

The legal status of a naturalized citizen in disputes related to personal status matters: Inheritance as a model

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Abstract---An individual's life is connected to various bonds: with their family, their society, and perhaps most importantly, with their homeland. This bond entails a set of rights and obligations, embodied in nationality as a legal system governing this relationship. Nationality is considered one of the most significant and fertile topics addressed by private international law, as it represents a sensitive and crucial issue for both the individual and the state. This is especially true regarding acquired nationality and the numerous questions and challenges it raises, particularly in matters of inheritance.

Keywords---acquired nationality, inheritance, personal status, conflict of laws.

Introduction:

Jurists have differed in defining nationality. Some have emphasized its legal aspect, focusing on the mutual rights and obligations arising between the individual and the state. Others have prioritized its political dimension, highlighting the political allegiance it establishes both in domestic and international law. Some scholars have also considered the social bonds inherent in the notion of nationality—such as spiritual belonging and social integration—to the extent that they blurred the distinction between nationality and affiliation to the nation.

Some scholars define nationality by focusing on one side of the relationship or on both. From the state's perspective, nationality is a tool used to classify individuals among different states and to determine who belongs to the population of each state.

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From the individual's perspective, nationality is a personal attribute — a part of one's civil status that carries specific legal effects.

When both sides are considered together, nationality becomes a political and legal bond between the individual and the state, and this is the definition preferred by most jurists.

Nationality is divided into two types. Original nationality is the legal bond that links an individual to their country from birth. It is usually acquired either by *jus sanguinis* (through birth to a father or mother who holds the nationality) or by *jus soli* (through birth within the territory of the state, as in the case of foundlings). This nationality represents an individual's fundamental belonging to a particular state, which entails specific rights and duties.

Acquired nationality, on the other hand, is the nationality granted to a person after birth, whether the individual was originally a citizen or a foreigner with respect to the granting state. The methods and procedures by which a state grants its nationality to an applicant vary from one country to another, including mixed marriage, restoration, territorial incorporation, naturalization, adoption within a family lineage, and others.

Nationality is considered one of the most important criteria used to resolve conflicts of law in personal status matters. However, the practical application of this criterion may raise several difficulties, particularly in cases of multiple nationality, absence of nationality, or change of nationality, as well as when a person's nationality belongs to a state with multiple legal systems or religious sects.

From this arises the following question: What is the legal status of a person with acquired nationality in cases of inheritance conflict?

1. Methods of Acquiring Algerian Nationality

The Algerian legislator has defined the methods of acquiring Algerian nationality in the Algerian Nationality Law issued under Order 70-86, amended and supplemented by Law 05-01. There are two main methods, and this section will focus on marriage and naturalization as two ways of acquiring Algerian nationality, provided that the applicant meets the necessary conditions and procedures.

1.1. Mixed Marriage

Marriage in this context has an indirect and non-automatic effect on acquiring nationality. Marriage alone does not automatically grant the foreign spouse Algerian nationality; it is subject to several conditions explicitly set by the Algerian legislator, as well as a set of required procedures. This has consequences at both the individual and collective levels.

1.1.1 Conditions for Acquiring Algerian Nationality through Mixed Marriage

Acquiring nationality through marriage to an Algerian requires the following conditions:

- The marriage must be legal and ongoing for at least three years.¹
- The spouse must have habitual and regular residence in Algeria for at least two years.²
- The spouse must have good conduct and behavior.
- The spouse must provide sufficient means of livelihood.

1.1.2 Procedures for Applying for Algerian Nationality

This article clarifies that the law requires anyone wishing to acquire Algerian nationality through marriage to submit an application expressing their desire to acquire nationality. This application must be accompanied by a set of documents, which are:

- The application form.
- A copy of the marriage certificate.

¹ Article 9 bis added by Law 05-01 dated 27/02/2005, amended and supplemented by Law 16-01 dated 06/03/2016.

² The same provision.

- A copy of the birth certificate.
- A copy of the criminal record (Form No. 03).
- The Algerian nationality certificate of the spouse.
- A residence certificate (Form No. 04) issued by the competent authorities.
- Three passport-sized photographs for identity verification.
- A work certificate or a copy of the commercial register.
- A certificate from the tax authority (proof of non-liability for tax).³

After verifying that all documents and papers are complete and that the foreign applicant meets the conditions set forth in Article 9 bis added by Order 05-01 and amended by Law 16-01, a decision is issued by the competent authority to accept or reject the application, based on its full discretionary power.

Article 26 of the Algerian Nationality Law stipulates that if the legal conditions are not met, the Minister of Justice shall **reject the application by a reasoned decision**, which is communicated to the applicant. The Minister of Justice may also reject the application, even if the legal conditions are met, by a decision communicated to the applicant.

