

Multiple Citizenship and its Consequences in Turkish Law

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ABSTRACT

Turkish law has adopted a number of approaches regarding the question of dual or multiple citizenship since the Turkish Nationality Act (TVK) came into force in 1964, largely in response to migration movements. While Turkish citizens were not allowed to hold Turkish nationality when they wanted to acquire foreign nationality between 1964 and 1980, dual nationality was actually encouraged by the 1981 Amendment to the Turkish Nationality Act. Turkey has become a receiving country for aliens seeking employment since 2000, and in order to work without being subject to the restrictions of Turkish legislation, immigrant women acquired Turkish citizenship by way of marriage. This led to changes in the Turkish Nationality Act in 2003 and subsequently marriage is no longer an easy way to acquire Turkish citizenship. Migration movements to and from Turkey, as well as the need to bring the current TVK into line with the European Convention on Nationality, are the principal factors shaping the latest Draft Turkish Nationality Act submitted to the Parliament in April 2006. The explicit acceptance of multiple citizenship in the draft bill is an attempt to remove inconsistencies in this area of Turkish law.

ÖZET

Türk hukukunun çifte vatandaşlığa karşı yaklaşımı Türk Vatandaşlığı Kanununun kabul edildiği 1964 yılından bu yana, Türkiye'den diğer ülkelere, diğer ülkelerden de Türkiye'ye yönelik nüfus hareketlerinin etkisiyle değişiklikler göstermektedir. Türkiye, 1980'li yıllara kadar, Türk vatandaşlığını kazanacak olan yabancılardan önceki vatandaşlıklarını bırakması şartını aramamış, buna karşılık, yabancı bir devletin vatandaşlığını kazanan ya da kazanacak olan Türk vatandaşları bakımından daha katı politikalar izlemiştir. 1980'li yıllardan itibaren, yurt dışında yaşayan Türklerin yaşadıkları ülkelerin vatandaşlığını kazanmak ve Türk vatandaşlığını muhafaza etme isteklerine cevap vermek ihtiyacı ortaya çıkmış ve TVK'nda yapılan değişikliklerle, çifte vatandaşlık açıkça teşvik edilmiştir. 1980–2000 yılları arasında, Türk vatandaşlarının

yaşadığı bazı ülkelerde, çifte vatandaşlık karşıtı yaklaşımlar etkili olmaya başlamış ve o devletlerin vatandaşlığını kazanmak isteyen Türkler için Türk vatandaşlığını bırakma şartı getirilmiştir. Bu ülkelerin yaklaşımına tepki olarak TVK’nda bazı değişiklikler yapılmış ve yetkili makam kararı ile Türk vatandaşlığını kazanacak bazı yabancıların şartlı olarak vatandaşlığa alınmasının yolu açılmıştır. 2000’li yıllardan sonra Türkiye dışarıdan göç almaya başlamıştır. Türkiye’ye gelen göçmenlerin, Türk yabancılar hukukunun çalışma hakkı konusunda getirdiği sınırlamalardan kurtulmak için Türk vatandaşlığını kazanma yolunu seçmeleri Türk kanun koyucusunu yeniden harekete geçirmiş ve 2003 yılında evlenme yoluyla Türk vatandaşlığının kazanılması zorlaştırılmıştır. 2000’li yıllardan sonra TVK’nun Türkiye’nin vatandaşlık politikalarını ve vatandaşlık hukukundaki yeni gelişmeleri yansıtmaması nedeniyle yeni bir Türk Vatandaşlığı Kanununu için tasarı hazırlanmış ve TBMM’ne sunulmuştur. Tasarı, tercihini çok vatandaşlık yönünde yapmak suretiyle, Türk hukukunun bugüne kadar çok vatandaşlığı hem teşvik eden hem önlemeye çalışan tutarsız yaklaşımını terk etmiştir.

KEYWORDS

Multiple Citizenship/Nationality, Acquisition of Nationality, Conflict of Laws, Migration

ANAHTAR KELİMELEER

Çok Vatandaşlık/ Tâbiyet, Vatandaşlığın Kazanılması, Kanunlar İhtilâfi, Göç

I. TERMINOLOGY

A. Nationality or Citizenship

Definitions of “nationality” and “citizenship” both involve a legal relationship between person and state.¹ In this sense they are interchangeable, although the former emphasizes international aspects of this relationship, while

