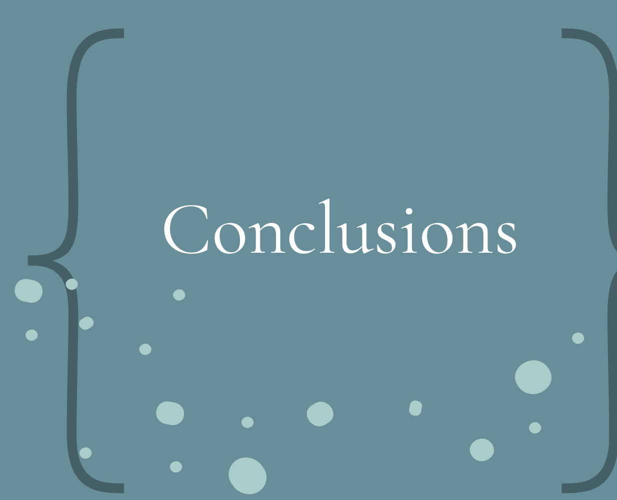
It is less arbitrary and more transparent than other methods of acquiring citizenship, such as those based on jus soli (right of soil), jus sanguinis (right of blood), or discretionary naturalization.

Monetary investment can serve as a contribution to the common good of a political community. As such, CBI schemes should not be dismissed outright as a legitimate reason for granting citizenship.

Citizenship by investment is not fundamentally different from the widespread practices of offering citizenship to prominent athletes or granting it to foreigners who have served in a country's armed forces or provided exceptional service to the nation.

Lastly, the significant financial benefits generated by these schemes cannot be overlooked. According to available statistics, at least €25 billion in foreign direct investment has flowed into the EU through golden visa schemes over the past decade.

CBI schemes are here to stay, and States retain their discretion to grant citizenship under specific conditions and requirements. Instead of questioning their legitimacy, efforts should focus on improving their governance and mitigating risks. Key actions include:



Protecting the integrity of the EU single market (for EU countries):
Safeguarding EU principles of sincere cooperation, security, and justice is essential.

Ensuring transparency and good governance:
Effective implementation of CBI schemes must address risks such as the infiltration of non-EU organized crime groups, money laundering, corruption, and tax evasion.

Strengthening due diligence processes:
Each State and its competent authorities must carry out robust background checks and ensure compliance with the highest standards.

Addressing circumvention of Common Reporting Standards (CRS):
According to the OECD, abuse of CBI/RBI schemes can be prevented by properly applying existing CRS due diligence procedures. Key measures include:

Requiring a real, permanent physical residence address (not just a P.O. box or in-care-of address) and verifying this through appropriate documentary evidence.
Instructing account holders to declare all jurisdictions of tax residence in their self-certification.
Ensuring that financial institutions do not rely on self-certification or documentary evidence if they know, or have reason to believe, that such information is unreliable, incorrect, or incomplete.

Additional approaches may include tax compliance measures and policies that consider the roles of all stakeholders, such as jurisdictions offering these schemes, tax administrations, financial institutions subject to CRS reporting, intermediaries promoting the schemes, and taxpayers.