In the case of approval of the naturalization application, the person who acquires Algerian nationality **becomes equal to a native citizen**, enjoying the same rights and bearing the same obligations as native citizens. This is known as the **principle of equality between native and naturalized citizens**. Acquired nationality also extends to children, so that **minor children of a person who acquires Algerian nationality under Article 10 of the Nationality Law** automatically become Algerian by virtue of their parents.⁴

1.2 Naturalization

Most international conventions recognize an individual's **right to change nationality**, allowing a person to acquire the nationality of a foreign state with which they previously had no legal connection. Naturalization is considered a **grant by the state** to a foreigner who requests its nationality by expressing their will, and it occurs only with the **consent of both parties**: the individual and the state.

1.2.1 Conditions for Acquiring Algerian Nationality through Naturalization

Applicants for Algerian nationality are divided into **two categories**, each with its own specific conditions:

A. Conditions for Ordinary Naturalization

The Algerian legislator established the concept of ordinary naturalization through Article 10 of the Algerian Nationality Law, which sets out the conditions for acquiring Algerian nationality through ordinary naturalization, upon the applicant's request and government approval.

The conditions are as follows:

- Residence in Algeria for at least seven years at the time of submitting the application.
- Residence in Algeria at the time of signing the decree granting naturalization.
- Attainment of legal adulthood.
- Good conduct, no conviction for offenses affecting honor, and proof of sufficient means of livelihood.
- Soundness of body and mind.
- Demonstrated integration into Algerian society.⁵

³ Mohand, I. (n.d.). Private International Law, Volume Two (Unpublished edition). Diwan of University Publications, Algeria, p. 172.

⁴ Article 17 of the Algerian Nationality Law.

B. Conditions for Exceptional Naturalization

Article 11 of the aforementioned Nationality Law provides **three exceptions** under which a foreigner may request naturalization **regardless of the conditions set forth in Article 10** of the same law. These cases are considered exceptions to the general rule and include:

- A foreigner who has rendered exceptional services to Algeria, or who has suffered a disability or illness as a result of work performed in service of or for the benefit of Algeria.
- A foreigner whose naturalization would provide exceptional benefit to Algeria.
- A foreigner who falls under the first paragraph of Article 11 but has died leaving behind a spouse and children.

1.2.2 Procedures for Acquiring Algerian Nationality through Naturalization

The Algerian legislator has regulated these procedures in **Articles 25 to 29 of the Nationality Law**, which consist of submitting the application file and its examination.

Anyone wishing to acquire Algerian nationality through naturalization must submit an application to the **Ministry of Justice**. If the applicant is not present in Algeria, the application may be submitted to the **Algerian embassy or consulate** in the country where the applicant resides, provided that the **residence requirement in Algeria at the time of signing the decree** and the **seven-year residency condition** are fulfilled.⁶

The naturalization application file must include the following documents:

- A copy of the birth certificate.
- Criminal record extract (Form No. 03).
- Residence certificate (Form No. 04) issued by the competent authorities.
- Certificate of non-poverty.
- Certificate of physical and mental soundness.
- Work certificate, professional card, or a copy of the commercial register.
- A copy of the marriage certificate.
- Copies of the birth certificates of minor children and the nationality certificate of the spouse.
- Tax authority extract.
- Three passport-sized photographs for identity verification.
- The applicant may also submit a request to change their first and last names in accordance with Article 12, paragraph 2 of the Nationality Law.⁷

After completing the investigation and verification procedures for the naturalization application, a decision is issued by the **Minister of Justice** to accept or reject the application. The Minister has **discretionary authority** to approve or deny it.

2. Law Applicable to Inheritance Matters

Acquired nationality raises several legal issues related to **multiple nationalities**, such as conflicts between acquired nationalities and the **security and sovereignty of the state**, which leads to the imposition of strict conditions on naturalized citizens. Other issues include **revocation of nationality**, **the exercise of diplomatic protection**, and the **difficulty of determining the applicable law in personal status matters**.⁸

⁵ Mohand, I. (n.d.). Ibid., p. 174.

⁶ Boujnana, A. K. (2014). Dual nationality and the position of Algerian law (Doctoral dissertation, Private International Law, Faculty of Law, University of Algiers), p. 109.

⁷ Boujnana, A. K. (2014). Ibid., p. 110.

⁸ Bouali, S., & Chareki, N. (2013). Algerian Private International Law (1st ed.). Dar Belkis, Algeria, p. 48.