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¹ For the purposes of the European Convention on Nationality (E.T.S. No. 166, done at Strasbourg, November 6, 1997), “nationality” means the legal bond between a person and a state and does not indicate the person’s ethnic origin. See the text of the Convention *available at* <http://conventions.coe.int> (last visited March 15, 2007). For a general comment on the Convention see, Gülin GÜNGÖR, “Avrupa Vatandaşlık Sözleşmesi” (European Convention on Nationality), Profesör Dr. Yılmaz Altuğ’a Armağan, Milletlerarası Hukuk ve Özel Hukuk Bülteni, 1997-1998, Vol. 17-18, No.1-2, pp. 227-250; Bilge F. TANRIBİLİR, “Avrupa Vatandaşlık Sözleşmesi ve Türk Hukuku” (European Convention on Nationality and Turkish Law), Profesör Dr. Ergin Nomer’e Armağan, Milletlerarası Hukuk ve Özel Hukuk Bülteni, 2002, Vol. 22, No.2, pp. 791-818.

the latter emphasizes domestic concerns. “Nationality,” however, must be distinguished from “citizenship”² in some respects: citizens have the right to participate in the political life of a state, for example by voting or standing for election; while nationals do not necessarily have these rights.³ It is possible to hold a nationality without being a citizen, i.e. to be legally subject to a state and entitled to its protection, without having the right of political participation; it is also possible to have political rights without being the national of a state. A good example of this being citizens of British Commonwealth countries who are resident in the United Kingdom are entitled to full political rights. Neither are “nationality” and “citizenship” interchangeable in terms of European citizenship, which flows from national citizenship; if one holds the “nationality” of an EU member state, one also becomes a “citizen of the Union” as a result.⁴

In Turkish law, “citizenship” (*vatandaşlık*) is defined as a legal and political bond between a natural person and the state, while nationality (*uyrukluk*) has a broader meaning which includes legal persons (e.g., corporations) and vessels such as aircraft and ships as well.⁵ Therefore, “nationality” would be a more accurate term for legal persons, vessels, and aircrafts, rather than “citizenship.”⁶ In spite of this, the terms of “nationality” and “citizenship” are used interchangeably with regards to the relationship between individuals and the State under Turkish law. This article will do the same.

² Citizenship is generally defined as membership in a political community. A person who has such membership is called a citizen.

³ E.g., not all U.S. nationals are U.S. citizens; however, all U.S. citizens are U.S. nationals. Nationals who are not citizens cannot vote or hold elected office (except in some local elections). However, they may live in the United States without restriction and may be naturalized as U.S. citizens under the same rules as other resident aliens.

⁴ The Maastricht Treaty introduced the concept of citizenship of the European Union (Article 8). See the text of the Treaty *available at* <http://www.eurotreaties.com/maastrichteu.pdf> (last visited March 21, 2007). EU citizenship offers certain rights and privileges within the EU; in many areas EU citizens have the same or similar rights as native citizens in member states.

⁵ Rona AYBAY, *Vatandaşlık Hukuku (Citizenship Law)*, 2d ed., İstanbul Bilgi Üniversitesi Yayınları, İstanbul 2006, p.13; Vahit DOĞAN, *Türk Vatandaşlık Hukuku (Turkish Citizenship Law)*, 5th ed. Seçkin Yayıncılık, Ankara 2005, p. 24.

⁶ The nationality of a legal person is generally the state under whose laws the legal person is registered (or the state where the legal person’s center of administration is located). For the tests applied for nationality of companies see Tuğrul ARAT, *Ticaret Şirketlerinin Tâbiyeti (Nationality of Corporations)*, Ankara 1979, pp. 63-97.

B. Dual or multiple nationality/citizenship

“Multiple citizenship” is a status in which a person is concurrently regarded as a citizen under the laws of more than one state. “Dual citizenship,” being a citizen of two states, is the most common type of multiple citizenship and therefore the various definitions of ‘multiple citizenship’ is always inclusive of the term “dual citizenship.” In Article 2 (b) of the European Convention on Nationality, “multiple nationality” is defined as “the simultaneous possession of two or more nationalities by the same person.” In this article, I also shall use the terms multiple citizenship and dual citizenship interchangeably.

II. CONSTITUTIONAL DEFINITION OF TURKISH CITIZENSHIP

Article 66 (1) of the Turkish Constitution⁷ states that “every person tied to the Turkish state with the bond of nationality is Turkish.” For the purpose of this definition, Turkish citizenship is wholly a legal term that indicates the legal bond between an individual and the State. The various characteristics of the individual such as religion, sex, race, national or ethnic origin do not have any effect on the status of a person’s Turkish citizenship. This definition discourages any discrimination among Turkish citizens. Every Turkish citizen is equal before the law, no matter whether he or she is a mono-Turkish citizen or a dual-Turkish citizen.⁸ This non-discrimination principle is valid for citizens whether they are citizens by birth or have subsequently acquired Turkish citizenship.