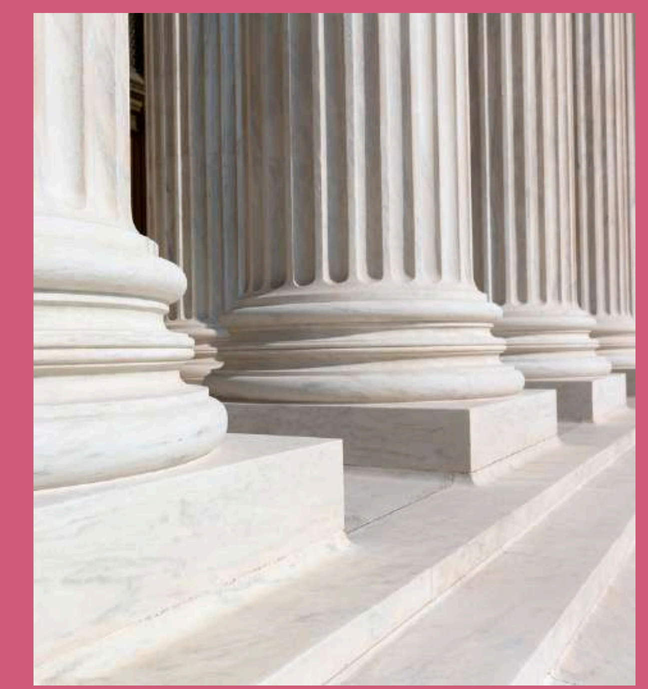
Italian Citizenship by Descent: the Court of Bologna proposes a generational limit. Is it really feasible?

The Court of Bologna, through judge Dr. Gattuso, has raised a constitutional legitimacy question concerning the Italian Citizenship law, challenging the recognition of citizenship iure sanguinis that currently does not fix any generation limits (art. 1 Law 91/1992), provided that the transmission of the right to Italian citizenship has not been formally interrupted.

The issue has been referred to the Constitutional Court in order to assess whether it is possible to provide a generation limit given that Italian Citizenship by descent is currently recognized to individuals who, while being descendants of Italian citizens, have never lived in Italy, have no intention of relocating there, and, in many cases, have never even visited the country.

The case in question involves 12 Brazilian citizens seeking Italian citizenship iure sanguinis through a female ancestor born in Marzabotto in 1876 who later emigrated to Brazil. This is because, prior to the entry in force of the Italian Constitution, women were not permitted to pass citizenship to their children. While this restriction has since been abolished, judicial proceedings remain necessary for such claims, as they cannot be submitted through the administrative path (Italian Consulates or Town Halls).

The Constitutional Court must now decide whether the absence of generational limits in the current framework is constitutionally legitimate. If the Court shares the same position raised by the local judge and therefore declares the constitutional illegitimacy of the art. 1 Law 91/1992, also a legislative intervention may be requested, according to the characters of the judicial pronunciation, in order to fix specific generational limits.



Meanwhile, the large amount of requests presented for the recognition of the Italian citizenship in Court continues to generate a significant number of legal cases, further clogging the judicial system.

Dual nationality and abuse of right

76 per cent out of 200 countries tolerate dual citizenship. But what happens when dual nationality is used to obtain benefits which the individual would not be otherwise entitled to?

Key Principles and Challenges of Dual Nationality under International Law

- Each State can determine who are its own nationals: It is an established principle in international law that it is for each State to determine under its law who are its nationals

- States' attribution of nationality must be recognized by other States: States' attribution of nationality under their internal laws shall be recognized by other States in so far as it is consistent with international conventions, international custom and the principle of law generally recognized with regard to nationality