Nationality constitutes a determinative factor in legal acts that take effect upon death. Among such acts is inheritance, which falls within the scope of personal status law and encompasses all assets, rights, and obligations left by the deceased, which are transmitted to the heirs. Inheritance is grounded in family law principles that govern the legal relationships between individuals and their family.⁹

The unification of the law applicable to inheritance, as adopted by some Arab states, **does not preclude certain issues** arising from the reliance on nationality as the connecting factor and the application of the principle of **unity of the estate** when resolving disputes involving heirs of foreign nationalities. This gives rise to the **problem of determining the scope of the law applicable to inheritance matters**.¹⁰

Therefore, we have divided this section into: **the scope of application of the law of the deceased's nationality**, and **the issues arising in inheritance matters**.

2.1 Scope of Application of the Deceased's Nationality Law

Although inheritance matters are extensive in scope, their **application is limited**, as evidenced by the fact that some matters considered part of inheritance **are not governed by the applicable inheritance law**, but rather by a different law.¹¹

2.1.1 Matters Falling Within the Scope of the Deceased's Nationality Law at the Time of Death

These matters consist of issues governed by the **law of the deceased's nationality at the time of death**, including: **causes of inheritance, conditions and timing of entitlement to inheritance, and impediments to inheritance**.

A. Causes of Inheritance

According to the **Algerian Family Law**, the legislator has recognized **kinship and marital relationship** as the two causes of inheritance, as stipulated in **Article 126** of this law.

- **Marital Relationship:** The relationship between a man and a woman that is legally and validly established. The marriage contract must be valid and meet all legal requirements¹² for the spouses to inherit from one another. The validity of the contract allows them to inherit from each other even if consummation of the marriage has not taken place.¹³

Additionally, the marital relationship must exist both legally and in effect at the time of death. If the divorce is revocable and the waiting period (*'idda*) has not expired, the wife inherits from her husband, and likewise, he would inherit from her. However, in the case of an irrevocable divorce, the wife does not inherit from her husband, as the marital relationship is considered terminated.¹⁴

- **Kinship Relationship:**

This refers to **true biological kinship**, meaning every blood tie that connects the heir to the deceased, including heirs with prescribed shares, agnatic heirs, and distant kin.¹⁵

B. Conditions of Entitlement to Inheritance

- **Death of the decedent:** Whether the death is actual or legally presumed.
- **Verification that the heir was alive after the decedent's death:** In accordance with Articles 128 and 134 of the Family Code and Article 25 of the Algerian Nationality Act.¹⁶

⁹ Salama, A. K. (2008). Private International Law: Nationality, Citizenship, the Treatment of Foreigners, and International Conflict of Laws and Civil Proceedings. Dar Al Nahda Al Arabiya, Egypt, p. 73.

¹⁰ Salah El-Din, G. (2008). Private International Law: Nationality and Conflict of Laws (1st ed.). Dar Al-Fikr Al-Jami'i, Egypt, p. 59.

¹¹ Hisham, S., & Okasha, A. A. (2008). International Civil and Commercial Procedures and the Enforcement of Foreign Judgments (Unpublished edition). University Publications, Egypt, p. 115.

¹² Mohamed, M. S. (n.d.). Inheritance Rules between Jurisprudence and Law. Dar Al Nahda Al Arabiya, Lebanon, p. 63.

¹³ Larabi, B. (2007). Al-Wajiz in Explaining the Algerian Family Law, Volume 2 (5th ed.). Diwan of University Publications, Algeria, p. 52.

¹⁴ Ahmed, M. A. D. (2007). Rights Related to Inheritance between Jurisprudence and Law (1st ed.). Dar Al-Thaqafa, Amman, p. 324.

¹⁵ Larabi, B. (2007). Ibid., p. 52.

- **Establishment of the kinship link** between the decedent and the heir.

C. Impediments to Inheritance

- **Intentional and wrongful killing**
- **Li'ān (Mutual Imprecation):** When a husband accuses his wife of adultery or immoral conduct and denies the paternity of her pregnancy. As a result, the child is not affiliated to the father and is therefore excluded from inheriting from him.¹⁷
- **Apostasy:** As provided in Article 138, apostasy—meaning abandoning Islam for another religion—constitutes a bar to inheritance.¹⁸
- **Simultaneous death of the heir and the deceased:** If the heir and the decedent die at the same time, no inheritance is established between them, as it becomes impossible to determine who died first.¹⁹

2.1.2. Issues That Fall Outside the Scope of the Law of the Deceased's Nationality at the Time of Death

Inherited property is transferred to the heirs in accordance with the law governing the location of the property, as these rules relate to the transfer of ownership of the estate.²⁰ Therefore, we will address the issues related to the status of assets subject to the law of their location.

