

Legal protection of nationality in Palestinian legislation and Islamic law

(An analytical study)

الحماية القانونية للجنسية في التشريعات الفلسطينية والشريعة الإسلامية

(دراسة تحليلية)

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Abstract

There is no doubt that Palestinian nationality is one of the most important elements of the Palestinian legal system. It is one of the pillars of the three components of the state, especially the components of the human race or the

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people. For this reason, the comparative legal systems were keen to regulate the issue of nationality and its provisions, And to protect the Palestinian nationality, especially in light of the political complexities experienced by the Palestinian people and its citizens, and therefore we had to shed light on how the Palestinian legislator to regulate the laws of Palestinian nationality, and how sufficient To address the major problems in the contemporary Palestinian reality, and to legislate laws that solve the great obstacles of Palestinian statelessness, and the lack of clarity of the means and conditions of granting and acquiring them under the current situation.

Keywords: Palestinian nationality, statelessness, citizenship, nationality acquisition.

ملخص

لا شك أن الجنسية الفلسطينية تعتبر من أهم مقومات النظام القانوني الفلسطيني، وهي من دعائم مكونات الدولة الثلاث، ولاسيما المكونات المتمثلة في العنصر البشري أو الشعب، ولأجل ذلك، حرصت الأنظمة القانونية المقارنة قاطبةً على تنظيم مسألة الجنسية وأحكامها، ومن ضمنها المشرع الفلسطيني، وذلك بهدف إسباغ الحماية لمواطني الدولة الفلسطينية المنشودة، ولحماية الجنسية الفلسطينية، وتحديدًا في ظل التعقيدات السياسية التي يمر بها الشعب الفلسطيني ومواطنيه، ومن ثم كان لزاماً علينا تسليط الضوء على كيفية تنظيم المشرع الفلسطيني لقوانين الجنسية الفلسطينية، ومدى كفايتها لمعالجة الإشكاليات الكبيرة في الواقع الفلسطيني المعاصر، وتشريع قوانين تحل العقبات الكبيرة المتمثلة في انعدام الجنسية الفلسطينية، وعدم وضوح وسائل وشروط منحها واكتسابها في ظل الوضع الراهن.

كلمات مفتاحية: الجنسية الفلسطينية، انعدام الجنسية، منح الجنسية، شروط اكتساب الجنسية.

Introduction

Nationality is the organizing criterion for the people of the state and determining it, as the people are one of the important pillars of the state, so it is not possible to imagine a state's territory without a people inhabiting it, and there is no room for a ruling authority without a people ruled by the authority. Therefore, it was necessary to have a standard for the

international distribution of individuals among the various countries and to define the people of each state.

A person's acquisition of nationality entails determining his political and social affiliation to the state from which he obtains its nationality, and thus it is possible to distinguish between citizens of the state and foreigners therein. Also, the national rights and duties that the citizen enjoys and distinguishes them from the foreigner can be determined. Nationality is the guiding criterion for determining the applicable law and specifically for all issues. Related to status and nationality.

This research deals with what nationality is in the law and the legal foundations on which it is based in Palestinian legislation. It also explains methods of establishing nationality and settling its disputes.

Research importance

The importance of the research lies in the fact that nationality is one of the important pillars of the state, because the state is based on all of its constituents, and there are also several traditional Palestinian decrees and laws that regulate the issue of nationality in Palestine. The issue of nationality is considered one of the sensitive topics, as it is considered an expression of the country's sovereignty and identity, as the Palestinian nationality has not witnessed stability due to the multiple political stages in Palestine so far, as the Palestinian people live scattered around the world due to the Nakba in 1948 and there are large numbers of Palestinians deprived of Palestinian nationality in Abroad until this moment.

Research problem

It is clear in a statement of the extent of the impact of the political changes that have occurred in the Palestinian arena on the rights enjoyed by the Palestinian citizen, whether inside or outside Palestine? To what extent does the legislation on nationality correspond to the reality of Palestinian society?

Research questions

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The main question is:

Have the political changes in the Palestinian arena affected the rights that the Palestinian citizen should obtain, whether inside or outside Palestine, and are the laws governing Palestinian nationality considered compatible with the current reality of Palestinian society? Is it sufficient to determine the necessary legal protection?

This question is divided into a group of sub-questions as follows:

- 1- What is nationality in law?
- 2- What are the legal foundations on which nationality is based in Palestinian legislation?

Research assumes

The special Palestinian legislation regarding nationality has affected the rights enjoyed by the Palestinian person inside and outside Palestine.

research aims

- 1-Defining the concept of nationality in the law.
- 2- Explain the legislative development of nationality in Palestine.
- 3-Explaining the procedural and legislative foundations of nationality in Palestinian laws.
- 4-Finding appropriate formulas to implement a Palestinian nationality law reserved for the members of the Palestinian community.

Research Methodology

- 1-Descriptive Analytical Approach.
- 2-The inductive and deductive approaches.

This was evidenced by analyzing what nationality is in the law, as well as the legal foundations regulating nationality in Palestinian legislation, and this will be done by reviewing the legal texts related to the topic of research and identifying them. As well as the detailed successive research in the particles of the subject of the research and from the general to the specific and vice versa, trying to draw conclusions while dealing with each part of it, and we will base our research on this on many references, opinions of jurists, laws and general and in-depth books.

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Research Structure

The division was as follows:

The first topic: the concept of nationality in legislation

The first requirement: the concept of nationality and distinguishing it from similar concepts.

The second requirement: the elements of nationality.

The third requirement: types of nationality.

The second topic: the stages of legislative development of nationality.

The first requirement: the right to naturalization according to international standards.

The second requirement: the legal development of nationality in Palestine.

The third topic: the legal foundations of nationality in Palestinian legislation.

The first requirement: foundations for the acquisition and removal of Palestinian nationality

The second requirement: proof of nationality.

The third requirement: jurisdiction to settle nationality disputes.

The first topic: What is nationality in the law

The first requirement: nationality and distinguishing it from similar concepts.

The opinions of the jurists differed and the legislative view varied in defining nationality in all countries.

First: The concept of nationality in law:

The special decrees regulating the provisions of Palestinian nationality did not define the concept of Palestinian nationality, but rather mentioned a classification of those who consider Palestinian nationality as follows:

He is considered Palestinian (¹):

¹ The Legal Department, The Legislative Council of Gaza, a proposal on defining nationality, p. 1.

- 1- Every person who held the Palestinian nationality; According to the unified Palestinian nationality decrees of 1925-1941 in force during the period of the English Mandate.
- 2- Every person born to a Palestinian father, whether in Palestine or abroad; According to the unified Palestinian nationality decrees for the years 1925-1941 in force during the British Mandate period.
- 3- Displaced persons or refugees and their children, even if they are not allowed the right of return in accordance with the peace agreement and the consequent bilateral agreements.
- 4- Everyone born in Palestine to a Palestinian mother and his father is unknown or stateless.
- 5- Anyone born in Palestine to a Palestinian mother and his father has not been legally related to his father.

Second: The concept of nationality in jurisprudence:

Some defined it as: "a legal-political relationship that benefits the individual's integration into the population component, as one of the components of the state (1)."

Some of them defined nationality as: "A political and legal relationship between a person and the state, which defines the corner of the people in the state that gives the person rights and privileges and imposes on him obligations and duties towards the state" (2)

Third: The concept of nationality from the judicial perspective:

The Palestinian judiciary did not know the concept of Palestinian nationality, and after reviewing the technical office of the Supreme Judicial Council, it became clear that no disputes were brought before the Palestinian judiciary regarding the provisions of Palestinian nationality. In Egypt, the

¹ Fahmy, The Fundamentals of Private International Law (Alexandria: University Culture Foundation, Second Edition, 1992), p.

² Riyad in partnership with Samia Rashid, Al Wajeez in Private International Law, The Knowledge Establishment in Alexandria, in 1917, p. 1 onwards, Jaber Al-Rawi - Explanation of the Provisions of the Nationality Law "A Comparative Study", Wael Publishing House, First Edition, Amman 2000, p. 12.

