

## Study the Nationality Status of People's Undetermined Nationality

<sup>1</sup>Masume Mahmoodi and <sup>2</sup>Seyed Hasan Vahdati Shobeiri

<sup>1</sup>Department of Law, Neyshabur Branch, Islamic Azad University, Neyshabur, Iran

<sup>2</sup>University of Qom, Qom, Iran

**Abstract:** One the most important and challenging at issue matters in private international law about nationality is the nationality status of undetermined nationality people that is a challenging topic because as it is clear some lawyers knows the nationality as a political and spiritual relationship which linking a person to the certain government. While, according to paragraph 1 of Article 976 of the Civil Law that indicate this subject: "All residents of Iran are considered as Iran's citizen excluding certain persons who their foreign nationality is definite. Foreign nationality from those is definite that their nationality documents not protests with Iran's government." In this study, due to the researchers scientific indigent, we attempt to clarify the legal status of these persons. And as regards, paragraph 1 of Article 976 of the Civil Law will give evidence in confirmed ambiguities but we are confronted onstream with items which had been behaved with such cases completely inconsistent and we seek to discover this lack of attention to the legal status of undetermined citizens that is from material and political consequences?! And to what extent is related with our ideas and opinions which is reflected in the constitution?! And also, how the principle of respect for the rights of foreigners is observe in our country?! Protest situation of government about these people should be unlimited and from a position of strength?

**Key words:** Nationality, nationality caused from residence, residents, undetermined nationality, private

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### INTRODUCTION

The meaning of nationality is a legal, political and moral connection between the person and certain government so that the person is consider as main constituting member of that government.

The importance of nationality in term of legal apart from other directions is that existence or lack of nationality is the main basis of enjoyment or deprivation of many of rights and privileges while also the nationality is the basic foundation of commitment to the duties or exemption from them.

Nationality divide into two categories depending on the time of creation: first, once a person has the nationality of birth and called by different names: "birth" nationality, "origin" nationality and "main" nationality and second, nationality which obtain with interval to the person after birth and named "acquisitive" nationality with laxity.

There is different criteria to determine the nationality of person's birth and governments in terms of legal fundamental viewpoints or their social or political materials, place one or more standards the basis of the birth nationality in their legal system. The most important of these standards are blood or lineage standard, soil or home standard and residence standard.

Legislator of Iran's Civil Law determined the blood and lineage as the main criterion of birth nationality and says about Iran's expression position and counting of citizens: "Those who their father is Iranian are considered Iranian's nationals whether they were born in the country or abroad" (Civil Law, Article 976).

But founding children which their parents are unknown and consequently, their lineage is unknown and cannot count them Iranian national by using this criterion, legislation to prevent these persons without nationality which create a problematic situation both for the person and for the government-determined home standard complementary with blood standard and stipulates that "Those who was born in Iran and their parents are not known are also consider as Iranian" (Ibid., Para. 3).

The fact is that substances related to nationality in Iranian Civil Law developed and written in a way that have many drawbacks that one of the most important of these drawbacks is unclear of law statements and thus, appearance of questions and even uncertainties that it may not be easy to answer them and has been led to conflicting interpretations of the law and other obvious examples of these drawbacks, the topic of this study, means nationality of illegitimate birth of a child is based on blood or lineage system. Does the paragraph 2 of

Article 976 of the Civil Law are included this category of these people or is dedicated to children that obtained from legitimate marriage?

There is no problem by assuming the inclusion, however, given the lack of inclusion what will be the duty of the nationality of these children? Obviously as an answer to this question and defend the legislator, cannot thought the problem was solved immediately according to paragraph 3 of this Article and consider them as Iran's nationality based on the soil system because, the subject of paragraph 3 is a child that her/his parent is unknown while subject of question is a child that born from his/her known parents illegitimate relationship so, it will not be include to paragraph 3 and thus, do not turns to perform soil and home system by assuming known parents in other words, subject of to paragraph 3 is that natural lineage whether legitimate or illegitimate is unknown. While in the discussion natural lineage is known but it is illegitimate.

As mentioned earlier, this uncertainty has led to conflicting interpretations; most commentators of Civil Law are consider the subject of question out of inclusion scope of paragraph 2 of Article 976 according to Article of "not accession illegitimate child to his parents" and as a result, lack of legal sequence effects on illegitimate lineage are consider the subject of question out of inclusion scope of paragraph 2 of Article 976 and perceived unpredictable and unenforceable the blood system and seek other ways to solve the problem but also a small group still are consider the subject of question included mentioned Article by rejecting these reasons and according to it, consider the illegitimate child Iran's nationality from Iranian parents. Which group is right?

Since, the basis of mentioned difference return to sequence or lack of sequence of legal effects on illegitimate lineage, arbitration and research in matter reflects the fact that after quoting the words of the parties and precision and thinking to them at first we have general view of types and kinds of lineage and legal effects relate to them and then, determine the problem of relationship between the lineage and the nationality and hence, our Civil Law is based on Islamic law generally, particularly on issues related to personal status and including the issue of lineage, it is necessary to search and discover the jurisprudence view about this issue; nevertheless, necessity of Islamic interpretation or at least not opposed to Islam-emphasizes on this search and exploration according to Article 4 of the Civil Law. As received jurisprudence opinion towards to the nationality of illegitimate child also help clarify this issue because although, rules relating to the nationality have been developed with national view and not Islamic view they

have been a little religious after the Islamic revolution and preparation of Civil Law. Therefore, they should interpret in such a way that have not opposition to Islam.

