

The Legal System of Dual Nationality in Iraq: A Comparative Study with Arab Legislations

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Published on: Published online on July 1, 2026

Abstract:

The legislative aspect of dual citizenship in Iraq shall be discussed in this study. The constitutional context of dual citizenship shall be analyzed along with its legislative and administrative dimensions. This paper will analyze how Iraqi laws manage to balance national sovereignty with individual and international law. For comparative purposes, this study will include a comparison of the laws of some selected Arab nations, namely Egypt, Jordan, and Tunisia, to illustrate where there are similarities and differences in the legal treatment of dual citizenship. It has been noticed that while Iraq is adopting a liberal approach towards dual citizenship through its constitution, other Arab countries adopt a conservative approach towards it due to security, stability, and exclusivity considerations.

Keywords:

(Dual Nationality; Iraqi Constitution; Nationality Law No. 26 of 2006; Sovereignty; Citizenship Rights)

الملخص :

تتناول هذه الدراسة البنية القانونية للجنسية المزدوجة في العراق، من خلال تتبع أسسها الدستورية وتطوراتها التشريعية وممارساتها الإدارية. كما تقيم الدراسة مدى قدرة التشريعات العراقية على تحقيق التوازن بين السيادة الوطنية والحقوق الفردية والمعايير الدولية. وتم إجراء تحليل مقارنة مع عدد من التشريعات العربية، ولا سيما في مصر والأردن وتونس، لإبراز نقاط الالتقاء والاختلاف في تنظيم الجنسية المزدوجة. وتبين النتائج أن العراق يعتمد نهجًا أكثر مرونة من خلال الاعتراف الدستوري بالجنسية المزدوجة، في حين تحافظ بعض الدول العربية على أطر قانونية أكثر تقييدًا بسبب اعتبارات الأمن والاستقرار السياسي ومفاهيم الولاء الحصري التقليدية. وتخلص الدراسة إلى مجموعة من التوصيات الهادفة إلى موازنة التشريعات العراقية مع أفضل الممارسات الدولية، مع معالجة التحديات القانونية والإدارية المحلية.

الكلمات المفتاحية:

(ازدواج الجنسية؛ الدستور العراقي؛ قانون الجنسية رقم ٢٦ لسنة ٢٠٠٦؛ السيادة؛ حقوق المواطنة)

1. Introduction

The question of dual nationality has become an important matter from a legal standpoint in light of globalization and migration, which have changed the relations between people and the state. Modern laws have taken the path of allowing for many citizenships in line with international human rights developments (Albarazi & van Waas, 2016). Dual nationality is one of those constitutional matters that is recognized by Iraq, which is an Arab country, although there are still some problems related to security, politics, and holding public offices.

2. Problem of the Study

The main problem lies in the inconsistency between constitutional provisions regarding dual citizenship and the legislation placing limitations on those who have dual citizenship. This problem arises in connection with public offices, political activities, and state sovereignty.

3. Aim of the Study

It seeks to analyze the Iraqi laws regarding dual nationality and compare it to other Arab legislations in order to find out their strengths and weaknesses.

4. Research Questions

1. What is the legal basis for dual nationality in Iraq?
2. How do Iraqi laws treat individuals who hold more than one nationality?
3. How do selected Arab countries regulate dual nationality?
4. What reform steps can enhance Iraq's legal framework?

5. Significance of the Study

These findings would add value to the scholarly discussions around citizenship laws, and would also provide insights for politicians and researchers on recent trends within the field of nationality law in Iraq and the Arab world in general.

Chapter One: Theoretical Framework

1. Introduction

The theoretical framework for this research will encompass all theories and principles required to solve the problem of dual citizenship in accordance with the contemporary law, taking into consideration the case of Iraq and other Arab states. Citizenship is perhaps the most significant bond between the citizen and the state. With the development of globalization, immigration, and other forms of mobility, the importance of dual nationality has increased significantly, making it imperative for the state to reconsider the old laws regarding exclusive citizenship (Spiro, 2016). This chapter will cover the concepts of nationality and dual nationality, development of the concept in modern law, and international law related to citizenship.

2. Concept of Nationality

Nationality is generally understood to be a legal relationship between a person and a specific state. The concept does not refer to just a sociocultural link; on the contrary, it denotes a juridical status established in both domestic and international law. According to the classical definition of nationality, it provides people with a certain legal status giving them rights to participate in politics and receive the protection of their home state, as well as duties towards the state (Crawford, 2012).