Supreme Administrative Court has settled in its definition of nationality to highlight its political and legal sides together as: a "political and legal bond." An example of this is what the court said in a ruling on 2/29-1964 that: "Nationality is a political and legal bond between the individual." And the state obliges him to be loyal to it and must give him the advantages resulting from obtaining it, Hence, issues of nationality emanated from the sovereignty of the state itself, and the authority of the legislator was to determine the requirements that must be met by whoever possesses the Egyptian nationality, and to whom it may be granted, a broad authority dictated by considerations of state sovereignty and the supreme interest of the homeland, and the state was to undertake, accordingly, to determine the component of the population in it. And when it establishes the nationality by its own will and determines the conditions for granting it, the conditions for its acquisition, and the conditions for its loss or forfeiture according to the situation it deems necessary ⁽¹⁾.

Through the above, we support the definition of the Egyptian Administrative Court, since what it came to define of nationality includes both the political and the legal aspect.

As for Islamic law, nationality is a special international law that is subject to the principles of Sharia, and jurists have the jurisprudence to formulate internal frameworks to regulate nationality, so that it guarantees the public interest of Muslims without contradicting the established texts ⁽²⁾.

¹ Abdel Aal, previous reference, pp. 17-18.

² Gharaibeh, Nationality in Islamic Law (p. 30).

The second requirement: the elements of nationality

* First element: the existence of the state ⁽¹⁾:

Countries, whether small ⁽²⁾ or large ⁽³⁾, simple or complex, are the ones that can confer their nationality on people, and hence there is no nationality in the aforementioned sense between the individual and the nation ⁽⁴⁾. The state alone creates and grants citizenship, and only the state recognizing legal personality can establish nationality ⁽⁵⁾.

As we know, nationality is a means to achieve a balance in the distribution of people between countries. The state has the right to determine who enjoys its nationality, and accordingly, only states from international groups or bodies have the right to grant citizenship even if these groups or bodies are named above states ⁽⁶⁾.

Thus, the right to establish a nationality is limited to the state only and not to other people of public international law. For example, the United Nations does not have the right to grant its own nationality, given that the United

¹Riyad, Egyptian Nationality, "A Comparative Study," *ibid*, pp. 13-14, Abd al-Rahman, Arab Private International Law, Part One, "On Nationality," League of Arab States, Institute for Higher Arab Studies, 1958, pp. 14-15.

² The Vatican State, for example, can grant citizenship

³The treaty state, America, Switzerland, and the United Kingdom of Libya grants its nationality to all its citizens even if they reside in its different states. Even if they have the local pastoral capacity, this characteristic is limited to the state itself, and the individual belonging to one of them is only considered an American, Swiss or Libyan in relation to other countries.

⁴It is true that the term nationality is derived from the word Nation, but this derivation goes back to the ancient writers who used the word nation as a synonym for the word Etat as a prelude to calling for the principle of nationalities, which requires recognition of every nation as an independent state. Launching it, and then we must exclude at the present time the idea of the nation as we exclude the principle of nationalities, citing: Arab private international law, Abd al-Rahman, previous reference, p. 14.

⁵Riyad, previous reference, p. 13.

⁶Abdel Aal, previous reference, p. 22.

Nations does not have the status of a sovereign state ⁽¹⁾, and a city or district does not have the right to It has a nationality even if it has a special international description ⁽²⁾, but it should be noted that work is taking place on the condition that some bodies and organizations such as the United Nations and the League of Arab States grant passports to their employees that enable them to move easily and easily between the countries entering the body or organization, and he must not carry Granting these passports is evidence of the granting of international or regional nationality (in the case of the organization). The matter may only be evidence of the administrative subordination of this body or that organization ⁽³⁾.

Likewise, the state is not required to be fully sovereign until it is established that it has the right to establish the nationality ⁽⁴⁾, for the state lacking sovereignty, such as that subject to the mandate or the system of wills, has the right to establish its own nationality. It was subject to the protection system like Tunisia and Marrakesh, it found a Tunisian nationality and another in Marrakesh in France ⁽⁵⁾, these countries gain their nationality as long as they retain their legal personality ⁽⁶⁾. The same applies to Palestine under the Ottoman Caliphate state, as Palestine was part of this state, and

¹See this in the advisory opinion of the International Court of Justice issued on April 11, 1949, regarding the killing of Count Bernadotte in the Occupied Palestine Territory, presented in Briggs: The Law of Nations Second Edition, p. 85 onwards, citing the Egyptian nationality, "A Comparative Study," Riyadh, op. Cit., P.13.

²The Treaty of Versailles stipulated in Article (105) what it called "the nationality of Danzig." However, this expression is imprecise, as it cannot be said that there is a nationality in the true sense as long as there is no country that enjoys an international personality.

³ Abdel-Aal, previous reference, pp. 22-23.

⁴ Riyadh, previous reference, p.13.

⁵Pativol (Tr. elem), third edition, No. 66, and Nabuaye al-Tawil, Part 1, No. 71, while Algeria, before its independence, was a French colony considered an extension of the French territory, and its people were considered French patriots, citing the origins of private international law, Dr. Mohamed Kamal Fahmy, Previous reference, p. 81.

⁶ Abdel Aal, previous reference, p. 23.

the Ottoman nationality law was applied on it, issued in the style of modern European legislation, in addition to its affiliation to Ayla al-Sham, which includes Syria, Lebanon, Palestine and Jordan now, and then during the British Mandate era, where several were issued. Decrees named after the unified Palestinian nationality decrees (1925-1941) and the complementary regulations ⁽¹⁾.

Also, the Oslo Agreement was left to the Palestinian National Authority organizing issues of identity and passports with its various institutions, whether legislative, executive or judicial, bearing in mind that Palestine enjoys partial independence or incomplete sovereignty.

However, if the state completely loses its sovereignty or legal personality, as is the case for the colonial state or that has joined another state, then the persons belonging to these territories do not acquire an independent nationality, but are considered belonging to the states that annex these territories under its sovereignty ⁽²⁾.

From the international point of view, it is not permissible for a single state to grant only one nationality, even if the state is made up of several states, as is the case for the federal states, where only one nationality is proven to the state, which is the federal nationality. Indigenat is not recognized internationally, but in America, for example, it has only one nationality from the international front ⁽³⁾.

Finally, when the state puts in place legislation related to nationality, it does not seek from behind that to acquire itself a specific description that distinguishes it from other countries, but rather aims from behind that to determine who is qualified to give this capacity to him, to be a member of its people ⁽⁴⁾.

¹ Al-Dahdouh, previous reference, p. 54.

² Abdel Aal, previous reference, p. 23.

³ Riyad, previous reference, p. 14.

⁴ Al-Dahdouh, previous reference, p. 54.

This element is consistent with Islamic law, as only the Islamic state is able to grant citizenship, and it has an international character, so the group has no right to issue citizenship ⁽¹⁾.

The state may not grant more than one nationality, even if it is a federal state, and every country has the right to grant its own nationality even if it is small in size or population.

***The second element: the individual:**

(Article 15) of the Universal Declaration stipulates that: "It is the right of every person to have his nationality, and that no one can rob him - in an arbitrary capacity - or rob him of the right to change it" ⁽²⁾.

However, does the meaning of nationality as belonging to a country pertaining to persons other than legal persons? Or does it include them?

A distinction should be made in this regard between the nationality of natural persons and juridical or legal persons.

According to the origin, natural persons are the ones who address the provisions of nationality, because nationality is based on social and spiritual ties and bonds that cannot find stability except in the natural person without the legal person ⁽³⁾.

Nationality is a description attached to a natural person as an individual, and based on this, the description of nationality does not append to groups of individuals. For example, the family does not have any nationality, because the unit that makes up the component of the region's population is - legally speaking - the individual and not the family. Likewise, nationality does not apply to legal persons, because the idea of nationality is incompatible with the nature of the legal person ⁽⁴⁾.

¹ Gharaibeh, Nationality in Islamic Law (p. 24).

² The Universal Declaration of Human Rights of 1948.

³ Al-Dahdouh, previous reference, p. 25.