### **FIRST SPEECH: NATIONALITY CAUSED BY THE RESIDENCE**

One of the most important factors is also reminders of the past is discussion of Iran's residents nationality and generally, how the connection of residence concept with nationality concept in Iran. Paragraph 1 of Article 976 of the Civil Law which have been exist in the same way that in other historical periods in Iran's nationality and without change, it states:

All Iran's residents are Iranian nationality excluding persons that their foreign nationality is definite. Foreign nationality of those is definite that their nationality documents be not protests to Iran's government. As you can see this paragraph of Article 976 of the Civil Law consists of two parts: the first part that with the sentence: "all Iran's residents are Iranian nationality" indicates the principle of nationality through residence in Iran and second part which says: "excluding persons that their foreign nationality is definite". In other words, the second part in fact is represents the range of apply exception in position of expression the exception of being foreign of those people that resides in Iran and the last sentence of the second part contained in paragraph 1 of Article 976 of the Civil Law which declares: "Foreign nationality of those is definite that their nationality documents be not protests to Iran's government." With the mentioned introduction should be noted that this paragraph, contrary to the belief of most Iranian lawyers, never not be in position of nationality birth expression based on soil system. Because the adoption of the soil system in fact, represents the method that determining the relationship between certain government as nationality with the off spring at birth moment (Jafari and Jafar, 2000).

Acceptance of the aforementioned lawyers theory based on that mentioned paragraph is indicates acceptance of soil system on behalf of the Iran's legislature, faced us with this question that what will be the cause impacts of such a acceptance? With little accuracy in style of writing and according to historical chronology of paragraph 1 of Article 976 of the Civil Law it is clear that mentioned paragraph has been merely as a legal presumption, confirms the link between residence and nationality of the country's people at the moment of the administrative situation consolidation and the recognition and determining the status of nationalities of that country.

In other words, Iran's legislator suppose at the moment of nationality law regulation has been this which there is no choice to stabilize its nationals unless, consider the all people that are residents as a Iranian legal presumption and purpose of inhabitants in this paragraph are those who have lived in Iran somehow at the time of stabilization of the situation.

Therefore, paragraph 1 of Article 976 of the Civil Law have a temporary effects and mentioned paragraph lost its effectiveness after identifying and stabilization of the situation and determining the nationality of all the inhabitants at the time and hence, cannot extend the mentioned paragraph to periods after stabilize the situation of Iran's inhabitants nationality. Meanwhile, necessity of eliminating the paragraph 1 of Article 976 of the Civil Law is undeniable matter from set of Iran's legal rules after stabilization of the situation, unfortunately, this important issue has been neglected by Iran's legislator so far. If not have the allow to the mentioned legal interpretation in this case according to the wisdom, inevitably have to accept that the other rules relating to nationality, especially those related to the acquisition Iran's nationality will lose their legitimacy and effectiveness.

For example, if not accept that paragraph 1 of Article 976 of the Civil Law has temporary nature and merely had application in that historical period to determine and stabilize nationality of people during the establish administrative system and separation of foreign from nationals, no longer will be necessary that people wants to obtain Iran's nationality with tolerance of excruciating conditions such as provisions observance of Article 979 and 980 and 983 of the Civil Law and other substances, it is enough that person to prove that somehow been living in Iran to resort to paragraph one of Article 976 of Civil Law consider as Iranain.

Of course, it is clear that acceptance of the mentioned analysis meant to remove or at least in optimistic view, disregard will a very important part of Iran's nationality rules.

In other words, paragraph one of Article 976 of Civil Law which has been accepted as a legal principle at the time of stabilization of Iranian nationals situation, after the stabilization Iranian nationals situation, must consider as an exception in all legal analysis. Otherwise, we will be faced with another problem (in case of acceptance of the mentioned paragraph as a rule and legal certainty principle to obtain nationality). As we know in all countries including Iran, the burden of proof of the claim of being nationality will be national's responsible after stabilization the legal status of persons in a political community, however, the burden of proof of being Iranian is notnational's responsible in paragraph one of Article 976 of Civil Law which analysis and accepting of this matter

only have more consistency with the theory of exceptionalism and temporality of the mentioned paragraph.

In other words, after stabilization nationality situation of all citizens of a country, this is the national that must prove by offering available documents that is a forming part of that country's population, not that the government assume its burden of proof of nationals claim. In the law of Iran's nationality, paying close attention in reform Articles 45 and 46 of Civil Registry Law adopted 18/10/1991 will self-sufficient us from further study in this context. Since, Article 45 of the Civil Registry Law states: "When the identity and nationality of persons consider as uncertainty and provide the necessary documents to prove it, issues will refer to regulatory authorities to prove identity and to prove nationality to provide city council and if approved will be acting in accordance with regulations.

Remark: in provide city council meetings which forming in order to mentioned case also Civil Registry's Chief will present with have the right to vote."

And also, Article 46 of the Civil Registry Law states: "Country's Civil Registry Agency will advertising the moratorium end of birth certificate replacement for each course by the mass media and after the end of stated moratorium, previously issued birth certificates and certificates will be invalidate and new birth certificates of Islamic Republic of Iran will exclusively official document of person's identity and nationality.

Remark: people who are not presents in the given moratoriums, issues will refer to court after detecting a violation and will be treated with them in accordance with the regulations."