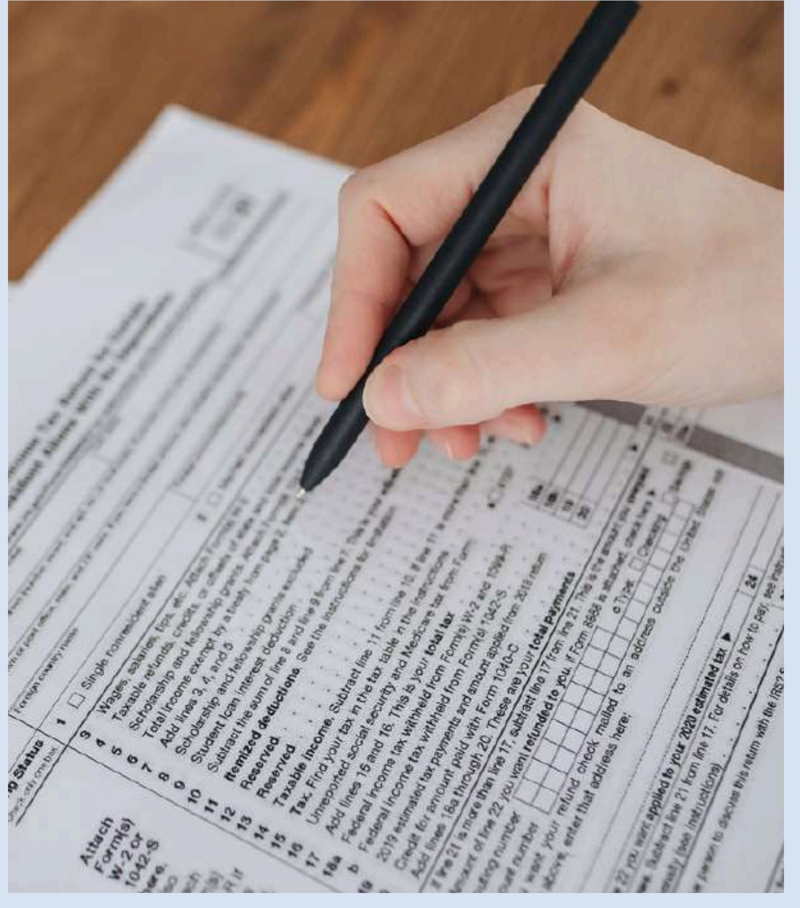
- Genuine link: most of tribunals have accepted the "dominant and effective link" theory. According to this principle, in case of conflict of nationalities, the nationality of the State of which the individual has a genuine connection and bond will prevail.

- The genuine link of the individual with a State is determined with several criteria: the genuinity and dominance of the connection shall be assessed taking into account the person's habitual residence and other factors such as the centre of his interests, his family ties, his participation in public life, and other attachments.

- Genuine link doctrine cannot be generalized: some arbitrators and scholars are questioning the general applicability of the genuine link doctrine, because thousands of persons who possess the nationality of a State but have their centre of interest, family and business in another State, would be exposed to non-recognition of their nationality.

- Dual nationality cannot be used fraudulently: acquisition or renounciation of nationality in order to obtain benefits to which an individual would otherwise not be entitled to is considered an abuse of right (abuse of process). Nationality acquired for the sole purpose of claiming diplomatic protection ... forms part of a transaction which is to be regarded as generally fraudulent and a State may refuse to recognize the change of nationality.

In recent years there has been an increasing interest by many individuals in obtaining a second citizenship and a growing number of States have changed their legislations allowing the retention of nationality even in case of acquisition of a second citizenship.



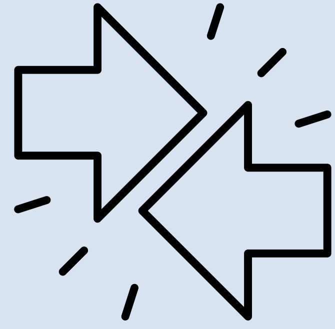
76 per cent of 200 countries tolerate dual citizenship for emigrants, allowing their citizens to voluntarily acquire the citizenship of another country without automatically losing their citizenship of origin. As a result, in ever fewer countries citizenship is lost if another citizenship is acquired and in ever more destination countries migrants are no longer required to renounce their previous citizenship as a condition for naturalisation. (Migration Data Portal)

But the acquisition of a second citizenship can also create some issues when an individual seeks State's diplomatic protection.

Dual nationality and diplomatic protection under international law

Dual nationality can cause some conflicts in case an individual seeks diplomatic protection against a State whose nationality such person also possesses. The 1930 Hague Convention on conflict of nationality laws, set forth that in this case a State may not afford diplomatic protection. 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.