⁴ Fahmy, Head of the International Law Department of the Faculty of Law at Alexandria University, and the former Dean of the Faculty of Law at Cairo University. And he said in that: But the work has been done, however, using

Nationality is based on the idea of the individual's political loyalty towards his state, and this spiritual link cannot reasonably exist between the legal person and the state, and nationality arises from the obligations of the individual that the legal person cannot bear, such as the obligation to perform military service, for example ⁽¹⁾.

However, a large group of jurisprudence does not see in these considerations what prevents a legal person from acquiring the nationality of a particular state, because the feeling of loyalty, although it is the spiritual basis of the nationality bond between the individual and the state, is not a legal pillar for the establishment of nationality.

There are individuals who do not have this feeling, such as the insane and the young, and there is also an important group of state subjects, such as women who are not able to pay the costs of military service, and despite this there is no dispute that they can all enjoy the nationality of the state ⁽²⁾.

The Arab judiciary did not deviate from this situation, as it decided that legal persons would enjoy the nationality, for example: the Egyptian Court of Cassation ruling on 1/31/1949 in which it said: (If the company was a partnership company established in Egypt in the manner required by the Egyptian Trade Law, and settled in Egypt It took the field of its commercial activity, and it included three partners, of whom only one is a foreigner, and its capital in which the foreign partner has only a small share in relation to a group, and the recommended partner in charge of managing and

the term nationality for legal persons subject to private law, it is said, for example, an English company, a French association, or an Egyptian institution, and this is an apparent error in using the term because nationality, as we have already known it, is an association that includes the integration of a person into an element Population, and it is not conceivable that the population component of the state consists of natural and legal persons, otherwise the state would have been able to increase its population by multiplying the creation of moral persons to infinity. See: Fundamentals of Private International Law, previous reference, p. 82.

¹ Fahmy, previous reference, p.82.

² Riyadh, previous reference, page 15.

representing it was an Egyptian, so there is no doubt that it is considered a company of Egyptian nationality.”⁽¹⁾

In fact, researching the nationality of legal persons is one of the issues on which a long and broad controversy has raged in jurisprudence. However, it is necessary from now to emphasize the fact that: “Nationality is a description attached to a natural person in his individual capacity without legal persons, because the idea of nationality is inconsistent with and what a corporate person has of a characteristic nature”⁽²⁾.

In sum, if the work was done on the use of the term nationality for these people, then the matter does not deviate from being a kind of trick and miracle that practical necessity resorted to with the intention of knowing the extent of the rights and obligations that are subject to it. The meaning of nationality here depends only on the legal system to which the legal person is subject.

This is what international agreements brought about. Many of them included stipulating that a legal person enjoys the nationality of a specific country. Work has also been made to use the term nationality for some things, such as ships and airplanes, due to their special importance. This is intended to express the association of these things with a specific country⁽³⁾.

***The third element: the existence of a legal and political relationship between the individual and the state:**

It is the existence of a legal and political relationship between the individual and the state, a relationship that is derived from the internal public law and drives its existence under the necessities of the situation, so the formation, survival and continuation of the state all of this includes the necessity of the presence of persons subordinate to it and their connection with it, a relationship that creates specific obligations under each of them, so the individual protects his person and his money and the defense of his interests

¹ Abdel-Al, previous reference, pp. 19-30.

² Previous reference, p. 30.

³ Riyadh, previous reference, page 16.

at home and abroad, and if one of them breaches one of these duties on his shoulders, the other has the right to oblige him to perform it completely ⁽¹⁾. The International Court of Justice made clear in its judgment issued on April 6, 1955, when it ruled: "Nationality is a legal relationship based on a social bond and on actual solidarity in living life, interests and feelings" ⁽²⁾. But with the emergence of the Islamic state, a new bond arose between the individual and the Islamic state, which was based on new, sophisticated foundations, and humanity did not discover a higher level than it. The basis of this dependency has become based on belief in Islam, a belief, thought and behavior, in which all other forms of dependency, whether ethnic, tribal or national, dissolve into it. So, everyone who believed in Islam, immigrated to Medina's society, and struggled with the Muslims became a member of the state's people.

Not only that, but that emerging Islamic state also absorbed other groups of followers of different religions, such as Jews and Christians, thus making them among citizens within bonds, covenants and covenants ⁽³⁾.

The third requirement: the types of nationality

Nationality is classified into two basic types, which are as follows:

1- The first type: the original nationality: which is established for the person by birth, and it is called the birth nationality, and therefore it is imposed on the person regardless of his will, so it is considered an imposed nationality ⁽⁴⁾. The individual obtains it through blood, which is the dependence of the newborn to the nationality of his parents, or one of them. He may also obtain it from the territory's right; That is, by birth on the

¹Wshahi, Private International Law, Part Two, Paragraphs 760 and 761, p. The treaties that it concludes entail special rights for their subjects, their right to assume their functions, exercise political rights and other things, and obligations to perform military service, according to Arab private international law, Abdul-Rahman, page 15.

²Egyptian nationality, previous reference, page 16.

³Gharabiya, Nationality in Islamic Law (p. 28).

⁴ Agha, The Mediator in Palestinian Private International Law, p. 157.

territory of the state. And the state may follow one or both of the two principles (¹).

2-The second type: Acquired nationality: it is what an individual acquires after birth for any reason for acquiring nationality (²). It is formed by naturalization, marriage, or the region's transition from the sovereignty of a state to the sovereignty of another state. The nationality expresses the idea of state's sovereignty, and entitles the citizen to enjoy political rights, such as the right to run and be elected, the right to assume public office, and impose some duties on him, such as the duty to military service, defend his state, and loyalty. to her (³).

Among the reasons that lead to acquiring citizenship in the Islamic State are the following:

First: Islam and immigration to the territory of the Islamic State

Citizenship is granted under the Islamic state to everyone who declares his Islam with the testimony that there is no god but God, and that Muhammad is the Messenger of God, and he uttered it in his tongue, then he committed himself to what Islam imposes on him in terms of principles and duties, and he was of sound belief, and the conception is correct, then he requested immigration to the Islamic state Standing where the residence, that is to ask the nationality of the State of Islam, it is granted to him if it is proved to the competent authorities ratified his claim and sincerity of his intention (⁴), he says: "O ye who believe! If you come to believing immigrants Vatnohn God knows Baamanhen the Almtamohn believers do not Trdjaohn to the infidels." (⁵).

Second: Entering into a contract with the state " disclosure "

Since the establishment of the Islamic State, there have been non-Muslim groups who have lived under the Islamic State in peace and security

¹Qafaisha, Moataz, p.6.

² Al-Agha, Previous Prairie, p. 158

³ Qafisha, previous reference, p.6.

⁴ Gharaibeh, Nationality in Islamic Law (p. 42).

⁵ Surah Al-Mumtahanah, verse 10.

alongside Muslims. They have their religious freedom, they enjoy the protection of the state, they have their economic interests, their social customs, and they have their lands and properties ... and there is no difference between them and the Muslim citizens.

And their existence was in an orderly and thoughtful manner and subject to clear constitutional laws.

So the Messenger of God, may God's prayers and peace be upon him, immigrated to Medina, where the Jews lived, so the Messenger of God, may God's prayers and peace be upon him, drafted a constitution that regulates the relationship of Muslims with the Jews, and that this constitution aims mainly to regulate the relationship between all sects and groups in Medina, chiefly immigrants, supporters, Jewish factions and others Under its provisions, Muslims, Jews and all factions must deal with any external aggression against the city.

With the conclusion of this constitution - and the approval of all factions including it - the city became a state and the agreement of its head, the Messenger - may God bless him and grant him peace - and became the supreme reference for Islamic law, and all human rights became guaranteed, such as the right to freedom of belief and the practice of rituals, equality and justice ⁽¹⁾.

The second topic: the stages of legislative development of nationality.

The first requirement: the right to a nationality according to international standards.

The issue of the existence of nationality according to the standards of general international law has not received serious attention by researchers, due to the lack of clarity of the features of Palestinian nationality due to the political fluctuations that the Palestinian arena has witnessed throughout contemporary history ⁽²⁾.