III. POLITICAL AND LEGAL APPROACHES TO MULTIPLE CITIZENSHIP IN TURKEY

Turkey’s policies concerning multiple citizenship have changed over the years since 1964 when the Turkish Nationality Act (Türk Vatandaşlığı Kanunu) came into force.⁹ It may be helpful to consider Turkish policy towards

⁷ For the official text of the 1982 Turkish Constitution, see Law No. 2709 of October 18, 1982, Official Gazette (here-in-after R.G.), November 9, 1982, No.17863 (Reiterated). For an English translation of the Constitution, see the official web site of Turkish General Assembly *available at* <http://www.tbmm.gov.tr> (last visited March 15, 2007).

⁸ See also Article 5 of the European Convention on Nationality, which provides that no discrimination shall exist in a state’s internal nationality law on the grounds of “sex, religion, race, colour or national or ethnic origin.” It also provides that a state shall not discriminate among its nationals on the basis of whether they are naturalized or native-born nationals.

⁹ For the official text of the Turkish Nationality Act No. 403 of 11 February 1964 see R.G., February 22, 1964, No. 11638. (hereinafter “TVK”). In this article, I will cover only the period

citizenship with regards to three distinct periods: the 1960s, the 1980s and the 2000s. One of the main characteristics of those periods is the influence of migration movements from and to Turkey.¹⁰

Turkey developed citizenship policies in response to emigration movements from Turkey to Western European countries in the early sixties when Turkey became a labor-exporting country. In fact, Turkish emigration to Western Europe started at the beginning of the 1960s with the signing of bilateral labor recruitment agreements with various countries (Germany (1961), Austria (1964), the Netherlands (1964), Belgium (1964), France (1965), and Sweden (1967)). Germany has been the dominant employer of Turkish workers since then.¹¹

The basis of Turkish emigration at that time was temporary labor recruitment and most of the workers were eventually expected to return to their home country. However, over the years, the temporary labor recruitment turned into permanent settlement. The workers started staying in their respective host country, together with their dependants. This meant that during the 1970s, emigration took the form of permanent settlement rather than temporary recruitment as a result of such factors as family reunions and the growth of a second generation born and brought up in their host countries.¹² The immigrant Turkish workers began to consider those countries where they were living and working as their second homeland. In spite of these developments, the Turkish state's policy on "multiple (and dual) citizenship" remained unchanged for about 15 years, during the period from 1964 to 1980.

At the beginning of early eighties, restrictive immigration policies were pursued by countries which had received Turkish immigrant workers, together with financial incentives for returning workers. However, around the same time, some of the receiving countries offered Turkish immigrants the possibility of full integration, allowing them the same rights given to nationals of that particular country. This resulted in the acquisition of a new citizenship. In

between 1964 and 2007 in terms of legislation on Turkish Citizenship, although there were two other Acts on Turkish nationality before 1964 in Turkey. The 1960s are also considered as the cornerstone for the roots of the policy changes regarding citizenship in Turkey.

¹⁰ Bülent ÇİÇEKLİ, "Vatandaşlık Politikası" ("Citizenship Policies"), in Turkut Göksu *et al.* (eds) 1980-2003 Türkiye'nin Dış, Ekonomik, Sosyal ve İdari Politikaları (Turkey's Foreign, Economic, Social and Administrative Policies), Siyasal Kitabevi, Ankara 2003, pp.371-389, at 382.

¹¹ Bülent ÇİÇEKLİ, *The Legal Position of Turkish Immigrants in The European Union*, Karmap Basın Yayın A.Ş., Ankara, 1998, p. 3 .

¹² Bülent ÇİÇEKLİ, (1998), pp. 14-21.

order to integrate into society and to attain appropriate working and living conditions, Turkish immigrants often sought to acquire the citizenship of the state in which they lived, but in addition to their Turkish citizenship.

These developments, in which Turkish immigrant workers sought to acquire dual citizenship, led to a shift in Turkey's own citizenship policy in the early 1980s.¹³ For example, in 1981 the Turkish Nationality Act was amended to remove obstacles to dual citizenship for Turkish citizens.¹⁴ Given the sizeable number of Turkish immigrant workers in Western European countries intending to live with their dependants in those countries, it became necessary to introduce dual citizenship into Turkish law. Therefore, the Turkish population living abroad acted as a catalyst for the formation of citizenship policies for the period of 1980 to 2000.