A. Registration of Real Property Rights Included in the Estate

These procedures fall under the concept of the location of assets and are governed by the law of the situs. If a property is located in a particular state and that state requires the registration of transactions issued by the heirs, the location of the property must be taken into account. Given the importance of real estate, and considering it as part of the state's territory, the principle of territoriality of laws and state sovereignty applies, meaning the law of the location governs the property. Ensuring the validity of transactions and providing security for the property owner therefore requires adherence to a single applicable law.²¹

B. Regulation of Joint Ownership Resulting from Inheritance

The regulation of joint ownership arising from inheritance is governed by the law of real property and property rights, that is, the law of the location of the asset. This law regulates the state of joint ownership, the management of jointly owned assets, the legitimacy of maintaining joint ownership by agreement, the duration of joint ownership, the authority of heirs over jointly owned assets prior to partition, the effects of partition, and the manner of its termination.²²

2.2. Issues Arising in Inheritance Matters

A judge may face several difficulties when handling a dispute with an international dimension. These include cases of multiple nationalities, where a person holds citizenship of several states; absence of nationality, where a person does not belong to any state; or loss of nationality, known as statelessness. Another challenge may arise in the proof and interpretation of foreign nationality laws.

2.2.1. Positive and Negative Conflict of Laws

A. Positive Conflict (Multiple Nationalities)

The existence of multiple nationalities raises a fundamental problem in the field of conflict of laws, particularly regarding legislation that uses nationality as a connecting factor in personal status matters, including the marriage of a foreigner. In such cases, it is necessary to apply the law of a single

¹⁶ According to the Family Law, the heir must be alive at the time of the decedent's death. A child who dies before their parent does not pass on inheritance rights to their own children, whereas a fetus inherits from the father provided it is born alive or shows signs of life.

¹⁷ Rachid, B. S. (2008). *Wills and Inheritance in Algerian Family Law* (1st ed.). Dar Al-Khaldounia for Publishing and Distribution, Algeria, p. 84.

¹⁸ Ahmed, M. A. D. (2007). *Ibid.*, p. 101.

¹⁹ Mohamed, A. Z. (n.d.). *Rules of Estates and Inheritance*. Dar Al-Fikr Al-Arabi, Egypt, p. 48.

²⁰ Rachid, B. S. (2008). *Ibid.*, p. 193.

²¹ Okasha, R. (n.d.). Conflict of laws in inheritance, wills, and endowments in Arab legislations and judicial practice. *Journal of Legal and Social Sciences*, University of Ziane Achour, Issue 8, p. 192.

²² *Ibid.*

nationality as the personal law of the multi-national spouse, due to the impossibility of simultaneously applying the laws of the different nationalities to which they belong.²³

To determine which nationality should be recognized for the purpose of applying its law to the dispute, two scenarios are considered as follows:

- **Multiple Nationalities without the Judge's State Nationality Among Them:**
In this case, the judge recognizes the **effective nationality**—the one with which the person is most closely connected. To determine this, the judge relies on **objective factors** such as the person's domicile or residence, the center of their business interests, family ties, language, place of exercising political or public rights, and other relevant factors²⁴. This approach is adopted by the **Algerian legislator**.
- **Multiple nationalities with the judge's state nationality among them:**
The prevailing opinion in nationality law and private international law is that, in this case, the nationality of the judge's state takes precedence over the others. Consequently, the nationality of the judge's state is applied. The law of the judge's state is applied to the disputed matter, regardless of the other nationalities the person holds alongside the judge's state nationality. This is because the judge's state nationality plays a decisive overriding role, eliminating any possibility of comparison or choice. Its law is applied exclusively to the matter in dispute.²⁵ The Algerian legislator adopted this solution in accordance with Article 22, paragraph 2 of the Civil Code, which stipulates that Algerian law applies when a person simultaneously holds Algerian nationality and the nationality of one or more foreign states.

B. Negative Conflict

It refers to the absence of nationality, meaning that an individual does not hold any nationality. It can be defined as a legal status of a person who does not enjoy the nationality of any state at all. A stateless person is someone who, from birth or at a later date, lacks the nationality of any country.²⁶

Negative conflict of nationalities occurs when no state claims authority over a person's nationality, and no country recognizes its national law as applicable to that person's personal status due to their statelessness. This situation creates a fundamental problem, especially when determining the law applicable to matters of personal status²⁷.