¹ Gharaibeh, Nationality in Islamic Law (p. 50), Islam Online, Constitution of Medina ... the pride of Islamic civilization, archive.islamonline.net.

² Khellah, Palestine and the British Mandate (Beirut Palestinian Research Center) 1974, p. 23.

The Palestinian nationality has an unparalleled peculiarity, given that it is not easy to talk about it, in theory, since there is no complete sovereignty over the Palestinian land and the people are scattered here and there and are not governed by a single government.

Citizens of 48 are subject to the provisions of Israeli nationality, citizens of the Gaza Strip and the West Bank are subject to the sovereignty of the Palestinian Authority, and refugees in the diaspora in Lebanon, Syria, Jordan and Iraq have not been naturalized by their host countries in order to preserve their Palestinian identity and to ensure that they do not join the countries to which they immigrated, which leads to forgetting their just cause, which is expulsion. The invaders and take back all of Palestine.

But the question that arises is whether a state is required for the existence of a nationality?

It is accepted by researchers that the state is based on the two pillars of the state, the people, and the public authority (the government). If any of them is lost, nationality does not exist, but the issue of Palestinian nationality has two exceptions:

One at the international level, and the other at the Palestinian level, and these two exceptions are the absence of a fully sovereign state for the existence of nationality and the unnecessary existence of a Palestinian state for the existence of Palestinian nationality:

1- The non-necessity of a fully sovereign state:

The fully-sovereign state that issues citizenship is to be fully sovereign. Countries without sovereignty have the right to issue nationalities, such as countries that are subject to the system of protection, tutelage or mandate. Legislation has been issued in Syria and Lebanon regulating the nationality of their inhabitants under the French mandate (¹).

The Tunisian and Moroccan nationality law was also issued under the French protection, but in the colonial countries, the situation is different, and most jurists see that their inhabitants do not have an independent nationality, as the nationality of the inhabitants of those areas dissolves into

¹ The Syrian and Lebanese Nationality Law of 1925.

the nationality of the occupied country, as well as for Algeria, which France considered part of its territory and this situation does not It can be accepted as it is the right of the peoples under colonialism to have their own nationality and they have the right to self-determination, as is the case that has not ended in Palestine.

There is no dispute that states lacking sovereignty have the legal and realistic right to a nationality, since denying them this right means that it is legitimized by occupation and colonialism, which is contrary to international laws that give peoples the right to self-determination, meaning that these peoples have the legal right to a nationality, but it is difficult for them. Achieving it under the influence of occupation and colonialism, but the nationality in these two cases is incomplete, and the reason for that is the lack or decrease of sovereignty that is reflected in the nationality, and makes it diminished, such as discrimination against them or the failure to provide them with diplomatic protection like other citizens of fully sovereign states.

As for Islamic law, nationality is a special international law that is subject to the principles of Sharia, and jurists have the jurisprudence to formulate internal frameworks to regulate nationality, so that it guarantees the public interest of Muslims without contradicting the established texts (¹).

2- The non-existence of a Palestinian state due to the existence of the Palestinian nationality:

On July 14, 1922, the League of Nations issued the British Mandate for Palestine, and thus the international community recognized the incomplete sovereignty of the State of Palestine, and Article 7 of the Mandate gave Britain the right to issue a law to regulate the nationality of the residents of Palestine.

On July 24, 1923 AD, the ill-fated Lausanne Agreement was concluded between fractured Turkey, Britain, France, Italy and Japan, in the light of which determines the fate of the country, which gained independence from the Ottoman Caliphate, after the First World War - including Palestine - and this treaty had a direct impact in terms of international law in determining the nationality of the Ottomans. Residents of Palestine, and the treaty

¹ Gharaibeh, Nationality in Islamic Law (p. 30).

stipulated that “the Ottoman subjects separated from the Ottoman Empire and become, according to this treaty, subjects of the countries to which the region is attached.” The Treaty of Lausanne was applied to Palestine as of the sixth day of August 1924 and was published in the Official Gazette of the Government of Palestine, and thus it was completed the elements of issuing international citizenship from the international destination.

On July 24, 1923 AD, the ill-fated Lausanne Agreement was concluded between fractured Turkey, Britain, France, Italy and Japan, in the light of which determines the fate of the country, which was independent from the Ottoman Caliphate, after the First World War - including Palestine - and this treaty had a direct impact in terms of international law in determining the nationality of the Ottomans. Residents of Palestine, and the treaty stipulated that “the Ottoman subjects separated from the Ottoman Empire and become, according to this treaty, subjects of the countries to which the region is attached.” The Treaty of Lausanne was applied to Palestine as of the sixth day of August 1924 and was published in the Official Gazette of the Government of Palestine, and thus it was completed the elements of issuing international citizenship from the international destination.

On November 29, 1947, United Nations General Assembly Resolution No. 181 issued the division of Palestine into an Arab state and a Jewish state. The resolution contained special provisions relating to the nationality of citizens in each of the two states.

On September 28, 1995, Israel and the Palestine Liberation Organization signed a peace agreement that recognized the existence of (Palestinian nationality) citizenship in more than one place in it, and this is to legalize the existence of Palestinian nationality through an international treaty recognized by international law.

3- The right to sovereignty over the Palestinian land:

Palestine was part of the Ottoman state (caliphate) since 1516 - 1924, and the sovereignty of the Ottoman state and the Ottoman people, which included large groups of the population in vast lands, and the population of Palestine was part of this people, and after signing the Treaty of Lausanne, Turkey ceded the territories that were part of it In the Middle East, including

Palestine, sovereignty was transferred accordingly from the inhabitants of the Ottoman Empire, and the regions separated from the Ottoman Empire did not form independent states, Rather, they have become states under the mandate or protection of other states according to decisions taken by the international community represented by the League of Nations. Palestine has fallen into two Arab and Jewish states. The sovereignty of the Palestinian people was restricted from the point of view of international law to the areas designated for it according to the partition resolution, and its sovereignty was limited to the West Bank and Gaza Strip. This sovereignty by other non-Palestinian parties, such as the Jordanian authority in the West Bank and the Egyptian authority over the Gaza Strip between 1948 and 1967, until the arrival of the Palestinian National Authority to part of the Palestinian territories in 1994.

Actual sovereignty began to belong to the Palestinians, and the legal sovereignty of the Palestinians was confined to the West Bank and Gaza Strip, and it no longer extended to the areas that were allocated to the Arab state according to the partition resolution. For the Palestinians, this decision results in an Israeli withdrawal from the West Bank and Gaza Strip only.

Based on this, we find that the Palestinian people's sovereignty over their land began in 1924 over all of the land of Mandatory Palestine, then it was legally reduced within the framework of the area granted to the Palestinians according to the partition resolution, then it actually decreased in the West Bank and Gaza Strip as the spread of settlements consumes half of the West Bank located on the Palestinian side, according to For the partition decision, after the signing of the Oslo Accords, when the Authority controlled some areas of the Arab West Bank and the Gaza Strip.

4- The change in the reality of sovereignty with the entry of the Palestinian National Authority and its impact on nationality in the West Bank and Gaza Strip:

The withdrawal of Israel from some occupied areas and the entry of the Palestinian Authority to them transferred actual sovereignty from Israel to the Palestinians in the presence of executive, legislative and judicial powers that represent the internal aspect of sovereignty and this sovereignty is

diminished due to the restrictions imposed by the agreement and the actual practices of occupation on the land from the spread of settlements and military barriers, as for the external manifestations of sovereignty. The Palestinian Authority is severely deficient in terms of internal sovereignty, according to the agreement and under legal sovereignty, the Palestinian Authority has the authority to issue and implement legislation and laws, including the law regulating the provisions of Palestinian nationality, despite the absence of legislation to regulate it, and although the Palestinian Ministry of Interior proposed issuing a law, it has not been approved until this moment.

***The right of self-determination for Palestinians and its relationship to nationality:**

Since international law recognizes the right of the Palestinian people to self-determination over the territories occupied in 1967, this means that the international community recognizes the existence of the Palestinian community, and since nationality is the criterion on the basis of which the bond between the people of one people and the state is determined,

We conclude that nationality is a legal right recognized legally in accordance with abstract international law standards, after addressing all international instruments and treaties, and the international community's recognition of the Palestinian people's right to self-determination.