Turkey has also become a receiving country in terms of international migration since 2000 and this immigration to Turkey caused it to change its own citizenship policies. The amendment of Article 5 of the TVK in 2003 was the first sign of this policy change. After this amendment,¹⁵ marriage can no

¹³ It should also be mentioned that similar policy changes with regard to multiple nationality in the international community were happening during the same period. A remarkable example of such shift in policy with regard to multiple nationality is that of the Council of Europe, whose purpose in the past had been to avoid the dual nationality. Multiple nationality was seen as an evil to be avoided in The Council of Europe's 1963 Convention on Reduction of Cases of Multiple Nationality and on Military Obligations in cases of Multiple Nationality (C.E.T.S. No. 43, done at Strasbourg, May 6, 1963). See the text of the Convention *available at* <http://conventions.coe.int> (last visited March 15, 2007). The Council of Europe's 1997 Convention on Nationality reflects the tendency towards international acceptance of multiple nationalities. Chapter V of the 1997 Convention regulates explicitly multiple nationalities (Articles, 14, 15, 16, and 17). Article 15 provides that the provisions of this Convention shall not limit the right of a State Party to determine, in its internal law, whether its nationals who acquire or possess the nationality of another State retain its nationality or lose it; and the acquisition or retention of its nationality may be made subject to the renunciation or loss of another nationality. Article 16 states that a State Party shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required. In the late 1980s and early 1990s, several Eastern and Central European countries made the same shift when they adopted new nationality laws.

¹⁴ As a result of the Amendment Act Number 2383 (R.G., February 17, 1981, No. 17254), a Turkish citizen can request the nationality of another state without surrendering his Turkish citizenship. Many Turkish citizens have applied to get permission for dual nationality since 1981. The only condition for dual nationality is to obtain permission of the Ministry of Interior.

¹⁵ The Amendment Act No. 4866 of 4.6.2003 (R.G., June 12, 2003, No. 25136), however, provides for gender equality with regard to acquisition of Turkish citizenship by marriage, but

longer be a way for foreign women to acquire Turkish citizenship upon a declaration of intention to that effect by them. Immigration movements were also a major factor in shaping the draft Turkish Nationality Act submitted to the Parliament in April 2006.¹⁶

IV. THE LEGAL BASIS OF MULTIPLE CITIZENSHIP

A. In International Law

Traditionally under international law, a sovereign state is free in principle to determine under its own law how and to whom nationality may be granted.¹⁷ Although nationality is in the state's reserved domain and the general freedom of states in matters of nationality is well established in public international law, the law of nationality is increasingly coming under regulation by conventions regulating nationality. The freedom of states in matters of nationality has been confirmed on many occasions. According to Article 3 of the European Convention on Nationality, "each State shall determine under its own law who are its nationals. This law shall be accepted by other States insofar as it is consistent with applicable international conventions, customary international law, and the principles of law generally recognized with regard to nationality."

Nothing in international law prevents anyone from establishing nationality in more than two countries. Dual nationality may result from the fact that there is no uniform rule of international law relating to the acquisition of nationality. However, attitudes towards multiple nationality vary widely since each state has its own nationality law based on its own independent domestic policy. In any state system, therefore, the possession of two or more nationalities simultaneously can be permitted, restricted or prohibited.

Individuals may hold dual/multiple nationality with the automatic operation of these different laws rather than by choice, which can lead to '*de facto* dual citizenship'. In cases in which citizenship is acquired after birth, the approach to multiple citizenship taken by States is more apparent. When a nationality law of a state requires renunciation of prior allegiances as a condition for derivative acquisition of its citizenship, it may be argued that the

makes the acquisition of citizenship upon marriage difficult. E.g., the marriage must have existed at least for three years and the couples must *de facto* live together in order to acquire Turkish citizenship.

¹⁶ See the text of Draft TVK available at <http://www2.tbmm.gov.tr/d22/1/1-1192.pdf> (last visited May 15, 2007).

¹⁷ Laurie FRANSMAN, *Fransman's British Nationality Law*, 2nd Ed., Butterworths, London, Edinburgh & Dublin, 1988, pp. 81-83.

state is against dual citizenship for the ones who want to acquire its citizenship by way of marriage, adoption or naturalization. This, however, is the only half of the whole picture. One should also consider that state's attitude towards dual nationality as reflected by how it treats its own citizen who wants to acquire another state's nationality. It can be argued that such a state is against dual nationality when it does not give permission to its "emigrants" who also want to continue to hold its nationality.

A state may follow an approach in favor of dual nationality for foreign nationals who want to acquire its citizenship, while it may take the opposite approach for its citizens who want to acquire the nationality of another state.

B. Legal Provisions Giving Rise to Multiple Citizenship in the TVK

In Turkish law, as in many countries, acquisition of Turkish citizenship at birth is a *de facto* way of possessing dual citizenship, whereas acquisition of citizenship after birth may reflect Turkey's genuine approach to multiple citizenship. Therefore, it would be appropriate to make a distinction between the acquisition of Turkish Citizenship at birth and after birth.