Based on the above analysis, just a brief look to paragraph one of Article 976 of Civil Code assume that during the stabilization nationality situation have been Iranian citizens and at that time the following persons be residents of Iranian:

- A foreign person with certain and indubitable foreign nationality
- A foreign person that his foreign nationality is in uncertainty at Iran's government
- A person without nationality
- Foreign person who has deliberately concealing his foreign documents
- A person who is resident in Iran but s/he does not know that is national of which country like a foundling
- A person who is resident in Iran and only know his mother and does not know his father relation, like an illegitimate child
- A person who is resident in Iran and all his ancestors have been living in Iran

In fact, according to paragraph one of Article 976 of Civil Law only will be count one of the Iran's citizens at the time stabilization of the situation related to determine the nationality of persons by Iran's government and until the completion of the census and giving Iranian certificate to stabilized people with the Iran's legislator's assumption all mentioned people with the exception of the first case in terms of residence in Iran and if someone did not accept this circumstantial evidence at that time, accordance to the above principles should left Iran and as a foreigner or non-nationality would receive permission from Iranian officials to enter the territory of Iran after the stabilization situation of Iranian nationals. In any case, after stabilization of the situation was treated as a foreigner with him.

It should be noted that in this legal presumption proof of being Iranian of aforementioned people only have been stabled on the basis of their residence in Iran. This means that all named above persons are considered as Iranian just residence in Iran regardless of any other factors. However, such reasoning is not only valid but also practical procedures of administrative officials and even in Iran's Courts (whether in the former regime or in current system) based on the denial of circumstantial evidence, residency was and is as proof reason of nationality.

It should be insisting and also have full attention that according to paragraph one of Article 976 of Civil Law at that time being Iranian of a person is not required to prove but only being foreigner need to have positive evidence as a accepted legal presumption and assumption from the Iran legislator at the time of stabilization of the situation and must at the time be proved (have been prove) by a foreign person.

In other words, at the moment of stabilize the Iranian nationals situation and during the refer of Iranian officials to all Iran's residents at the time of the census and giving Iranian birth certificates to them, if referring person does not accepted that is Iranian national in terms of living in Iran, must prove his being a foreigner with undeniable evidence to the authorities or as it was in case of the absence of offering supporting documents indicating being a foreigner, she/he had no choice and must leave Iran until stabilize the Iranian citizens nationality situation and after stabilize the situation as a foreign citizen, be returned to Iran meanwhile obtaining visa (entry visa) from the Iranian authorities.

And now, if we not consider the mentioned paragraph as a temporary legal verdict (or exceptional rule) but consider it as a key and public principle and also extend it to the present time, in this case it is sufficient that a foreign prove that is residing in Iran based on laws

and regulations that hereby can benefit the interests of paragraph one of Article 976 of Civil Law based on the above analysis, however, as previously stated, this topic is unlike the previous and current rulers operational procedures, moreover, none of the Iran's courts hereof, does not vote to being Iranian of complainant in the event lawsuit proof of Iran nationality by a resident to spend the settlement of complainant in Iran after establishing nationality status of Iranian citizens and it is clear that accepting the opposite concept of this analysis will cause shutting down and become abandoned a significant number of nationality rules. By accepting the theory of permanent the paragraph one of Article 976 of Civil Code it is unclear that there will be other necessity to performing Articles 979, 980 and 983 and it is clear that in the constant assumption of assuming paragraph one of Article 976 of Civil Code, mentioned cases would be without practical background or in other words with regard to paragraph one of Article 976 of Civil Law other relating paragraphs to nationality will lose their legal status and essence.

## **SECOND SPEECH: NATIONALITY FROM BIRTH (ORIGINAL NATIONALITY)**

Apart from the exceptional nationality from residence at the moment of stabilize the situation, general state of taking Iran's nationality is possible in two ways: original nationality (birth nationality) and learned nationality (non-birth nationality).

Naturalization of a country to a born person at the moment of birth is called original nationality, origin nationality or birth nationality and to establish any relationship in the name of nationality after birth in the tradition of private international law, is called learned nationality or non-birth nationality which educational nationality and imposed nationality are two subsets of non-birth nationality or learned nationality.

According to the above terminology and with accuracy in Iran's nationality regulations, we will realize that paragraphs 2, 3, 4 and 5 of Article 976 of Civil Law only states ways to possess original nationality or origin nationality or Iran's birth nationality. With this exception that paragraph 2 of Article 976 of Civil Law is reflects the thinking of Iran's main legislator in birth nationality which is called acceptance of blood system or relative nationality from the Iran's legislator and paragraphs 3, 4 and 5 of this Article confirms acceptance of the soil system or territorial nationality as a quite exceptional system from the Iran's legislator.

Therefore, Iran's birth nationality system is kind of complex system which its principle and foundation is

based on blood system and acceptance of soil system only consider as exception to this principle which by mention this introduction, we will briefly describe of each above paragraphs.

#### **FIRST TOPIC: DESCRIPTION OF PARAGRAPH 2 OF ARTICLE 976**

According to Article 976 and paragraph 2 of this Article those who their father is Iranian whether they were born in the country or abroad are considered as Iranian nationals.

Iran's legislator in this paragraph and as a principle have been blood system (or relative system of nationality) as an expression of acceptance. Based on the foregoing paragraph any person whose father is Iranian are consider as Iranian birth national definitively from the moment of birth regardless of the place of birth (anywhere in the world that is born whether in Iran or abroad) in terms of applying the Iran's nationality rules. Despite some disagreements these people also are called Iranian.