The second requirement: the legal development of nationality in Palestine.

Legislative graduation for citizenship in the Palestinian territories ⁽¹⁾:

The legal framework regulating nationality in Palestine is characterized by fragmentation and ambiguity, and we can attribute this to two reasons:

- 1- The diversity and multiplicity of the successive authorities over the rule of Palestine, and consequently the different legislation accompanying it.
- 2- The absence of geographical unity between the Palestinian areas and the administrative subordination of these areas to neighboring regimes (Egypt

¹ Agha, Mediator in Private International Law, First Edition, without authority, 2011, pp. 159-161.

and Jordan), and the division of the homeland into areas controlled by the occupation granting its people its nationality (48 regions) and occupied areas without assigning citizenship to their citizens (the West Bank) and areas from which the occupation withdrew. Nationality (Gaza).

We will briefly review the most important stages that the Palestinian nationality went through:

First: Nationality in the Ottoman Era:

The inhabitants of Palestine during the Ottoman rule were citizens of the Ottoman Empire, possessing its nationality, and talking about Ottoman citizenship, prompt us to address the British mandate, which stipulated that a person residing in Palestine obtain Ottoman citizenship, and prevent the Ottomans from acquiring the nationality of a foreign state except after obtaining permission from the Ottoman government , In order to limit the Ottomans' naturalization of the nationalities of countries whose citizens enjoyed foreign privileges ⁽¹⁾.

Every person who had Ottoman citizenship, and wanted to travel outside the country, was required to obtain an Ottoman passport, which was written in Turkish and French ⁽²⁾.

Second: Nationality during the Ottoman rule:

After the imposition of the British Mandate on Palestine, a British Royal Decree was issued on 7/14/1925 announcing the emergence of the Palestinian nationality, organizing it, and laying down the conditions for its acquisition and loss. This decree, and the amendments that took place to it, gave the High Commissioner wide powers that enabled him to serve the Zionist goals and interests and facilitate the acquisition of nationality.

Third: Nationality after the 1948 Nakba:

¹Codby, *ibid.*, P. 64. Codby was director of the Institute of Law that the British Mandate government established in Jerusalem in 1920 to teach law to students.

² Ottoman Passport Law (Passport). See Aref Ramadan, *Code of Laws*, Part 5 (Beirut: The Scientific Press, 1928), p. 270, citing Palestinian nationality and citizen, previous reference, p. 16.

After the Nakba of 1948, the Palestinians' status differed according to their whereabouts. Whoever remained in the territories occupied in 1948 acquired Israeli citizenship. And whoever was in the Gaza Strip or took refuge in Transjordan acquired the Jordanian nationality, and those who were inside the Gaza Strip remained in possession of a realistic incomplete Palestinian nationality. As for refugees to Syria, Lebanon, Egypt and Iraq, they have become stateless, except for those who acquired the nationality of the country in which they resided after 1948.

Fourth: Nationality after the 1967 catastrophe (occupation of Gaza, the West Bank and East Jerusalem):

After 1967, the status of Palestinians in the West Bank and Gaza Strip in terms of nationality remained the same, so that the Jordanian government continued to consider West Bank Palestinians as Jordanians and continued to grant them Jordanian passports, and in 1984 the Jordanian government took some measures so that it issued green bridge cards to Palestinians who hold Jordanian passports and permanent residents in the West Bank, while yellow bridge cards were issued to those who had a job in the East Bank, and there was no discrimination for those who legally held a yellow card or green card, as all were considered Jordanian citizens.

In 1988 and following the issuance of the disengagement decision on 7/31/1988, instructions were issued by the Jordanian Council of Ministers according to which the Jordanian nationality was stripped from those residing in the West Bank (holders of the green card) and the nationality of the yellow card holders was kept.

Fifth: The current status of Palestinian nationality in the territories of the Palestinian Authority:

After the Oslo Agreement and the establishment of the Palestinian Authority, Palestinians residing in the territories of the Palestinian Authority enjoy de facto Palestinian nationality, which is deficient because the sovereignty of the Palestinian Authority is incomplete as it does not have control over the territory and cannot provide protection for its citizens abroad, and the absence of a Palestinian law regulating nationality and the conditions for its acquisition and loss.

Although a Palestinian nationality bill has been prepared since 1995, it has not been approved by the Legislative Council so far. The Oslo Agreement contains restrictions that tie the hand of the Palestinian Authority and does not give it the right to issue such a law.

The third topic: the legal foundations of nationality in Palestinian legislation.

The first requirement: foundations for the acquisition and removal of Palestinian nationality

First: Reasons for gaining Palestinian nationality:

The Palestinian nationality is acquired as a general basis, either because of an original cause that coincides with the person's birth and is called the original nationality, and is based on the right of blood or the right of the territory, or it is acquired by a subsequent reason on the person's birth event and it is called emergency or subsequent reasons, and it is based on naturalization, mixed marriage, or change of sovereignty. Territoriality or realization of a person's option to restore his original nationality.

A- Cases of acquiring nationality on the basis of blood right:

The right to blood means the right of a person to acquire the nationality of the country to which his parents belong, upon his birth. The basis of nationality here is the family origin from which the newborn descends, and that is why it is also called the nationality of descent (1). (Article 3) of the unified Palestinian nationality decrees for the years (1925-1941) stipulated in paragraphs(A-B) cases of acquiring Palestinian nationality on the basis of

¹ Look at that:

-Egyptian nationality, "a comparative study," previous reference, page 39.

-The origins of comparative Lebanese private international law, previous reference, pg. 66.

- Al-Wajeez in private international law, previous reference, p. 67.

-مجلة دولية محكمة تصدرها جامعة د/ مولاي طاهر بسعيدة -الجزائر-

the right to blood. As the Palestinian nationality was granted to everyone born to a Palestinian father in two cases (¹):

-When a person was born in Palestine to a Palestinian father from a legal marriage.

-When he was born outside Palestine to a Palestinian father through a legal marriage.

B- Cases of acquiring nationality on the basis of the right of the region:

As for the right of the region, it is required to establish the nationality bond on the connection that binds the individual to the region in which he was born, without considering the origin from which the newborn descended, whether he was born to national or foreign parents. Born in British soil, he is British (²). This bond is usually reinforced by the parents' resettlement in the state's territory at the time of birth. Therefore, this system does not apply to those who have been accidentally born in the country that adopts this system. Among the countries that adopted the territorial right system alone are the countries of Central America and Latin America (³).

Article Three of the Unified Palestinian Nationality Decrees for the Year (1925-1941) stipulated in Paragraph (C) cases of acquiring Palestinian nationality on the basis of the territorial right. As the Palestinian nationality was granted to everyone who was born from a legal or illegal marriage in Palestine and did not acquire this nationality on the basis of the right to blood. The aim is to include many Jews who came to Palestine and whose parents did not acquire Palestinian nationality yet (⁴).

C- Cases of gaining citizenship through naturalization (⁵):

Naturalization is the most important way to enter the nationality of the country after entering the birth. It is the normal way open for everyone who wants to acquire the nationality of the state, and naturalization is the entry of

¹ Dahdouh, previous reference, p. 206.

² The Egyptian Nationality "A Comparative Study," previous reference, p. 40

³ Arab private international law, previous reference, p. 40.

⁴ Al-Dahdouh, previous reference, p.208.

⁵ The previous reference, P. 210.

a person into the nationality of the state at his request and after this state approves. Based on that, naturalization can only be achieved by the combination of two wills: the will of the individual and the will of the state. The set of unified Palestinian nationality decrees in Articles (4-5-6-8-9) stipulated the conditions for naturalization, and differentiated them into two types:

- Type based on the fact of birth and residence together according to Article (4-5-6).

- Type based on mere residence for a short period.

A person acquires Palestinian nationality if he is granted a certificate of naturalization by the High Commissioner, after submitting an application for citizenship, under conditions that are:

A- He has resided in Palestine for a period of no less than two years.

B- He must be of good manners, and be familiar with English, Arabic or Hebrew (which are the official languages of Palestine during the Mandate period).