From the point of view of Arab legislation, there is more than one sociopolitical meaning of the term "nationality". Traditionally, the concept is connected to belonging, descent, and loyalty to the motherland.

Modern legal scholarship generally identifies two bases for acquiring nationality:

1. **Jus sanguinis (right of blood)** – where descent from a national parent confers nationality; this approach dominates most Arab legal systems.
2. **Jus soli (right of soil)** – where nationality is acquired by birth within a state's territory; more common in the Americas (Shaw, 2017).

Nationality laws differ across jurisdictions, but all emphasize that nationality is a core expression of state sovereignty since each country determines who its nationals are.

3. Concept of Dual Nationality

Dual citizenship, also known as multiple citizenship, occurs when an individual is regarded as the citizen of two or more nations. Dual citizenship may occur automatically, for example, a case where the child of people of differing nationalities is born, or by choice, for instance, through naturalization in another country (Albarazi & van Waas, 2016).

Traditionally, dual citizenship was seen as a bad thing since it created jurisdictional conflicts, service in the military, or protection. States were afraid that divided loyalty might lead to a lack of national cohesion and loyalty. But the change in international migration, migration of skilled workers, and human rights regime has made dual citizenship acceptable slowly but surely (Spiro, 2016) .

There are various reasons why dual citizenship has become accepted in most modern legal systems, which include:

- **Economic integration and globalization**, which allow for cross-border mobility.
- **Human rights principles**, specifically the right to family reunification.
- **Diaspora engagement**, in which states gain from having diplomatic relations with their citizens residing abroad.

- **Recognition of international migration trends**, specifically those in conflict-affected areas (Iraq, Syria).

However, there are certain states that have reservations about dual citizenship, especially in relation to political matters.

4. Theoretical Approaches to Dual Nationality

Legal scholarship identifies several theoretical approaches to dual nationality:

a. The Exclusive Allegiance Approach

Under the traditional approach, nationality constitutes an indivisible tie. In other words, a person cannot have loyalty towards more than one state at the same time. This theory prevailed during the early twentieth century and is still evident in some conservative nationality laws in the Arab world.

b. The Pluralistic Approach

Modern theoreticians are keen on adopting a more dynamic approach towards loyalty. Modern theory holds that the concept of citizenship is not limited to the realm of politics alone but includes social, economic, and cultural relationships that citizens maintain regardless of the borders (Bauböck, 2017). In this regard, dual citizenship represents an extension of human freedom.

c. The Functional Approach

The theory emphasizes the practical aspect of dual citizenship as opposed to seeing it as a fixed state. The theory looks at how dual citizenship impacts the rights and duties of citizens and access to public services of citizens. Nations that follow this theory tend to accommodate dual citizenship in certain sectors like security and high government positions.

5. International Legal Perspective

International law does not prohibit dual nationality. Instead, it leaves the regulation of citizenship primarily to domestic legal systems. However, several international instruments have influenced state behavior.

a. Hague Convention of 1930

The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws encouraged states to avoid cases of multiple nationality but did not impose binding limitations. Article 1 explicitly recognizes that each state has the right to determine who its nationals are.

b. Human Rights Principles

The present-day law on rights supports dual citizenship to a certain degree. As regards the Universal Declaration of Human Rights (1948), it states that every individual has the right to his/her nationality; furthermore, it denies any form of deprivation of one's citizenship. In spite of the fact that there is no mention of dual citizenship here, it is considered favorable now (Shaw, 2017).

c. International Migration Norms

Immigration at a global level from conflict areas like Iraq has prompted international bodies to encourage countries to formulate nationality laws which will help avoid situations where individuals end up without citizenship (UNHCR, 2023).

On this basis, the idea of dual nationality in the constitution of Iraq follows international trends.

6. Dual Nationality in the Arab Legal Context

Various methods are employed by the Arab states in terms of their policies on dual citizenship:

- The restrictive method: this is exemplified by Jordan where there is an emphasis on national loyalty and rules regarding dual citizenship involvement in government employment.
- The conditional method: this is reflected in Egypt's policy where dual citizenship is allowed only with the agreement of the state.
- The flexible approach is illustrated by Tunisia and Iraq where dual citizenship is recognized but restrictions apply for government positions (Ben Salem, 2021).