1. Acquisition of Turkish Citizenship at Birth

Jus sanguinis and *jus soli* are the principles accepted by states for the acquisition of citizenship at birth. Some countries adhere to *jus sanguinis*, which generally defines an individual's citizenship according to that of his parents (transmission of citizenship by descent). Other countries follow the legal principle of *jus soli*, which determines a person's citizenship according to where he was born.¹⁸ Many states have a mixture of *jus sanguinis* and *jus soli*, including Canada, the United States, Israel, Germany,¹⁹ Greece, Britain, and Ireland.²⁰

Turkish law has accepted the *jus sanguinis* principle, giving primary acquisition of Turkish citizenship by parental descent. The place of birth (*jus*

¹⁸ A frequent exception to *jus soli* is imposed when a child was born to a parent in the diplomatic or consular service of another state, on a mission to the state in question.

¹⁹ Germany only recently abandoned full *jus sanguinis*, adopting a few elements from *jus soli* e.i., Article 4(3) of the German Nationality Act. See English translation of the German Nationality Act (as last amended by the Act of July 23, 1999) available at <http://www.iuscomp.org/gla/statutes/StAG.htm#4> (last visited May 21, 2007).

²⁰ More recently these countries have begun to move more towards the use of *jus soli*, partially under the influence of the European Convention on Nationality.

solı) is the secondary acquisition of Turkish citizenship in order to avoid statelessness.

According to the *jus sanguinis* principle laid down in Article 1 of the TVK, a child born to a Turkish mother or through a Turkish father, in or outside the Turkish territory, is a Turkish citizen starting from the date of his/her birth.

This provision may cause dual nationality at birth, if one of the parents is a Turkish citizen, while the other is a citizen of another country whose law accepts the *jus sanguinis* principle for the acquisition of nationality at birth. Before the amendment of the TVK in 1981, the child of a Turkish mother and a foreign father born in wedlock could have acquired Turkish citizenship if he/she did not acquire foreign citizenship from the father (former Article 1(b) of the TVK). However, after the amendment this wasn't possible, so there is a strong suggestion that the purpose of the provision was to eliminate many cases of dual citizenship.

On the other hand, a child whose mother or father is a Turkish citizen may also have dual citizenship at birth if he is born in a country whose law accepts the *jus soli* principle.

2. Acquisition of Turkish Citizenship After Birth (Derivative Acquisition)

Before the shift in Turkish attitude about dual citizenship in 1981, dual nationality was acceptable for aliens who wanted to acquire Turkish citizenship, but dual nationality for Turkish citizens who were naturalized in another state was rejected implicitly. The TVK did not give permission to Turkish citizens who wanted to acquire another nationality while it permitted an alien to acquire Turkish citizenship without relinquishing of his/her previous citizenship.

With respect to current provisions of the TVK, multiple citizenship has been accepted for both groups and the possession of multiple citizenship has not been considered to be disloyal to Turkish State since 1981. The implication is that dual citizenship for Turkish citizens has been encouraged since then.²¹

²¹ Ergin NOMER, *Vatandaşlık Hukuku (Citizenship Law)*, 15th Ed., Filiz Kitabevi, İstanbul 2005, p.31.

a. Multiple Citizenship for the Aliens Who Want to Acquire Turkish Citizenship

i. Naturalization (Acquisition by an Administrative Decision)²²

Dual citizenship for those who were naturalized in Turkey is permissible since there is no renunciation requirement as a prerequisite to naturalization in the TVK (Art 6). However, conditional acquisition of Turkish nationality, which was introduced by another Amendment in 1989,²³ constitutes an exception to the rule “no renunciation requirement as a prerequisite to naturalization.”

Before the 1989 Amendment, under the Turkish Nationality Act in its original form, an application for naturalization was either accepted or denied. In cases where the application was accepted, an alien could acquire Turkish citizenship by a decision of the Council of Ministers. After the Amendment, an alien may be conditionally accepted for Turkish citizenship. In such cases, Turkish citizenship is acquired at a date determined by the Ministry of Interior at which the additional requirements materialize.²⁴ There is no clarity in the 1989 Amendment concerning additional requirements. In the preparatory documents of the Amendment, the relinquishment of the previous citizenship is cited as an example of a so-called “additional requirement.”²⁵ The Amendment resulted from political reaction to the renunciation requirement under German Law for foreign nationals wanting to acquire German citizenship.