Dual nationality, Effective and dominant nationality



But what happens in case of conflicts between nationalities? The non-responsibility rule seems no longer the prevailing principle applicable to cases where issues arise to conflicting nationalities. During recent years is being replaced by the principle of "effective nationality"

an individual’s claim may also be presented against a State of which the individual is citizen, as long as the connection with the claimant State is prevalent

In the milestone case Liechtenstein v Guatemala (Nottebohm case), the International Court of Justice affirmed that international arbitrators have given their preference to the real and effective nationality, which is based on stronger factual ties between the person concerned and one of the States whose nationality is involved.

Factors which are taken into consideration for determining that the link is effective are: (i) the habitual residence of the individual; (ii) the centre of his interests; (iii) his family ties, his participation in public life; (iv) attachment shown by him for a given country and inculcated in his children.

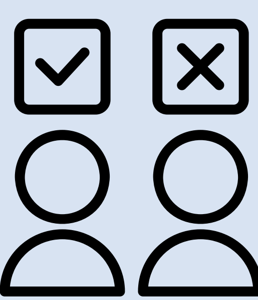
Effective nationality must be based on strong factual ties

After the Nottebohm decision, the “effective nationality” principle has been confirmed by many Tribunals. The Iran-United States Claims Tribunal in Case No. A-18, for example, affirmed that is 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, that must be taken into account. The same tribunal, Case n. 296 Bavanati, dismissed a compensation case brought by an Iranian-US dual national because:

“evidence shows that since 1974, when 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 …”.

Genuine link theory cannot be generalized

The Nottebohm award was not unanimous and some of the judges and some authors have expressed dissenting opinions for various reasons.



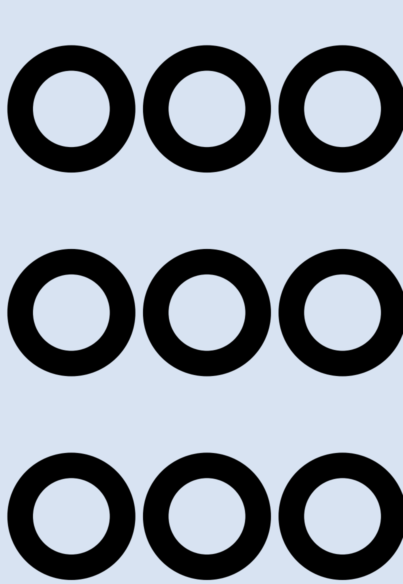
The possible limitations to the general applicability to all cases of the “genuine link” doctrine were clearly acknowledged in case Flegenheimer decided in 1957 by the Italian-US Concilation Commission.

The Tribunal recognized, in fact, that if the genuine link doctrine were to be generalized, thousands of persons who possess the nationality of a State but have their centre of interest, family and business in another State, would be exposed to non-recognition of their nationality.

As pointed out by UN Special Rapporteur, John Dugarde:

> In today's world of economic globalization and migration there are millions of persons who have drifted away from their State of nationality and made their lives in States whose nationality they never acquire. The genuine link theory, if applied strictly, would exclude them from the benefit of diplomatic protection.

Abuse of nationality



Dual nationals can also be subject to another limitation when seeking diplomatic protection of their interests by one of the States of which they are nationals. The Nottebohm award, evidenced that situations of abuse of dual nationality may occur. The Court indicated in fact that, in the case of Mr. Nottebohm, naturalization was asked for not so much for the purpose of obtaining a legal recognition of his bond and allegiance to Liechtenstein, but with the sole purpose to enable him to substitute for his status as a national of a belligerent State (Germany) that of a national of a neutral State (Liechtenstein).