Chapter Two: The Legal Structure of Dual Nationality in Iraq

1. Introduction

The regulation of dual citizenship in Iraq is a special case that involves constitutional doctrines, laws and procedures. As compared to most Arab countries, which usually have rather rigid approaches to the acceptance of double citizenship, Iraq has a more liberal attitude especially after 2003 due to political change and migration waves. Despite the

constitutional recognition of dual citizenship, there are some inconsistencies between legislation and administration concerning this matter. The present chapter deals with the legal basis for dual citizenship in Iraq through constitution, Nationality Law No. 26 of 2006, laws regarding eligibility for public employment, and administration problems.

2. Constitutional Basis of Dual Nationality in Iraq

2.1 Article 18 of the Constitution (2005)

The Iraqi Constitution, promulgated in 2005, provides explicit mention of the legality of dual nationality. "An Iraqi may have more than one nationality. Anyone who occupies a sovereignty or security position shall relinquish all other acquired nationalities".

It is noteworthy that this clause was a sharp deviation from the Iraqi constitution before 2005, because the former did not allow dual citizenship. The above constitutional text provides the following implications:

1. **Dual nationality is generally permitted** without requiring prior government approval.
2. **Holders of dual nationality are restricted** from occupying certain high-level public positions unless they renounce their non-Iraqi nationality.

2.2 Purpose of Constitutional Flexibility

In attempting to align the presence of the Iraqi diaspora with the issue of national sovereignty, the framers aimed at ensuring that the millions of Iraqis who migrated from their motherland due to repression and conflicts could be given the opportunity to hold dual citizenship.

3. Nationality Law No. 26 of 2006

The Nationality Act, which came into force in 2006 and was enacted under Number 26, took the place of the previous 1963 Act and modernized the Iraqi system of nationality in order to suit the new political era that followed after 2003.

٣,١ Reacquisition of Iraqi Nationality

Under this law, Iraqis who were deprived of their national status for political reasons or under compulsion can get their nationality back without losing their other nationality (Art. 10).

٣,٢ Acquisition by Descent

Jus sanguinis forms the basis of Iraqi nationality legislation, conferring Iraqi citizenship on any child born to an Iraqi parent irrespective of where the child is born. This ensures dual citizenship automatically in cases of jus soli from other countries.

٣,٣ Acquisition by Naturalization

A foreign national can obtain Iraqi citizenship via naturalization, but this must be under certain circumstances that include residence and good character. There is no requirement for the applicant to renounce his citizenship unless barred from doing so in his home country

٣,٤ Loss of Withdrawal of Nationality

The law allows for the loss and voluntary withdrawal of nationality but is stringent in depriving a person of his/her citizenship to avoid situations of statelessness. This restriction complies with international standards (Albarazi & van Waas, 2016).

4. Restrictions Pertaining to Public Service

Even though accepted constitutionally, Iraq enforces certain restrictions in order to safeguard its national security.

٤,١ Sovereign and Security Positions

For someone to hold such positions he/she is required to renounce any other nationality and become an Iraqi citizen exclusively.

- Presidential or ministerial positions
- High judicial posts
- Senior military or intelligence roles
- Sensitive security appointments

This rule reflects the functional approach, where dual nationality is permitted but restricted in high-risk contexts (Bauböck, 2017).

٤,٢ Parliamentary and Electoral Restrictions

Dual nationals are allowed to contest in parliamentary elections but the political culture tends to make the candidates reveal their foreign nationality. Specific political groups have

pushed for stricter measures to avoid foreign interventions but the legal constraints have been few (Hassan, 2020).

٤,٣ **Public Opinion and Debate**

In the public discourse in Iraq, the issue of dual nationals being loyal to the country, especially against the backdrop of the competitions regionally and internationally, is often discussed. However, legal experts consider that prohibition will contradict the constitutionality and the contemporary situation regarding migration (Al-Ani, 2022).

5. Administrative Practices and Institutional Challenges

While the rules provided by constitution and laws are clear, administrative practices are rather inconsistent.

٥,١ **Declaration Obligations**

The Iraqi citizens with dual nationality are supposed—though not obliged—to declare their foreign nationality while seeking jobs in the administration or passport issuance. There is no centralized database that documents the number of dual nationality citizens (Hassan, 2020).

٥,٢ **Lack of Central Management**

There are two separate data bases in the Ministry of Interior and Ministry of Foreign Affairs for the issues of citizenship. Some citizens with dual nationality might not be included in national data because of the absence of information exchange.