In other words, in order that someone be know as origin Iranian, it is enough to prove that his father is Iranian (the purpose of the origin Iranian in here is only have Iran's main and birth nationality).

Possible forms which will cause create children from Iranian man can categorize due to factors such as: nationality of Iranian man's wife and the place of his child's birth.

Considering the above statements, we find that acceptance of blood system or relative nationality by Iran's legislative only via Iranian father relative in any case will not cause non-nationality of the child and certainly acceptance the above system, ensure the Iranian nationality of begotten (whether joint child was born in Iran or abroad).

However, as it seen in some mentioned statements, it should be noted that a child whose father is Iranian may has additional birth nationality in some cases which Iran's legislator has removed consciously these cases from inclusion of Article 989 of the Civil Law and Article 41 of constitution. In other words, Iran's legislator does not show particular sensitivity about create common child additional birth nationality obtained from marriage of a Iranian man (with Iranian woman or non-national) by positive conflict of birth naturalization systems or other cases.

An important result which achieve from paragraph 2 of Article 976 is that acceptance of this system (means blood system) is only mandatory along the lineage of Iranian man. While unlike Iran, in some countries blood system also have been accepted along the women lineage

nationals of those countries. The mentioned concept is that Iran's legislator not recognized the right to pass nationality through the blood system for the children obtained from Iranian women, unlike many countries in the international community.

This mentioned statement may be has such objection that because in all the above statements in fact, the child has been born in a Iranian family (for example in several first form, parent of child was Iranian and in next forms mother is non-nationality which imposed on her the Iran's nationality due marriage with an Iranian man as coercive and in last form, mother of child has foreign nationality which obtained the Iran's nationality due marriage with Iranian man ) so, Iran's nationality whether or not belongs to him according to the fact that child's father is Iranian. Although, the above statement is incorrect but is not the whole truth. Therefore, imposing or not imposing the husband's Iranian nationality due to marriage will not the main cause of birth nationality for common child but from Iran's legislator's perspective, relative relationship of begotten with Iranian father will cause child's birth nationality. While such assumption does not valid on children who was born in the country or abroad cause of Iranian women marriage with foreign men which in the following lines will more accurately describe this subject.

Another very important question that may come to mind is that in the followers countries relative naturalization system (such as Iran) does the father's nationality consider as his child's requirement of nationality in the moment of gestation? Or the survival of the father's nationality will be expression of birth relative naturalization until the birth of the child? With designing of this question, two legal theories will be propose unconsciously about this:

- Transmission nationality of father-to-embryo theory at moment of gestation
- Transmission nationality of father-to-embryo theory at moment of childbirth

If the first viewpoint (presence of father's nationality at the moment of gestation) consider as the basis of our legal analysis in this case, any change in the nationality of the child's father will have no effect on the nationality of the child from the moment of gestation to the moment of birth.

In other words, if the child's father leave the Iran's nationality after gestation and until the moment before childbirth because according to the first theory that is nationality at the the moment of gestation, the criterion was validity therefore, child at birth moment will obtain his father's former nationality (Iran's nationality)

and according to current father's nationality the child will have dual birth nationality certainly (if the child's father be a citizen of another country with blood system and also believes in the theory of nationality transmission at birth moment).

If hypothetically, we place the Iran's birth nationality rules based on the first theory and we want to analyze it results will be achieved on two assumptions that will include (that such theory is not accepted):

- Change father's nationality from Iranian nationality to the foreign nationality (during the moment of gestation until childbirth)

Because according to the first theory (transmission nationality theory at moment of gestation) gestation belongs to a person with Iranian nationality therefore, if embryo born alive, she/he will certainly Iran's citizen. So, effects of child's father's nationality leave will not be subject to the embryo at the embryonic period. In this case, regardless of the outlined at the writing method of paragraph 2 of Article 976 of Civil Law and the legislature's silence, it seems mentioned child will consider as Iranian because his father had Iran's nationality at moment of gestation.

- Change father's nationality from foreign nationality to the Iranian nationality (during the moment of gestation until childbirth)

According to mentioned theory because at the moment of gestation child's father had not Iran's nationality therefore, assuming acceptance of the first theory, Iranian nationality status of the embryo will have more debate at the embryonic.

Moreover, it should be noted that according to the appearance of Article 984 of Civil Code, consequential effect of seeking Iran's nationality by father of the embryo is not applicable to the embryo. Because according to written substance, minor children those who seeking Iran's nationality (foreign man) will be count as Iran's national and because of Iran's legal norm, embryo not considered as minor child therefore, cannot extended the effects of Article 984 of Civil Law to the embryo.

According to mentioned subjects, now this question will be raise that what will be the child's nationality assignment after the acquisition of Iran's nationality by a foreign man, if his joined embryo born in Iran or abroad?

Answer to the above question will not be easy according to the first theory. Because mentioned child at the moment of gestation had a foreigner father and according to the

mentioned theory because in transmission of nationality it has no credit therefore, accepting the first theory will have no place in Iran's nationality rules.

Answer to the above question is easy according to the second theory that is known as the theory of transmission nationality at birth moment and Iran's legislator have approved it and endorsed it. Because born of embryo which is joined to an Iranian father (whether that aforementioned embryo born in Iran or born abroad) according to paragraph 2 of Article 976 of Civil Law the mentioned child at the birth moment will have certain Iran's nationality and the time of live birth of a child who is very determined and assessed will be consider the start of the transmission relative nationality from father to the child.