Mr. Bottehom did not show any intent of becoming wedded to Liechtenstein's traditions, its interests, its way of life or of assuming the obligations – other than fiscal obligations – and exercising the rights pertaining to the status thus acquired. Judge Guggenheim noted that

> *"nationality acquired for the sole purpose of claiming diplomatic protection ... forms part of a transaction which is to be regarded as generally fraudulent and a State may refuse to recognize the change of nationality".*

Effective nationality cannot be disguised in order to obtain illegittimate benefits

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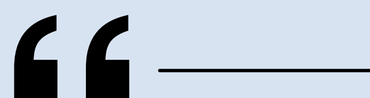
The concept of a possible abuse of dual nationality was further expanded The Iran-United States Claims Tribunal in Case No. A-18, and in other cases decided by the Iran-US Tribunal. In fact, among the most controversial claims to be decided by the tribunal were those brought by individuals who held both the Iran and US citizenship. In judging those cases, the Tribunal affirmed the principle that:

dual nationality cannot abused, i.e. the Tribunal could deny jurisdiction on equitable grounds in cases of fraudulent use of nationality.

In the Case Esphahanian, the Tribunal affirmed that

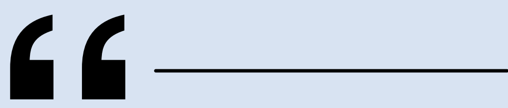
“Such a case might occur where an individual disguises his dominant and effective nationality in order to obtain benefits with his secondary nationality”.

Judge Mosk, in his concurring opinion for case A-18, affirmed that



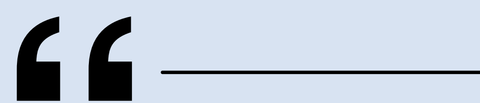
“the use by a United States citizen of his or her Iranian nationality in a fraudulent or other inappropriate manner might adversely affect the claim by that person”.

In the case Saghi, the Tribunal denied the claim because the claimant



“had consciously sought and obtained Iranian nationality solely for the purpose of having certain shares ...placed in his name in order to minimize the adverse effects of the Law of Expansion. ... To rule otherwise would be to permit an abuse of right”.

More recently, in the 19 May 2023 Award in Mihaljević v Croatia (a dispute submitted to ICSID), Croatia challenged the Tribunal's jurisdiction, arguing — amongst other objections — that

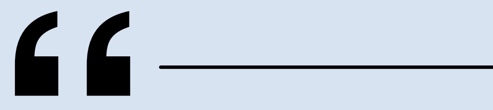


(i) the Claimant committed an abuse of process (or abuse of rights) by attempting to revoke his host State nationality after the dispute had arisen, with the sole purpose of circumventing ICSID's host State nationality restriction;
(ii) there exists a consistent practice that a change of the claimant's nationality to manufacture jurisdiction rationae personae in a particular dispute is an abuse of process".

Also in the Concurring Opinion of Ms. Maria Vicien-Milburn it was pointed out that:

"Such abuse may, in my view, arise equally in the case of acquisition or renunciation of nationality, since both entail an alteration of form designed to obtain a right that would not otherwise exist."

And



"For an individual to renounce his or her nationality in order to gain the protection of the ICSID Convention could therefore ….. constitute an abuse of process."

Nationality planning and “treaty shopping” by corporations

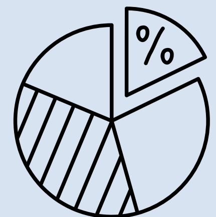
The same principles apply to corporations, when they structure or restructure their holdings, in a way to secure deliberately the protection of certain investment treaties or legislations. A domestic investor that would not otherwise benefit from the rights of foreign investors may form a company, for example, in a ICSID contracting State with its home country as a vehicle to be able to bring claims against its State. To avoid this practice, commonly known as nationality planning or treaty shopping, International Courts have developed the concept of abuse of process.