◦,٣ **Impact on Political Activities**

Unclear administrative procedures make the dual nationality citizens running for election uncertain about their eligibility. Some election committees are inconsistent in imposing renunciation obligations which results in lawsuits during parliamentary elections (Al-Ani, 2022).

5.4 Security and Legal Concerns

Security institutions express concerns regarding:

- Allegiance conflicts
- Confidentiality risks
- Potential protection by foreign states

These concerns often motivate calls for stricter administrative controls, though such measures must remain consistent with constitutional principles.

6. Alignment with International Norms

Iraq's acceptance of dual nationality is consistent with international human rights trends emphasizing:

- The right to nationality
- Prevention of statelessness
- Family unity
- Rights of migrants and refugees

Unlike previous Iraqi regimes that used nationality as a political tool, the current legal system reflects a more inclusive and rights-based approach (Shaw, 2017).

7. Critical Assessment

A review of Iraq's legal system reveals both strengths and gaps:

Strengths

- Constitutional permission for dual nationality, rare in the Arab region.
- A modern nationality law supporting diaspora reintegration.
- Legal safeguards preventing arbitrary deprivation of nationality.

Gaps

- Administrative inconsistency and absence of a unified system for recording dual nationals.
- Ambiguity in public office eligibility rules.
- Lack of clear procedures for renunciation or verification processes.

These gaps weaken legal certainty and create practical challenges for dual nationals.

Chapter Three: Comparative Analysis with Arab Legislations

1. Introduction

Dual citizenship has emerged as the major issue concerning legal disputes in the Arab world at present times. While all Arab nations share the same past, cultural values, and laws, yet there exists wide divergence between them as far as their treatment of multiple citizenship is concerned. The reason for such divergence lies in the variations in political regime, security issues, migration patterns, and the way in which each nation ensures exclusivity and individualism.

This chapter is devoted to the analysis of the legal systems of three different Arab nations, i.e. Egypt, Jordan, and Tunisia in comparison to the legal system of Iraq. The choice of these particular nations was made on the grounds of the uniqueness of their legal systems – while Egypt has adopted the system of conditional authorization, Jordan has adopted the restrictive system, and Tunisia has adopted the flexible but politically cautious one.

2. Dual Nationality in Egypt

2.1 Legal Framework

Dual citizenship is regulated by the Nationality Law Number 26 of 1975 as modified. Under this law, an Egyptian citizen can have another citizenship, but that can happen only if such a person gets prior permission from the Ministry of Interior. Persons who have another citizenship without permission can be considered foreigners in specific cases (Egyptian Nationality Law Number 26 of 1975).

2.2 Conditions for Approval

Approval is generally granted if:

- The applicant submits a formal request.
- They commit to notifying authorities of the foreign nationality.
- They agree that holding another nationality does not exempt them from Egyptian obligations unless expressly waived.

Purposeful notification ensures state oversight and helps prevent legal disputes regarding loyalty or military service.

2.3 Rights and Restrictions

Egyptian dual nationals retain most civil rights, but may face limitations in:

- Holding certain public offices
- Serving in the armed forces
- Accessing sensitive governmental roles

These restrictions stem from Egypt's emphasis on protecting state security and administrative stability (Elsayed, 2019).

2.4 Comparison with Iraq

Aspect	Iraq	Egypt
Constitutional recognition	Explicitly permits dual nationality	No constitutional provision
Approval requirement	No prior approval	Mandatory prior approval
Public office	Restrictions only for sovereign & security positions	Broader restrictions in practice
Policy approach	Flexible	Conditional & controlled

Egypt's system is more centralized and supervisory, whereas Iraq adopts a permissive constitutional approach without prior authorization.

3. Dual Nationality in Jordan

3.1 Legal and Political Background

Although dual citizenship is not forbidden by the laws of Jordan, Jordanian culture focuses on being a citizen of only one state. The absence of dual citizenship in Jordan means that the political system of this country is very conservative (Al-Majali, 2018).

3.2 Government Positions and Public Office

Jordanian law places significant limitations on dual nationals who seek:

- Ministerial appointments
- Parliamentary membership
- Senior public service roles

In most cases, these restrictions stem from security-related approaches to allegiance and not from explicit legislative provisions.

3.3 Judicial Interpretations

Jordanian courts and government officials have traditionally been suspicious about dual citizenship, especially if there is an element that might lead to distrust or conflict of interest.