C- He has the intention to reside in Palestine if his request is answered, and he must swear the oath of loyalty to the government of Palestine, and the High Representative may grant a certificate of naturalization even if the aforementioned residency condition is not met.

Whoever acquires the nationality by naturalization becomes Palestinian and all rights and duties that a Palestinian has from the day he obtains the naturalization certificate apply to him.

In Islamic law, the naturalization of a Muslim with the nationality of a non-Islamic state as long as it is necessary, and as long as it does not affect his religion and does not affect the essence of his belief and does not prevent him from carrying out the costs of his religion and does not affect the belief of his family members, it is legally permissible (¹).

D- Cases of acquiring nationality through mixed marriage:

¹ Sabil, Ruling on Naturalization of a Non-Islamic Country (p.92), Rida Al-Batawy, Ruling on Nationality in Islam, Dunia Al Watan, <https://pulpit.alwatanvoice.com/>

The wife of a Palestinian is Palestinian and the wife of a foreigner is considered a foreigner unless she wants to retain her Palestinian nationality, or if she is Palestinian, married a foreigner and acquired his nationality and then separated from him, then she is entitled to return to the Palestinian nationality, and the foreign woman does not lose the Palestinian nationality if she acquired it through her marriage to a Palestinian if the latter died or separated. It should be noted here that a foreign person who marries a Palestinian woman does not acquire Palestinian nationality by simply marrying her, but rather must fulfill the general conditions for obtaining Palestinian nationality by naturalization ⁽¹⁾. The unified Palestinian group of decrees adopted as a general principle the theory of dependency, whereby the wife's nationality was attached to the nationality of her husband and her subordination to him according to the text (Article 12/1)

As for Islamic law, subordination is always to the husband, not to the wife, so marriage is one of the reasons for acquiring nationality under the Islamic state for women only, meaning that if a foreign woman marries a Muslim who holds the nationality of the Islamic state, she has the right to subordination to the house of Islam, and then you get citizenship ⁽²⁾.

As for a Muslim woman who does not hold the nationality of the State of Islam, if she marries a Muslim citizen, she acquires the nationality, because she has become subordinate to him through the residence and the home.

As for a Muslim who does not hold the nationality of the state of Islam, and marries a woman who holds the nationality, he does not acquire nationality through this marriage. Because the subordination to the man and not to the woman, as previously mentioned ⁽³⁾.

E- Cases of acquiring nationality when territorial sovereignty changes:

Palestine was part of the Ottoman Khilafah State, and then its inhabitants held Ottoman citizenship, and the situation continued in this way until the collapse of the Ottoman Khilafah State after the First World War, and

¹ Al-Agha, previous reference, p. 166.

² Sarkhasi, Al-Mabsout (10/84), Gharaibeh, Nationality in Islamic Law (p. 70)

³ The previous reference.

France and Britain shared influence over the Arab regions, and it seriously sought at the time to impose its sovereignty over Palestine from During the issuance of many legislations related to nationality.

As a result, many elements of the world's Zionists and oppressors became holders of Palestinian nationality, which distorted the balance of the population balance in Palestine by disrupting the interest of this group over the Palestinian demography.

Whereas when the scale tilted in favor of the Palestinian Arab population, then it became more favorable to the world's Zionists, who were brought in from abroad and granted Palestinian nationality during the mandate, and the situation continued in this way until the recognition of the major colonial countries that had previously circumvented the Ottoman caliphate in favor of Zionists By establishing an international entity for them to be known as Israel, the Palestinian nationality was changed at that time for the residents of Al-Quds Al-Sharif, the West Bank and the Gaza Strip.

With Jordan officially annexing the Jerusalem District and the governorates and cities of the West Bank in an official capacity in 1951, the inhabitants of this region have two nationalities, an old nationality, which is the Palestinian nationality, and a new nationality, which is the Jordanian nationality.

As for the residents of the Gaza Strip, they continued to hold the Palestinian nationality, and they kept it until the June 5, 1967 war, when the Zionist occupation authorities occupied the rest of the Palestinian land, and part of the lands of Jordan, Egypt and Syria, and the nationality problem arose after that for the residents of the areas that were occupied During the setback war in 1967, would the Israeli occupation grant Israeli citizenship to the inhabitants of these areas with the consequences that would result from introducing new population elements to them that would not meet them in hopes, pains and ambitions? Or keep them to put parts of these areas without the other.

In fact, the Israeli occupation authorities have sought to be satisfied with annexing Jerusalem and granting its residents Israeli citizenship without the areas of the West Bank and the Gaza Strip, restricting the issue of travel and movement for residents of these areas, and from another angle they have

sought to encourage Palestinians to emigrate outside the areas in order to make the policy of emptying a success. The occupied territories are by the Palestinian people, by practicing the most heinous means and methods of demolishing homes, And the policy of starvation, deportation, and other means with the aim of creating a new situation that helps it swallow all the occupied areas, and the multiple and repeated attempts by the occupation authorities to pressure some countries that incubate and host Palestinian refugees with the aim of settling them in those countries, by establishing its national authority over some parts of its national soil in the hope. Restoration of the entire occupied national territory, and even more than that, the denial of the Israeli occupation authorities has sought and still seeks to deny their abandonment of wars and the terror of their organized Zionist gangs from the return of Palestinian refugees to the embrace of their national soil. Hence, the Zionist entity's annexation of the occupied territories did not affect the Palestinian nationality, as the Palestinians continued to retain the Palestinian nationality despite all this diaspora (¹).

Second: The reasons for the demise of the Palestinian nationality:

Loss of nationality means the loss of nationality from a person after enjoying it for a period of time, and this may happen due to a person performing a voluntary act that would prove to him another nationality, which leads to the removal of his nationality to prevent him from falling into dual nationality, and to respect his right to change his nationality and acquire another nationality (²).

1- Renunciation of Palestinian nationality (³): Article 9 of the first paragraph of it permits anyone who acquired Palestinian nationality within one year of reaching the age of majority, that is, if he has exceeded eighteen

¹ Al-Wajeez in private international law, previous reference, pp. 107-109.

² Look at that:

-Al-Daoudi, previous reference, p. 202.

-Riyadh, previous reference, p. 69.

- Al-Dahdouh, previous reference, p. 114.

³ Previous reference, p. 234

years of age, to give it up. If he submits the permit, he is considered a foreigner from Palestine.

2- Deprivation of Palestinian nationality ⁽¹⁾: Article ten of the unified Palestinian nationality decrees specified cases of losing Palestinian nationality, whether on administrative grounds, by withdrawing it from its holder by the state or by dropping it from him.

A- Cases of revoking nationality: The decrees granted the right to revoke the nationality of the High Commissioner due to the availability of cases, namely:

- Obtaining citizenship through false information or fraud and fraud.
- It is proved that acquiring nationality by naturalization is disloyal to the government of Palestine.

B- Cases of revoking Palestinian nationality: These are the same cases of revoking the aforementioned nationality. This procedure is taken in the face of acquiring nationality through naturalization or confronting a foreign wife who acquired citizenship through marriage.

The second requirement: proof of nationality

Given the Palestinian situation, it is difficult to say that there is legislation that regulates nationality and the conditions for acquiring and losing it, although a Palestinian nationality bill has been prepared since 1995, but it has not been submitted to the Legislative Council for approval and issuance by legal means, given that there are obstacles to its issuance since the State of Palestine is sovereign It is incomplete because the Oslo Agreement contains restrictions that bind the Palestinian Authority and hinder the issuance of such a law ⁽²⁾.

¹ Previous reference, p. 235.

²An article published by lawyer Mahmoud Hammad, under the title (Intervention on Palestinian nationality in light of the recent procedures), without clarifying the publication and its date.

As for the law in effect in Palestine, it is a set of unified nationality decrees for the years (1925-1941) ⁽¹⁾, established by the British Mandate for Palestine, and is still in effect until now.