Although, the second theory that is accepted by the Iran's legislator should be noted that the first theory (theory of criterion of child's nationality according to the father's nationality at the moment of gestation) have a few disadvantages which quickly review some of these:

- The exact time of gestation is not easy and comfortable and requires careful medical experiments and other research and scientific findings
- Usually before childbirth does not need to determine the embryo nationality but most need to understand the concept of nationality is relating to the period after the born embryo. In case of need to determine the embryo nationality countries as the case can predict the mentioned situation in their rules of resolve the laws conflict (in rare instances such as inheritance at the moment of embryo and dedicating and wills to the interests of embryo)

As already mentioned with study of Iran's birth nationality rules it is clear that Iran's legislator does not accepted the basing the theory of child's nationality based on the father's nationality at the moment of gestation. Because:

Firstly, at the time of Article 976 of Civil Law by year 1934-1935, it was not much scientific progress in Iran that Iran's legislator has been established the mentioned theory based on the scientific findings.

Secondly, the spelling of paragraph 2 of Article 976 of Civil Law based on: "Those who their father is Iranian are consider as Iran nationals whether they were born in the Iran or abroad" such that nowise not observe sign of accept the theory and with little attention to the used words by Iran's legislator it will clear that the main axis of the origin nationality acceptance or birth nationality base on blood system in Iran is father's Iranian nationality at

the birth moment and Iran's legislator nowise does not and has not a reference to moment of gestation or moments before childbirth.

Thirdly, may be embryo exterminate due to natural or unnatural causes at a distance of gestation until the moment of birth in this case, embryo nationality issues will be cancel.

Therefore as we saw determine the exact moment of gestation and other matters mentioned above is one of the problems that first theory is facing which in second theory (father's transmission nationality to embryo at child's birth moment) we do not observe it. And since the second theory based on embryo being born alive as an objective and verifiable and measurable fact. Therefore, this will resolve the first theory weaknesses to a great extent.

Acceptance of first theory will face us with an important question. That is the question, when the father of the child dies in the interval between gestation and child's birth what is the situation of child's nationality according to paragraph 2 of Article 976 of Civil Law? Does the mentioned child consider as Iranian or the child's nationality at his birth will aura of ambiguity due to lack of determine the child's father's nationality?

In response to the above question, it must stated that according to the father's transmission nationality at the moment of child's birth, it is assumed that because the nationality of the child's father was Iranian from the moment of gestation until before child's birth and father deceased at the time of his death with Iranian nationality so in the case of being alive an Iranian father, mentioned survival possibility on Iranian nationality had been dominated to his change nationality, therefore, considering the above analysis mentioned child will consider as Iranian.

Another controversial issue that maybe considered in paragraph 2 of Article 976 of Civil Law is the subject of conjugal relationship that the child was obtained. In other words in this case, we want see that whenever an illegitimate relationship establish between a Iranian men and a woman (whether Iranian or foreign and non-nationality) and obtain a child from that relationship what is the status of child's nationality? Does the child due to the fact that has a natural and Iranian tradition father will gain Iran's nationality? Or from perspective of Iran's legislator, perform the paragraph 2 of Article 976 of Civil Law is legal and legitimate depending on the child's accession to an Iranian father? In other words, does the purpose of the father is a legal and legitimate father? Because this paragraph has a close relationship with paragraph 3 of Article 976 of Civil Law in order of legitimacy of continued discussion or illegitimacy sex of

fathering a child. So, we tried that these questions will be answer during studying the paragraph 3 of Article 976 of Civil Law.

Other raised issue about paragraph 2 of Article 976 of Civil Law is lineage proving claim which uncertainty may cause uncertainty in child's nationality. In order to avoid begging the question, usually in this case, the law is located court headquarter of city credit and after proving lineage (whether legitimate or illegitimate) child's netionality determine based on the father's legal nationality or natural father that in paragraph 3 of Article 976 of Civil Code we will refer to this case as much as possible.

## **SECOND TOPIC: ANALYSIS OF PARAGRAPH 3 OF ARTICLE 976**

After a detailed discussion about paragraph 2 of Article 976 in which children's nationality status from Iranian fathers were explored, we will analyze a part of Iran's Civil Law in which mention to born children in Iran that their parents is unknown.

By consider the paragraph 3 of Article 976 of Civil Law those who are born from unknown parents in Iran consider as Iran's national.

This paragraph of the Iran's nationality regulations is concerning the acceptance of origin nationality based on a hypothetical system of soil. The following two conditions are necessary to apply this paragraph:

- The birth of child in Iran
- Not known the child's parent

At the outset, this might seems that Iran's legislator only intended to assume Iran's nationals the foundling children or in other words, children that their parents' identity is unknown and even perhaps can confirm the mentioned second condition but other assumptions in this regard can be imagined with a little care in term uncertainty of the child's parents.

The term "non-obvious" in this paragraph in addition to the uncertainty of the true identity of the child's parents can understand firstly, non-obvious of child's parent's nationality and secondly, uncertainty of conjugal relationship that the child was obtained.

In other words, foundling children are the children that their parents are unknown in terms of identity but due to being deprecate births and development of children without nationality in global society, some Iranian lawyers focused on this point correctly and with logical tact that is requisite of teaching private international law in Iran (at least until the precedents verdict of number 617

General Board of the Supreme Court issued in 1998) that can considered Iranian the children from parents without nationality with extended range of paragraph 3 of Article 976 of Civil Law and including the incorporation of first paragraph of the same Article if the mentioned children were born in Iran.