By bringing conditional acquisition of citizenship into Turkish law, the 1989 Amendment deserves criticism in many respects. First, the Amendment cannot be justified based on its aim of eliminating dual citizenship. Second, “conditional acquisition” may cause discrimination among nationals of different states who want to acquire Turkish citizenship. It also leaves wide discretionary power to administrative authorities about which condition is required and which foreigners can conditionally acquire Turkish citizenship. Third, it is highly questionable whether it is acceptable or not to inject political reaction through

²² Naturalization is the act whereby a person voluntarily and actively acquires a nationality which is not his or her nationality at birth.

²³ Amendment Act No. 3540 of 20.4.1989 (R.G., April 29, 1989, No.20153).

²⁴ The time period for the condition to be materialized is two years. If it is determined by the Ministry of Interior that the condition is materialized before the end of this two years, then the alien acquires Turkish nationality on that date. If not, the decision of acquisition of Turkish nationality is going to be cancelled.

²⁵ In Article 11(2) of the Draft TVK it is explicitly stated that renunciation of previous citizenship may be required as a condition of naturalization by the Competent Authority.

legislative measures. Finally, and perhaps most poignantly, the amendment has never resulted in any change in treatment with regard to the dual nationality of Turkish-Germans in Germany. If a Turkish citizen wants to acquire German citizenship, relinquishment of Turkish nationality is still required by German legislation.²⁶

In Turkish nationality law, it is hard to see a consistency of approach with regards to the consequences of naturalization in terms of dual citizenship. On one hand, the TVK purports to eliminate dual nationality with respect to the naturalized alien's dependants, but on the other hand, it sometimes encourages or tolerates dual nationality. For example, a naturalized mother's infant child may acquire Turkish citizenship upon his mother's acquisition of Turkish citizenship in exceptional circumstances. One of the requirements of acquisition of Turkish citizenship by dependant children of the mother is the elimination of dual citizenship. In case the child is still accepted as a citizen by his or her country of origin, he/she cannot acquire Turkish citizenship together with her mother (TVK Art 14).²⁷ When a naturalized alien is the father, his infant child acquires Turkish citizenship whether or not the child holds the nationality of his or her country of origin (TVK Art 16/I). In this situation, Turkish law does not purport to eliminate dual citizenship.²⁸

ii. Marriage and Adoption

In Turkish law there is also a lack of consistency in the approach for other derivative acquisitions of nationality. For example, marriage may fairly be the source of dual citizenship in Turkish law (as in the case of naturalization). Article 5 of the TVK²⁹ does not require the relinquishment of previous

²⁶ The German Nationality Act (as last amended by Article 6. No.9 of the Act of 14 March 2005 available at http://www.bmi.bund.de/Internet/Content/Common/Anlagen/Gesetze/Staatsangehoerigkeitsgesetz__englisch,templateId=raw,property=publicationFile.pdf/Staatsangehoerigkeitsgesetz_englisch.pdf), requires that an applicant must generally give up his or her previous citizenship in order to acquire German nationality by naturalization. However, there are exceptions in case the applicant is not able to, or only under great difficulties able to, renounce his or her former citizenship (Article 12 (1)).

²⁷ See Articles 16/II, 17 and 18/II of the TVK for the conclusions of other derivative acquisitions.

²⁸ See Articles 17 of the TVK for the consequences of optional acquisition.

²⁹ Article 5 of the TVK was amended by Law No 4866, dated 4/6/2003, for the purpose of equality between men and women (gender equality). In the explanation of the Amendment it was stated that it was made with a view to bringing Turkish Nationality Law into line with the Council of Europe Convention on Nationality. Before the Amendment, only alien women could acquire Turkish citizenship by way of marriage a Turkish man. An alien man who married a Turkish woman had no right to acquire Turkish citizenship this way. The amendment also added new

citizenship for an alien who wishes to acquire Turkish citizenship by way of marriage.³⁰

However, adoption of a child by a Turkish citizen does not leave any room for dual citizenship because the main purpose is to avoid the statelessness of the adoptive child.³¹

b. Multiple Citizenship for Turkish Citizens

In the Turkish Nationality Act, dual citizenship for Turkish citizens who acquire the nationality of another state is permissible. Voluntary acquisition of a foreign nationality is not a ground for *ex lege* loss of the Turkish citizenship.³² It can be further argued that Turkish law has encouraged dual citizenship since 1981 when the Turkish Nationality Act was amended for that purpose. As a result of the amendment, a Turkish citizen can request the nationality of another state without surrendering his or her Turkish citizenship (TVK Arts 21-22). The only condition for dual citizenship is to obtain permission of the Ministry of Interior (TVK Art 22 (3)).