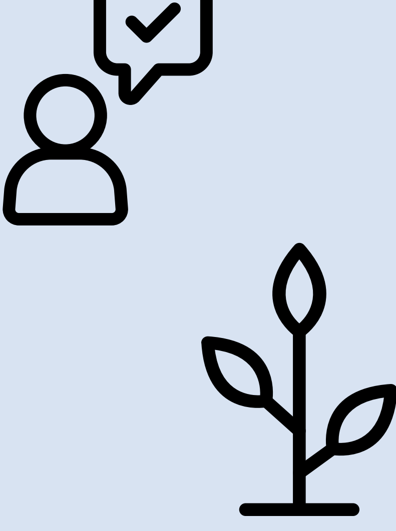
One of the most recent and publicly known case in which the doctrine was applied is the arbitration brought by Philip Morris against the Government of Australia. The case originated after Australia enacted the Tobacco Plain Packaging Act, a legislation that removed brands from cigarette packs. Philip Morris served a Notice of Arbitration against Australia claiming that the enacted legislation amounted to an expropriation of its intellectual property rights. The Tribunal concluded that:

> *the initiation of the arbitration constitutes an abuse of rights, as the corporate restructuring by which Philip Morris acquired the Australian subsidiaries occurred at a time when there was a reasonable prospect that the dispute would materialise and as it was carried out for the principal, if not sole, purpose of gaining Treaty protection*

Conclusions

Approximately 76% of 200 countries surveyed now tolerate dual or multiple citizenship, marking a significant shift in the global landscape.

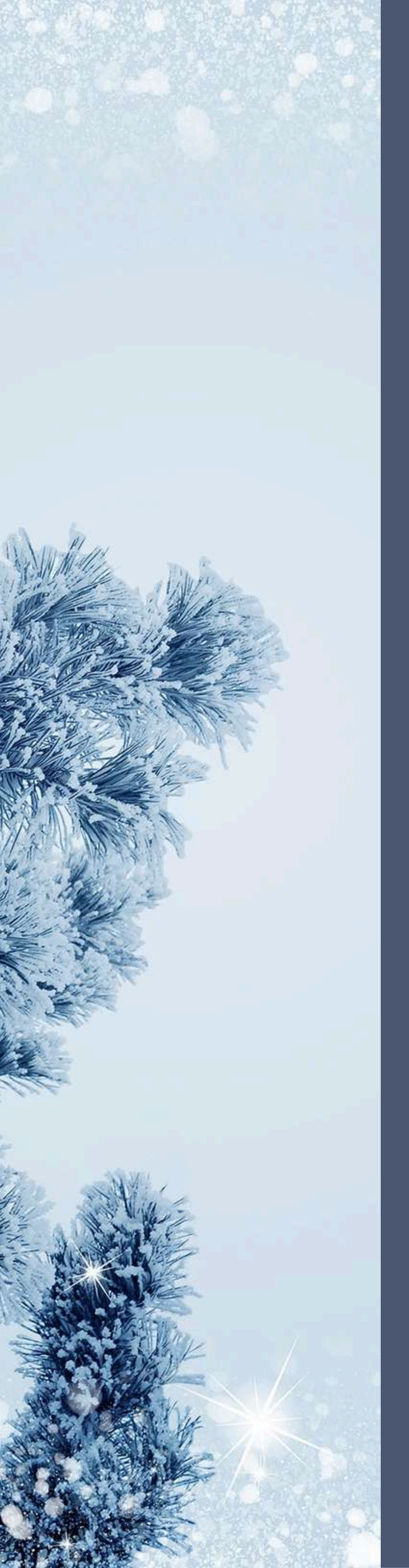




This growing acceptance is driven as (i) an unavoidable consequence of gender equality (mothers as well as fathers can transmit their citizenship to the child by descent), (ii) transnational migration (migrants and their children acquire the citizenship of the destination country while retaining the citizenship of the origin country)and (iii) in part by the increasing number of countries offering citizenship by investment (CBI) programs, which has sparked interest among individuals seeking a second citizenship for various reasons.

However, it’s essential to note that international arbitration decisions and commentaries have established that manipulating citizenship, such as acquiring or renouncing it to gain a right that would not otherwise exist, is considered an abuse of rights (abuse of process) and may be deemed fraudulent.

In such cases, a state may refuse to recognize the change in nationality, highlighting the importance of genuine intentions and transparency in citizenship matters.



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