Although, there is not available accurate information about thinking methods of Iranian Lawyers after the verdict precedents but practical procedures of Iran's government is still based on the denial of birth nationality to such a person.

In other words, Department of Registration of child's birth city issue Iranian certificates for children born in Iran from marriage of non-nationality nationals in order of exclusion of Article 976 of Civil Law.

For children who born from illegitimate or illegal conjugal relationship in Iran acceptance of subject will be somewhat difficult.

It may be stated that while utilizing publicly of paragraph 3 of Article 976 of Civil Law for all named above there is the possibility of giving birth nationality to an Iranian as well. It is clear that acceptance of such an analysis has been much dispute at least before the verdict precedents of General Board of the Supreme Court (Number 617).

In other words, before the mentioned verdict precedents, whenever a child was born because of an illegal relationship in Iran or abroad, even though the mentioned child's natural or customary father was Iranian not only previous and current governing body does not consider the mentioned child as Iranian but also some lawyers does not express a desire to applying paragraph 2 of Article 976 of Civil Law about mentioned child. But the verdict precedent has changed the situation in another way.

In verdict precedent obtaining birth certificate for a child from illegitimate relationship is one of the tasks of the natural or customary father and he must obtain Iranian certificate for his legal child and because according to reform Article 46 of Registration Law approved in 01/08/1984, birth certificate is consider as authentication identity proof and Iranian people's nationality, thus, the customary father along with obtain birth certificate will be obliged to prove child's Iranian nationality caused by illegal relationship.

If the natural father of the child be Iranian (whether the child's natural mother is Iranian or foreign) the child born anywhere in the world because mentioned before the verdict precedents legal or customary or natural father responsibility (such as a birth certificate) also will impose on him so, child's natural father has Iranian nationality must provide Iranian birth certificate

for his child based on paragraph 2 of Article 976 of Civil Law (must be careful that after the verdict precedents mentioned above being Iranian documentary of mentioned illegitimate child, apply is paragraph 2 of Article 976 of Civil Law and can not be cited in this regard to paragraph 3 of stated Article).

Therefore, it was observed the topic that was considered as unresolved issue or at least a complex issue in discussion of Iran's nationality before the verdict precedents of the Supreme Court, according to the lawyers' opinion in relation to paragraph 2 of Article 976 of Civil Law and only a small number of lawyers known Iran's nationals only those children belonging to Iranian natural father who were born in Iran with reference to paragraph 3 of Article 976 of Civil Law, today has a different shape.

Verdict precedents of the Supreme Court has caused a change in the Iran's nationality law so that Iranian range of these children developed according to mentioned verdict precedents. Therefore, today, every child who born in Iran or abroad from Iranian natural father's illegitimate relationship (with any woman, whether Iranian or foreign or without nationality) will have main Iranian nationality at birth moment, not in accordance with paragraph 3 of Article 976 of Civil Law that is based on soil system but in accordance with paragraph 2 of Article 967 of Civil Law and in terms of verdict precedents of the Supreme Court which corresponds to the blood system and with little tolerance for such a child can even consider as an Iranian.

It should be noted that after the verdict precedents of the Supreme Court, whenever due to proving lineage determines that nationality father of the child born in Iran is non-Iranian at the moment of birth of the child (whether the born child in Iran caused by legal or illegal relationship), instead of applying paragraph 3 of Article 976 of Civil Law, can consider the mentioned child include to paragraphs 4 or 5 of Article 976 of Civil Law.

Obviously, this assumption when the child born abroad, even taking into account the precedents of the verdict, cannot consider the mentioned child as Iranian and the natural father of the child cannot request the issuance of Iranian birth certificate from Iranian authorities for his customary child.

### **THIRD TOPIC: DESCRIBE PARAGRAPH 4 OF ARTICLE 976**

Considering the top of Article 976 of Civil Code those who born from foreign parents taht one of whom was born in Iran will be consider as Iranian. The fourth paragraph of wrote Article as an exception (subject to



certain conditions) while acceptance of soil system at birth moment, only applicable in relation to children who were born in Iran.

As you can see Iran's legislator deviated of apply the blood system principle (relative nationality) and conditionally is accepted soil or territorial system at the birth moment only for number of children which in some cases that are quite exceptional.

According to above matter, it is clear that however existence of paragraph 4 of Article 976 of Civil Law merely indicates acceptance the soil system as a special case and is considered by Iran's legislator and must necessarily use of restricted interpretation rule during interpreting the foregoing paragraph. Because the subject of interpretation is study one of the exception cases. Therefore, during restricted interpretation, the interpreter must interpret mentioned legal law to a certain extent (to a certain extent of the legislator's will).

It should be noted that the nature of children's nationality included paragraph 4 of Article 976 of Civil Law is similar to children's nationality obtained from Iranian father, obtain certain birth nationality or Iran's main nationality at birth moment.

In other words, people's common point included in paragraphs 2 and 4 Article 976 of Civil Law is Iran's certain birth nationality at birth moment for them as main or origin nationality and their difference lies in the fact that those subjects to paragraph 2 of Article 976 of Civil Law known based on main system of Iran's birth nationality (blood system) while those subjects to paragraph 4 of Article 976 of Civil Law are considered as Iran's national through the acceptance of exceptional the soil system by Iran's legislator.