The applicant should apply to obtain a permission certificate indicating that there is no legal obstacle to holding Turkish citizenship while acquiring another. Otherwise, voluntary acquisition of a foreign nationality without former permission of the government is a statutory ground for deprivation of the Turkish citizenship subject to its discretion (TVK Art 25/1(a)).

The request for dual citizenship is made through a petition submitted to the highest local administrative authority at the applicant's residence in Turkey. In

requirements that made the acquisition of Turkish citizenship through marriage even more difficult than before.

³⁰ For further information and discussions on Article 5 of the TVK see Gülin GÜNGÖR, "Latest Status of the Alien Spouse in Respect of Acquisition of Turkish Nationality by way of Marriage Following the June 2003 Amendment," Ankara Law Review, 2004, Vol.1, No. 1, pp. 29-49; Fügen SARGIN, "Türk Vatandaşlık Kanunu'nda Değişiklik Yapan 2003 Tarihli ve 4866 Sayılı Kanun Kapsamında Bir Değerlendirme" (An Evaluation Within the Context of the Law Dated 2003 and Numbered 4866 Amending the Turkish Nationality Act), AÜHFD, Vol. 53, No.1, 2004, pp. 27-63.

³¹ See Article 3 of the TVK for the conditions laid down in order to acquire Turkish citizenship by adopted children.

³² Article 7 of the European Convention on Nationality entitles states to deprive nationality of their nationals in case of voluntary acquisition of another nationality, as well as fraud or failure to provide relevant information when acquiring nationality.

foreign countries, the application is to be made to the Turkish consulate. The Turkish authorities open a file and transmit it to the Department of Population Affairs and Nationality at the Ministry of Interior (TVK Art 21).

The certificate of permission is valid for three years. During that period the Turkish citizen is obliged to submit the relevant documents furnishing evidence of his acquisition of the foreign nationality (TVK Art 22(4)). Otherwise, upon the proposal of the Ministry of Interior, the Council of Ministers shall decide whether that person will lose his Turkish citizenship (TVK Art 23(2)).

V. CONFLICT OF LAWS AND MULTIPLE CITIZENSHIP

In the civil law systems of Continental Europe, nationality is generally accepted as a connecting factor for the choice-of-law rules governing a person's status and capacity. The common law countries use a test of *lex domicilii* (the law of domicile) to determine the status and the capacity of a person.

Turkish choice-of-law rules use the *lex patriae* (*national law*) as a test for the status and capacity of the parties. The law of the state with which that the person is connected with a bond of nationality is the "national law." National law is the applicable law to personal status of individuals, in the widest sense of the term, such as capacity, guardianship, engagement, marriage, divorce and legal separation, parental relationships, adoption, and parental authority. Hence, in the field of conflict of laws, multiple nationality may cause some legal problems in cases where nationality is determined as a connecting factor of a choice of law rule, i.e. which nationality is going to taken into account if the person has more than one nationality.

In this respect, the Turkish Act on Private International Law and Law of International Civil Procedure³³ provides two principles that have received worldwide acceptance in the case of nationality disputes. If a person has both Turkish nationality and one or more foreign nationalities, only the Turkish nationality is taken into account (MÖHUK Art 4(b)). If a person lacks Turkish nationality, but has more than one foreign nationality, then the law of the state with which the person has a closer connection is applied (MÖHUK Art 4(c)). This closer connection needs to be determined case-by-case. Nevertheless, there are certain important factors (such as domicile, habitual residence, prior nationality or domicile, the state where the civic rights and duties are exercised or where the economic activities carried out) which have an influence in determining the closer connection.

³³ Milletlerarası Özel Hukuk ve Usul Hukuku Hakkında Kanun, Law No.2675 of May 20, 1982 (R.G., May 22, 1982, No.17701) (hereinafter "MÖHUK").

Assuming a person's capacity to exercise rights is disputed before a Turkish court and that person possesses both Turkish and another nationality, according to Article 8(1) of the MÖHUK "the capacity of persons to have and to exercise rights is governed by their national law." In such a case, the Turkish court only considers Turkish nationality to settle the dispute concerning his capacity to exercise rights.

If the person is not a Turkish citizen but holds both British and French nationality, for example, the Turkish court then determines the state with which the foreign national has a closer connection. If he is domiciled or habitually resident in England and also carries out his economic and professional activities there, England may then be considered the country with which he has a closer connection and the court applies English law as his national law.