Despite the variety of criteria proposed to resolve this issue, the Algerian legislator has adopted the criterion of the person's place of residence²⁸, given the extent of an individual's connection and attachment to the place in which they live. This makes the degree of a person's attachment to a specific location parallel to their connection with the state to which they belong by nationality.²⁹

2.2.2. Conflict mobility and a person's affiliation with a multi-jurisdictional State

A. Mobile Conflict of Laws

Dynamic or mobile conflict arises when a factual change occurs in the connecting factor, resulting in the transfer of a person or a particular matter from the scope of one law to that of another under the same conflict-of-laws rule. In other words, a mobile conflict occurs when a given situation can be subject to two different legal systems.³⁰

Nationality is considered one of the connecting factors that gives rise to dynamic conflict, as it is subject to change. A person can change their nationality between the time the legal relationship arises and the time the dispute is brought before the court. This results in the succession of laws governing

²³ El-Akoun, A. (n.d.). Positive and negative conflict between nationalities (Master's thesis, University of Algiers), p. 63.

²⁴ Hussein, H. (n.d.). Nationality, the Status of Foreigners, and Their Provisions in Iraqi Law. Dar Al-Thaqafa for Publishing and Distribution, p. 75.

²⁵ Sami, B. M. (n.d.). Al-Waseet in Private International Law. Dar Al-'Uloom Al-Arabiya, Lebanon, p. 274.

²⁶ Okasha, M. A. (n.d.). Ibid., p. 177.

²⁷ Ghaleb, A. D. (2005). Private International Law (4th ed.). Dar Wael for Publishing, p. 141.

²⁸ The Algerian legislator adopted this solution by amending the Civil Code, specifically in Article 22, as amended by Law No. 05-10.

²⁹ Okasha, M. A. (n.d.). Ibid., p. 197.

³⁰ Abdelhakim, M. A. R. (n.d.). Al-Waseet in Private International Transactions Law (1st ed.). Cairo University, p. 56.

the dispute: the old nationality law followed by the new nationality law, which may cause conflicts between acquired rights under the laws of both states. This creates practical difficulties in applying nationality law, which is the law applicable to international private law disputes concerning personal status matters³¹. In such cases, the nationality recognized is that of the person at the time the act occurs. For example, in marriage, the applicable nationality is that of the person at the time the marriage contract is concluded, and so on.

B. A person's affiliation with a state having multiple legal systems

A judge may face difficulties in applying nationality law if the case is referred to the law of a state with multiple personal status codes. For example, a national connecting rule may indicate applying the nationality law of the spouses to a dispute concerning the substantive conditions of marriage, or applying the nationality law of the husband at the time of marriage to a dispute concerning the personal or financial effects of the marriage. If the national judge refers to this law, they may find it nonuniform, with multiple internal legal systems, whether it is regional multiplicity—as seen in states that apply a specific law to each region.³²

If the judge faces one of these cases, they will inevitably encounter difficulty in determining which law among the multiple laws should be applied, which law qualifies as the nationality law referred to in the national connecting rule, and which law should be recognized to resolve the dispute.³³

The Algerian legislator provided that the prevailing solution to this issue is to apply the domestic law indicated by the internal connecting rule of the country whose law the national rule refers to³⁴. According to Article 23, paragraph 1 of the Civil Code, when it appears from the preceding provisions that the applicable law is that of a state with multiple legal systems, the domestic law of that state determines which of its legal codes should be applied.

Conclusion:

Nationality is of a mixed nature, as it finds its place within both public law and private law. It holds great significance for both the individual and the state at the national and international levels, granting rights, imposing obligations, and providing protection.

In inheritance matters, nationality serves as a connecting factor in relations involving a foreign element and as an indicator for determining the scope of the foreign law to be applied. This is achieved by specifying the matters that fall within the scope of this law, to which the personal law is applied, while matters outside its scope are governed by another law.

As a result of studying our topic, which concerns the legal status of a person with acquired nationality in inheritance matters, the following conclusions were reached:

- The judge applies Algerian nationality law if it is among the conflicting nationalities in inheritance matters; if it is not present, the law of the effective nationality is applied, in accordance with Article 22.
- Considering that public order serves as a safeguard, foreign law applicable to inheritance matters is excluded by the national judge if such law violates international public order.
- The judge must take into account the nationality in effect at the time of any legal act in cases of multiple nationalities.

³¹ Youbi, S. (2010). Conflict of laws in the field of lineage (Master's thesis, University of Abu Bakr Belkaid, Tlemcen), p. 264.

³² El-Akoun, A. (n.d.). Ibid., p. 109.

³³ Zourti, T. (2011). Studies in Algerian Private International Law. Dar Houma for Printing, Publishing, and Distribution, Algeria, p. 19.

³⁴ Jaber, J. A. R. (n.d.). Ibid., p. 115.

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