It is noteworthy that the following three conditions are necessary to apply the special soil system at birth moment (or territorial system in birth naturalization) as described in paragraph 4 of Article 976 of Civil Law:

- A) The birth of a child in Iran
- B) Being foreigner nationality of child's parents
- C) The birth one of the child's parent

In other words, whenever at the moment of child's birth do not exist one of the conditions set out in paragraph 4 of Article 976 of Civil Law, the mentioned child cannot include to paragraph 4 of Article 976 of Civil Law according to general rules governing the restricted interpretation in relation to the exception cases.

It means when a child born in Iran but have not one of two conditions (B) and (C) cannot consider him as Iran's main birth national and he may include to Paragraph 5 of Article 976 of Civil Law but when a child has no first

condition (it means not born in Iran) in this case, he cannot benefit from Iran's nationality (both absolute and unstable), considering the main component of paragraphs 4 and 5 of Article 976 of legislative of Civil Law by Iranian legislator, acceptance of the soil system at birth is also exceptionally and because its main distinguishes acceptance of of such a system was child's birth in Iran, so with absence of such a provision, cannot mention to child's nationality.

In addition, there is another relationship between the paragraph 2 of Article 976 of Civil Law and paragraph 4 of this of Article. It should be noted that collection would not be possible between the soil system and Iran's blood system (for certain child and at the moment of his birth). In other words, Iran's relative system (or blood system) with Iran territorial system (soil system) are not retractable with each other. This is called the divergence between paragraphs 2 and 4 of Article 976 of Civil Law.

This is another question that may be raised that is does the foreign relative system is retractable with Iran's territorial system? In response to the above question can be answer as when a baby born in Iran from French couple, if one of the child's parents was born in Iran, the child will Iranian and since France is following the blood system or relative system at giving birth naturality on the other hand, the child is French, therefore, according to paragraph 4 of Article 976 of Iran's Civil Law and Articles 17 and 19 of the Civil Code of France collection will be possible between foreign blood system and Iranian soil system.

Another fundamental question that remains is does the Iran's relative or blood system is collective with foreign blood system or the possibility of these two systems will not be there at that unit?

Maybe it would seem impossible to imagine such case but with little contemplation in paragraph 2 of Article 976 of Civil Law and consideration of Article 986 of Civil Law and in terms of some of the issues it will be seen that collection between these two systems is possible in Iran.

For example, assuming an Iranian man had married with a French woman and their children (especially abroad) was born in France. Because of marriage, Iran's nationality will impose on woman and on the other hand, due to the lack stripping of French nationality woman by the French government will be demonstrated which woman in the birth of her child has dual Iranian and French nationality and given that children from French women (Article 17 and Article 19 of the French Civil Code) will also know as French birth national and on the other hand because the father of the child is Iranian so, mentioned child has French nationality through mother's relative and Iranian nationality through

father's relative and will have dual birth nationality. So as it seen, the collective possibility will expect between two Iranian blood system and foreign blood system in Iran.

It may also raise this question that how can imagine that Iran's legislator is not considered born children in Iran which their mother is Iranian but this legislator consider as Iran's certain nationality at birth moment the born children in Iran which has born from marriage of foreign women with her compatriot or another foreign man (excluding marriage with a Iranian man) only foreign woman's birth or her husband in Iran? This hybrid approaches of what policy and how we can justify the mentioned discrimination?

Unlike many countries that pursuant the blood system which prescribed mother-to-child transmission of nationality and it is definite issue in such countries, blood system or the transmission of nationality to child did not accepted through the mother in Iran and as a result, upon the birth of a child, cannot just having a mother, consider the mother's nationality is transferable to her child. With little hesitation at other civic law will realize that even if Iran's legislator does not accepted transmission nationality from Iranian mother to her child but can use from sum between the paragraph 4 of Article 976 and Article 987 Iran's Civil Code and partially know definitive citizen or a Iran's precarious birth citizen the number of children born in Iran which obtained from marriage of these women with foreigners men.

If you look carefully at Article 987 of Civil Law and integration with paragraph 4 of Article 976 an interesting result is achieved. As we know, in accordance of Article 987 of Civil Law Iranian women marry with foreign men may be due to marry with foreign men; remain on Iranian nationality, may be foreigner husband's government nationality is imposed on Iranian woman at effect of marriage which in the latter case is merely that woman's Iranian nationality according to Article 987 was temporarily withdrawn and mentioned woman in this case will consider as foreign woman and child's legal birth usually perform after marriage, so, born child in Iran from such conjugal is included to paragraph 4 of Article 976 Iran's Civil Law and thus, mentioned child will certainly have Iran's birth nationality at birth moment and when there is not second and third terms of the 3 fold above conditions, the mentioned child will included to paragraph 5 of Article 976. Iran's legislator to solve the above problem in 2008 attempt to lay a Article that unfortunately, not only did not solve the above problem but also created complex situation hat described at the previous lines.

Obviously, when a child born in abroad from marriage of a Iranian women with foreign man, according to

previous learning, she/he will not be under no circumstances of birth nationality (either deterministic or shaken) and mentioned child for being Iranian must after reaching the age of 18 years like other foreigners gain Iran's nationality having the requirements of the application.