Strict application of the principles laid down in Article 4 (b) and (c) of the MÖHUK regarding multiple/dual nationality may be unfair when "common nationality" is envisaged as a connecting factor for a choice-of-law rule. For example, in Article 13 of the MÖHUK, certain common criteria are taken into consideration in order to determine the law applicable to divorce and legal separation. Article 13 of the MÖHUK states that the grounds and legal consequences of divorce and legal separation are governed by the common national law of the spouses. Where one of the spouses has both Turkish and British nationality and the other has only British nationality, there is a common national law (British) in the dispute. Although British nationality is the common nationality of the spouses, the Turkish court may take into consideration only the Turkish nationality of the spouse who has dual nationality because of the strict application of the principle laid down in Article 4(b) of the MÖHUK, which will necessarily cause the court to leave the common national law and to use the law of common domicile of the spouses.

VI. CONSEQUENCES OF MULTIPLE CITIZENSHIP IN TURKISH LAW

Multiple Turkish citizens have the same rights and duties as Turkish mono-citizens. No discrimination is made between Turkish dual citizens and Turkish mono-citizens. In other words, dual citizens enjoy all the rights conferred upon Turkish mono-citizens, and they have the same duties imposed on them as Turkish mono-citizens as well.³⁴ However, there are some exceptions to this rule.

³⁴ In the European Convention on Nationality, same principles are accepted. Article 17 provides that nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party.

The first exception emanates from international law. A state cannot claim diplomatic protection for one of its nationals against the other national state of that person. For instance, a Turkish dual national who resides in the country of his second nationality cannot receive the diplomatic protection of the Turkish state.

The second one is related to military service.³⁵ A Turkish citizen who is a national of another state may be exempted in Turkey from the obligation to perform military service if he has already performed his military service in the other national state.³⁶

The third exception is the loss of nationality *in case of* a lack of a genuine link between Turkey and the Turkish citizen habitually residing abroad.³⁷ Dual Turkish citizens may lose their Turkish nationality upon proof of the lack of sufficiently close ties with Turkey for the past 7 years. Turkish dual citizens should prove their interest about and connection with Turkey in order to keep their Turkish nationality. In Article 25 of the TVK, there are two provisions on denationalization of Turkish citizens with regard to two groups of dual citizens: naturalized Turkish citizens (TVK Art 25/(f)) and Turkish citizens who have acquired the citizenship of another state (TVK Art 25/(h)).

It should be noted that there is no sanction (such as denationalization of Turkish nationality) against mono-original Turkish citizens who have been living in a foreign country for years without sufficient connection with the Turkey.

CONCLUSION

Turkey's citizenship policies have been a response to the population movements to and from the country since the 1960s. Turkish nationality law has not taken a consistent approach to multiple citizenship since the Turkish

³⁵ Article 21(1) of the European Convention on Nationality provides that persons possessing the nationality of two or more States Parties shall be required to fulfill their military obligations in relation to one of those States Parties only.

³⁶ According to Article 1 of Act. No. 3802 of 21.5.1992 (R.G., June 1, 1992, No. 21245) On the basis of principles to be determined by the decision of the Council of Ministries, Turkish citizens who were born or have been residing abroad or those who have emigrated to a foreign country before the age of majority and who have also acquired the citizenship of the state of residence shall be exempted from the obligation to perform military service upon their request, provided that they have performed their military service in the country of residence, of which they are citizens .

³⁷ See also Article 7(e) of the European Convention on Nationality.

Nationality Act came into force in 1964. Sometimes a pro-dual citizenship approach was followed by the Turkey for the aliens who wanted to acquire Turkish citizenship, whereas an anti-dual citizenship approach was adopted for Turkish citizens who wanted to acquire the nationality of another state. Policies with regards to multiple citizenship for Turkish citizens changed in early 1980s in response to dual nationality demands coming from the Turkish migrant community living in the Western European Countries. The Turkish Nationality Act was amended to remove these obstacles on dual nationality for Turkish citizens in 1981.

In addition, recent immigration since 2000 has caused Turkey to change its citizenship policies regarding aliens who want to acquire Turkish citizenship. Turkey became a receiving country for some foreign migrant workers and the first sign of policy changes was the Amendment of Article 5 of the TVK in 2003. The Amendment imposed strict requirements on acquisition of Turkish citizenship by way of marriage. It should be noted that the purpose of the even more recent attempts to amend the TVK comprehensively aims to bring the Turkish Nationality Act into line with the provisions of the European Convention on Nationality. These attempts resulted in a draft nationality act submitted to the Turkish parliament in April 2006. The main difference between the current TVK and the draft law is the approach towards multiple citizenship. Avoidance or elimination of the cases of multiple citizenship is no longer the purpose of the Turkish Law (save the Article 11(2) of the Draft which provides renunciation of the current foreign citizenship as a requirement sought upon discretion before the naturalization by the competent authority). Avoiding statelessness, however, still remains one of the main concerns in the Draft.