The third requirement: jurisdiction to settle nationality disputes

Nationality disputes may arise before the administrative authorities in countries, and this dispute may take place in the court of the judiciary, and here a question arises about the competent court for nationality disputes, so do the administrative courts have absolute jurisdiction over nationality disputes or is this jurisdiction could be held in the regular courts in such disputes:

First: In the administrative jurisdiction ⁽²⁾:

The unified Palestinian nationality decrees of 1925-1940 authorized the High Commissioner, who acts in the place of the Head of State, with these powers. The defect of abuse or deviation of power, and as is seen in this picture, also the dispute in the administration's decision to refuse to grant a person a nationality certificate despite his enjoyment of it in accordance with the provisions of the law as a result of his birth to a national father or who was born in Palestine to a Palestinian mother and a stateless father, as well as The dispute over the administration's decision to refuse to grant a wife of Palestinian origin a nationality certificate despite her enjoyment of it as a result of granting her husband the Palestinian nationality, The individual resorts to these disputes that usually take this picture to cancel the administrative issued in his nationality, whether negative or positive, as well as compensation for the damage resulting from this decision, and the Palestinian law did not specify a period to object to such decisions, so we

¹The Palestinian Al-Waqae'a website, Issue (1351), Appendix No. (2), published on August 10, 1944.

² See Al-Wajeez in Private International Law, previous reference, pp. 181-182.

see the application of general rules in the claim on such these decisions in terms of prescription are related to the administrative decision. Therefore, as mentioned previously, if the administration abuses its right, then any person has the right to resort to the judiciary, since the judiciary is an independent authority, and its function is to implement the law and establish rights, and to abide by or be affected by decisions issued by the executive authority.

Second: Judicial jurisdiction ⁽¹⁾:

The Palestinian legislator did not follow the example of other legislations by specifying the competent judicial authority in examining nationality disputes, since the law applied until this moment is an old law that had been promulgated during the British Mandate in 1925 CE for the year 1941 CE, in accordance with the unified nationality decrees, and the fact that the Oslo Agreement had been issued. The Palestinian Authority was handcuffed and prevented from issuing the nationality bill that was presented to the Legislative Council in 1995, because the Authority does not have absolute sovereignty as it is in other countries due to the conditions of occupation and the difficulty of establishing a state on the entire Palestinian soil, And that the authority controls a small part of the occupied territories in 1948 AD, and the occupation's control over the crossings and its effective ability to prevent any Palestinian from entering the Palestinian territories despite his actual enjoyment of this nationality, and that the authority has no power or power in the face of these arbitrary decisions and its racial elimination.

***Judicial jurisdiction over issues of nationality:**

The criminal courts have jurisdiction over the crimes that may be committed upon the enforcement of the nationality laws, and the Supreme Court of Justice or the administrative courts shall have jurisdiction to consider proving the nationality of a specific person or denying it from him.

A- The jurisdiction of criminal courts to consider some crimes related to nationality laws:

¹Lessons in private international law, previous reference, pp. 248-249., Egyptian nationality, "a comparative study," previous reference, page 301.

Some crimes may be committed when applying the nationality laws, such as making some false statements or submitting some forged papers with the intention of proving or denying nationality, or using a certificate of naturalization for another person and presenting it as his own nationality with the intention of impersonating its owner and so on, and the Palestinian Penal Code has stipulated In Articles (116) and (117): “Whoever gives any judicial procedures a false testimony affecting any matter of substance related to a matter related to it being stopped by those procedures while knowing that the testimony is false is considered to have committed a felony called a felony (false testimony).

The previous article clarifies that there is no lesson whether the testimony was sworn or given in any other way, and it is also not a lesson if the person who gave the testimony was a witness who accepted the testimony or not, or if the testimony was acceptable in those procedures or not, as well as the text of (Article 117) Paragraph (2): “Whoever tempts a person to give false testimony and that person gives a false testimony based on that temptation, he shall be deemed to have committed a felony of temptation to give false testimony.”

Article 118 stipulated the penalty for false testimony, stating: “Whoever gives false testimony or induces someone else to perform it shall be punished with imprisonment for a period of 7 years.” Article 119 also provides for the crime of fabricating evidence as the use of fabricated evidence (forged certificate issued by a foreign consulate that he is one of them). Its citizens), knowing that it is also considered a felony and is punishable by imprisonment for a period of six years.

We note here that the crime mentioned in the preceding articles is the original jurisdiction of the Court of First Instance in Palestine, since these crimes of the type of felony are genuinely examined by these courts, and Article 120 of the same law stated: “Whoever knowingly swears a false oath or gives a false assurance or a false statement in front of a person who has the power to swear an oath or take the permit is considered to have committed a misdemeanor.

” This crime is within the jurisdiction of (the Magistrate’s Court in Palestine), and also (Article 122) of the same law stated: “Whoever

intentionally destroys a book or document of any kind, such as (Certificate of nationality) or any other thing of any kind or not subject to resolution and interpretation or made it impossible to know his truth while he knows that it is necessary he is considered to have committed a misdemeanor), and this crime belongs to the jurisdiction of the Magistrate Courts in Palestine.

***Subsidiary and subsidiary jurisdiction:**

• (A): Criminal jurisdiction over nationality disputes:

The dispute regarding nationality may be raised before the criminal judge during his consideration of a specific crime in which his judiciary depends on the commission of a criminal act, such as the violation of the deportation decision issued by the competent administrative authorities, and accordingly the person deported shall appeal this decision before the administrative or judicial authorities, and here this person commits a crime in violation of the legitimate orders stipulated According to Article (193) of the applicable Palestinian Penal Code, if this person is brought before the Palestinian Magistrate's Court to be tried for this offense, then he appeals before the court that he is a Palestinian and may not be deported in accordance with the Basic Law of 2003 and its amendments, and it is proven that, then he is ruled innocent.

If the opposite is proven, then the judgment will be guilty, and this has a great impact on citizenship issues as a subsidiary, and we mean here by the accessory capacity that the judiciary was not primarily concerned with proving the nationality, but at times it examined the evidence that it is looking into the verification of this crime, the court found out that the accused is Palestinian and who Then the court ruled his innocence, and did not accept the deportation of the Palestinian from the homeland, despite his violation of this decision.

•(B): Civil jurisdiction in nationality disputes:

If a civil case was filed subordinately before a civil court during its consideration of a particular case, the defendant would have argued that the court does not have jurisdiction to hear this case, since he is not a Palestinian national and he follows the national court, then the court must settle nationality disputes with this plea before entering into the matter.

•(C): **Administrative jurisdiction in nationality disputes:**

Nationality issues can be considered before the administrative courts in Palestine. If a person appeals to the election commission's decision not to allow him to run, as he is not a Palestinian, and this person has paid this decision in contravention of the law as he has Palestinian nationality, then the administrative court must consider this. Pay before considering the subject matter.

•**Original jurisdiction in nationality disputes (stripped citizenship case):**

The administrative judiciary is considered to have the exclusive jurisdiction in the original in nationality disputes, and that if the form that the nationality dispute takes, then the jurisdiction shall be held by the administrative judiciary, especially if the nationality dispute is in the form of an appeal against an administrative decision if one of the reasons for the challenge brought by the text is available ⁽¹⁾, as stipulated in the Courts Formation Law. The Palestinian legal system in Article (33) in the second paragraph: "The Supreme Court of Justice shall have jurisdiction over the requests submitted by the concerned parties to cancel the regulations, regulations, or final administrative decisions affecting people or money ..." ⁽²⁾.

At the present time, a special law on administrative disputes No. 3 of 2016 has been issued, according to which administrative courts have been formed. The administrative judiciary also has jurisdiction over the nationality dispute if it is in the form of an original lawsuit, such as a central or national report, or the status of the foreigner to the plaintiff without there being a decision by the administration or abstaining from a decision calling for an appeal without there being an actual litigation calling for that appeal.

The Palestinian Civil and Commercial Procedures Law (Article 39) stated: "The Magistrate Court has jurisdiction to hear cases of correction in the civil personal status records and records." If there is a mistake in the official data

¹Egyptian nationality, previous reference, p. 322.