3.4 Comparison with Iraq

Aspect	Iraq	Jordan
Legal position	Constitutionally permitted	Not explicitly recognized; often restricted
Public office	Limited restrictions	Extensive restrictions & political barriers
Administrative clarity	Moderate clarity	Ambiguous; highly discretionary
Practical openness	High	Low

Jordan represents one of the more restrictive Arab models, contrasting sharply with Iraq's constitutional embrace of dual nationality.

4. Dual Nationality in Tunisia

4.1 Constitutional and Legal Context

Tunisia permits dual nationality and does not require citizens to renounce their original citizenship upon naturalization. The 2014 Tunisian Constitution does not impose general prohibitions on dual nationality (Ben Salem, 2021).

4.2 Political Office Restrictions

The central problem here is the problem of the presidential candidates needing to renounce their foreign citizenship in order to become president. This is due to the requirement that Tunisia needs to maintain its singular allegiance in terms of state leadership.

4.3 Administrative and Social Approach

What makes Tunisia unique compared to other Arab countries is that Tunisia permits its citizens to have dual citizenship. The majority of Tunisians who live in Europe have dual citizenship, and diaspora diplomacy is usually viewed as something good by the state authorities.

4.4 Comparison with Iraq

Aspect	Iraq	Tunisia
Constitutional stance	Explicit permission	Implicit permission through practice
Restrictions	High-level security & sovereign roles	Presidency only
Diaspora integration	Growing	Highly developed
Administrative coherence	Developing	More stable & coordinated

Both systems share an overall openness, with Tunisia slightly more restrictive at the level of the presidency.

5. Cross-Country Comparative Discussion

5.1 Degrees of Restrictiveness

The chosen legislations from the Arab world exhibit the following policies:

1. Restrictive Jordan: focuses on loyalty and avoids dual citizenship.
2. Conditional Egypt: allows dual citizenship but requires prior permission.
3. Flexible Tunisia and Iraq: permit dual citizenship either legally or practically without many restrictions.

The approach adopted by Iraq is closer to modern international regulations and thus fits the flexible type of policy.

5.2 Impact of Migration and Diaspora

- Due to the substantial diasporas that exist in Egypt and Tunisia, there is an economic and political reason to allow dual nationalities.
- The need for dual nationality policy in Iraq has come about due to the large diaspora population that exists because of war.
- There are strict controls due to the sensitivity of the demographic and political situation in Jordan.

5.3 Public Office & Sovereignty Concerns

All four countries restrict dual nationals from certain positions, but the scope varies:

- **Jordan:** wide-ranging restrictions
- **Egypt:** moderate restrictions
- **Tunisia:** mainly presidential office
- **Iraq:** sovereign and security roles only (Constitution of Iraq, 2005)

This suggests a shared regional concern about divided allegiance in high-level state functions.

5.4 Administrative Clarity and Implementation

- **Tunisia** shows coherent administrative practice.
- **Egypt** maintains strong state oversight through approval mechanisms.
- **Jordan** relies on practice and political interpretation rather than codified rules.
- **Iraq** suffers from fragmented administrative systems and inconsistent application.

Iraq's challenge is not legal permissibility, but administrative enforcement and clarity.

Conclusion

The legal aspects of dual citizenship were examined in this research focusing on constitutional provisions, laws, and other administrative issues related to Iraq. A comparative legal analysis of some Arab models of legal regulation was made in order to define the position of the researched legal system within the Arab world. As a result, it can be concluded that Iraq has a special position in the Arab countries as it gives its citizens the right to possess more than one citizenship and has a flexible and modern legal regulation that meets modern tendencies of international law. According to Article 18 of the Constitution of Iraq introduced in 2005, Iraqis have a right to have several nationalities simultaneously.

The Iraqi Nationality Law No. 26 of 2006 provides for the possibility of obtaining the lost Iraqi nationality without the renunciation of a foreign citizenship and also includes certain measures to avoid the arbitrary loss of nationality. Nevertheless, despite the

presence of a rather progressive legal framework, the implementation of dual nationality in Iraq encounters the problem of unclear administrative procedures and ambiguous eligibility criteria for holding public positions.

A comparative analysis with the models of dual citizenship of Egypt, Jordan, and Tunisia shows that they differ substantially from the Iraqi one. Jordan follows a restrictive approach to the issue of dual citizenship that stresses exclusive loyalty to the state, Egypt uses a conditional approach that presupposes state permission and control, and Tunisia, being similar to Iraq, has better coordinated administrative practices in the sphere.

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