²Palestinian Regular Courts Formation Law No. (5) of 2001.

in the identity card, for example, or the birth certificate, then this jurisdiction shall be convened by the Magistrate's Court to look into the matter. This case, and if it is proven to have this error through the data provided by the plaintiff, it has the right to fulfill the Ministry of the Interior with a judicial decision subject to appeal to amend these restrictions. Article (411) of the same law stipulates: "The Court of First Instance shall have general jurisdiction in hearing all cases and requests that do not interfere with the jurisdiction of the Magistrate's Court".

Therefore, it becomes evident that: The Court of First Instance in Palestine is the court competent to consider nationality cases, since there is no text in the Law on the Formation of Regular Courts No. (2) for the year 2001 or the Constitutional Court Law No. (3) for the year 2006 or the Civil and Commercial Procedures Law, any text. It specifies the judicial authority that should hear nationality cases, and we have nothing but the text that we mentioned earlier that "the court of first instance is the authority to have jurisdiction in cases that are not subject to the court of peace." As for the Palestinian High Court of Justice, it is one of the departments of the Supreme Court previously, but now the Administrative Court It is the one that has the authority to consider the administrative decisions issued by the President of the National Authority or the Minister of Interior regarding granting or withdrawing nationality, or any procedure related to nationality issues of an administrative nature, in this case the person against whom this decision is issued can resort to the administrative court, as it has the original jurisdiction in all administrative disputes. As defined by Article 3 of the Administrative Disputes Law (¹).

As for the form of the lawsuit filed before the court of first instance, the plaintiff deposits it with the court of first instance. The lawsuit list is filed, including the name of the plaintiff, the defendant, and the subject matter of the case, for example: proving the plaintiff's Palestinian nationality and the plaintiff's requests and evidence attached to this lawsuit and then mentioning the case to the competent court and setting a session in it. After paying the fees payable by the plaintiff and informing the defendant with the

¹Palestinian Regular Courts Formation Law No. (5) of 2001.

administrative authority and represented by the attorney general to inform him of the lawsuit list and respond to it with a response list within 15 days from the date of his notification and after the plaintiff submits and seals his evidence and the defendant administrative authority submits its evidence, the court decides to seize the case for the decision. For cases filed before the Special Administrative Court appealing the administrative decisions issued in the decision to withdraw nationality from any national, for example, the procedures are to submit a petition to the court registry with the number of the summoned against them attached to it with the supporting documents, according to the text of Article (8), and Article (5) specified the date for submitting the summons It is within "sixty days" from the date of publishing the contested administrative decision or the date of its notification to the person concerned, and in the event of the administration's refusal or abstention. For any decision being made, the time starts from the expiration of thirty days after submitting the request to it, and this petition must be submitted by a practicing lawyer according to the text of Article (7) of the same law, and the court sets a date to hear the summons in the presence of one party to consider issuing an interim decision. If the court finds that the application meets the formal requirements, it decides to issue a memorandum to the plaintiff against it indicating the reasons for the contested decision or the violation of the issuance of the decision subject of the request, and the administrative body submits a response list within fifteen days to oppose the issuance of a final decision on this summons, and to inform a copy of the response For the plaintiff, if the administrative authority fails to present the response list on time, it is not permissible to hear it in the objection to the summons, and if the response list is submitted within the legal period, a date is set for the summons to be considered and the litigants are notified of that and the plaintiff against him on the day set for hearing the request by repeating his list of reply and presenting his evidence, and the plaintiff has the right In responding to the arguments made by the plaintiff against him, and after that the court issues its judgment as soon as possible in the request, either by rejecting it or canceling the decision that was appealed, or Amending it with the effects resulting from its judgment.

Findings and recommendations

Results:

1 -Nationality is a political and legal bond that obliges an individual to be loyal to the state and enjoy political rights and that it is subject to the law in granting, withdrawing and restoring it. Legal link in the sense that the law governs its emergence and demise, as well as determines the various implications for it.

2 - The right to establish a nationality is limited to the state only, to the exclusion of other people of general international law, and it is not required that the state be fully sovereign in order to issue citizenship, so it may be issued from countries that fall under guardianship or mandate.

3 -That the international community recognized in its charters the right of any of the peoples to determine and determine their fate, especially the Palestinian people, and this is evident in the 1923 Lausanne Agreement between Turkey and Britain during the First World War in the right of countries that were forced to separate from Turkey and organize their nationality on their own, including Palestine, United Nations resolutions, resolutions. 181 and Resolution 242, which gave the Palestinians part of their rights, which is their right to establish a Palestinian state on the 1967 borders and the Oslo Agreement signed between the Palestine Liberation Organization and the Israeli occupation in 1994 AD, which gave the Palestinians the right to establish their state after the end of the transitional period on the 1967 borders, and this agreement was welcomed by the international community and confirmed this The agreement stipulates the necessity of the return of Palestinian refugees to their lands, and it is clear that there is no problem for the international community to allow the Palestinians to regulate their nationality.

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4 -That it is difficult to accept by taking the basis of the right to blood without the right of the region, and vice versa to acquire the original nationality, and that does not mean granting the Zionists who were born on the land of Palestine the Palestinian nationality on the basis of the right of the territory, since every rule has anomalies and the fact that they perched on our land by force, we do not accept them in that.

5 -If there is any reason for the legal loss of nationality due to naturalization with another nationality, then the person's loss of his original nationality shall remain patriotic, even if he is a national of another country.

6 -If the nationality loses as a result of naturalization with another nationality, then evidence must be established that the foreign nationality has been acquired after obtaining the naturalization permission and does not include permission for him to retain the original nationality.

7 - The house of Islam is the house that the Sharia of Islam prevails and is applied in it regardless of its residents.

8 -Islam is a religion and nationality, and the Islamic nationality is based on belonging to Islam as a religion or convergence under the rule of an Islamic state by law.

9 -The Islamic foundational nationality, which appeared for the first time with the establishment of the Islamic state at the time of the Messenger of God, may God bless him and grant him peace. The Messenger of God, may God's prayers and peace be upon him, identified the patriots in the Islamic state, and they are the immigrants, supporters and followers of the Jews, for these are the people of the Islamic state.

10 -The Islamic nationality is granted under the Islamic state to everyone who declares his conversion to Islam, and who testifies that there is no god but God and that Muhammad is the Messenger of God, after verifying the sincerity of his claim and the sincerity of his intention.

11 -Everyone who has acquired the nationality of the Dar of Islam is one of the people of its home, he has what is for the Muslims and he owes what he owes, except for what was based on belief and religion, so each has his belief and what he owes.

Recommendations:

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1 _The merging of Arab societies into a single bloc that closely resembles the European Union, America and others, with the need for this unification to be subject to the rules of Islamic Sharia law, with each Arab country retaining part of its sovereignty and its own nationality and issuing a general nationality that shades Arab peoples, removing borders, promoting trade exchange and unifying currency Arabic.

2 _The need to develop Palestinian legislation that regulates the provisions of nationality, granting it, withdrawing and restoring it, and that this law includes citizens of 48 and refugees in the diaspora and camps to grant them full Palestinian citizenship (nationality) with the need to coordinate with the Arab countries hosting refugees through the Arab League and to draw up a charter that they sign with the necessity to facilitate and not object to granting procedures. Palestinian nationality on their land.

3 _Work to grant Palestinian refugees residing outside Palestine, and displaced persons and their ilk, Palestinian nationality on the basis of the right to blood.

4 _We recommend the text of a draft law that regulates Palestinian nationality by adopting the granting of nationality on the basis of the right of blood and territory, with the need to provide for the exclusion of the Zionists who were born on the land of Palestine, since they were found on this land by rape and force that is not based on any right, with the necessity to grant the original inhabitants of Palestine, Muslims and Christians. And Jews without any discrimination.

5 _We recommend the necessity of limiting in Palestinian legislation cases of revoking, withdrawing and granting nationality, and that this be the exclusive jurisdiction of the Palestinian judiciary, for its independence and ensuring that the executive authorities do not influence it.

6 .Adopting the Sharia of Islam in granting and revoking citizenship, as it protects the citizen and his rights under the state of Islam.

7. Inviting scholars of Islamic law to research and delve deeper into nationality in Islamic law and to overturn rulings on contemporary reality.

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sGod grants success,