In all the above assumptions which child born in Iran when one of the child's parents were born in Iran, child in accordance with paragraph 4 of Article 976 will certainly have Iran's nationality at birth moment but if one of the child's parents were not born in Iran child will remove from provisions of paragraph 4 of Article 976 and will include to paragraph 5 of this Article which will explain at following.

#### **FORTH TOPIC: DESCRIBE PARAGRAPH 5 OF ARTICLE 976**

Another exceptional acceptance of the soil system is perform of paragraph 5 of Article 976 which according to the top Article based on consider Iranian included in this Article, its paragraph 5 holds: those who born in Iran from foreigner father and they have stayed another year immediately after reaching the age of 18 years, otherwise their acceptance to Iran's nationality will be under regulations that is prescribed for seeking Iran's nationality. As you can see the following three conditions are necessary for the perform of this paragraph:

- Child's birth in Iran
- Foreign nationality of father
- Stay in the Iran for another year, after reaching the age of 18 years old

Iranian lawyers have no disagreement about first and second terms but theoretical unity is not observed between them on how to fulfill the third condition.

According to one view, the child who was born in the Iran and his father is foreign, he must live in Iran from birth moment to age of 18 years after reaching the age of 18 years, consciously stay at least another year in the Iran. These lawyers inferences from word "other" in paragraph 5 Article 976 the continuity and uninterrupted residence of begotten from birth until age 18 and then take another year. It should be noted that these lawyers knows the nature of mentioned paragraph 5 kind of birth nationality.

Some legal scholars consider the fact that certainly, the Iran's legislature had a porpuse to use of the word "other" because according to them, the nature of paragraph 5 Article 976 is obtain nationality (it is necessary to note that this paragraph is just limited

to the interpretation of the nature of these lawyers) therefore, mentioned begotten not only must reach to age of 18 and 19 but also stay in Iran for another year but because the condition of Iran's obtain nationality is continuous or intermittent 5 years stay in Iran, so to complete the begotten residency condition we will need another 4 years stay. So, as observed from the perspective of this group of Iranian lawyers paragraph 5 Article 976 has nature of obtain nationality.

According to the opinion of a number of other Iranian lawyers because the condition of residence in Iran must be a kind of informed stay condition in Iran, given that children from birth to 18 years old, if he have stayed in Iran, his residence was not voluntary and therefore his foreign father have been living in Iran. Therefore, the child's residence or not from birth to 18 years old had no effect on the continuity and the accession to the Iranian nationals and no legal value.

According to recent views which consider the paragraph 5 Article 976 kind of origin nationality or birth nationality, the word "other" mentioned in the first part of paragraph 5 Article 976 will back to the moment of birth.

In other words, according to recent thinking (which seems to be more logical than other points of view) when a child born and his father be foreign, it is enough that mentioned child stay voluntary and informed in Iran another year (other than birth in Iran) regardless of his consequential residence from birth moment to 18 years old only after reaching the age of 18 years, thereby, his shaken or potential birth nationality become to certain and potential of Iran (Arfa, 1996).

It should be noted that mentioned child from birth to age 18, if the government is also following the blood system, his father was a definite government national and in the affair will follow his father's government and when father of the child, government's national pursuant to the absolute soil system, mentioned child has not the father's government nationality and also will have not Iran's birth certain nationality but in order of rules related to personal status will follow father's government or Iran's law (Madani, 2006).

According to above enumerated will realize that existence of third, fourth and fifth paragraphs of Article 976 indicates acceptance of exceptional the soil system by Iran's legislator.

Therefore, acceptance of blood system through an Iranian father is considered as an absolute form and as main way of birth nationality in Iran and soil system consider as conditionally and bound and exceptional. Nevertheless, can states with a little tolerance that birth naturalization system in Iran will a combination of blood and soil system.

#### **FIFTH TOPIC: IMPORTANT POINTS OF THE FOURTH AND FIFTH PARAGRAPHS OF ARTICLE 976**

During study of paragraphs 4 and 5 of Article 976 should take into consideration that the most important of which are:

- According to Article 976 children born of foreign political and consular representatives in Iran are not included to this paragraph
- According to the Article "A" of Article 977 whenever the mentioned people in the fourth paragraph of Article 976 want accept their father's nationality after reaching the age of 18 must within one year submit their written request to the Ministry of Foreign Affairs attached to acknowledge of their father government that they have accepted his nationality compliance with first Article of law nationality adopted in 1936
- According to paragraph "B" of Article 977 if mentioned people in the fifth paragraph of Article 976 want remain to their father's nationality after reaching the age of 18 shall comply with the foregoing first Article of regulations, must submit their written request to the Ministry of Foreign Affairs attached to acknowledge of their father government within 1 year

Exit from Iran's nationality by applying paragraphs "A" and "B" of Article 976, under no circumstances will not be bound to comply with the stipulated conditions in Article 988. In other words, those subjects to paragraphs 4 and 5 of Article 976 during symptom of Iranian nationality will not have necessity to perform general military service duty in the manner prescribed in paragraph 4 of Article 988, however such condition is a necessary matter for people who leave Iranian nationality and a person want leave Iranian nationality will not be able to leave without passing mentioned period or obtain a certificate of exemption from military service from competent authorities.

In addition, a person that plans to use of services provided in paragraphs "a" and "b" of 977 will not have need to perform commitment subject of paragraph 3 of Article 988 and also agreement or disagreement of Iran's government (subject of paragraph 2 of Article 988 of mentioned law) and this is enough that he give a statement to Ministry of Foreign Affairs and leave Iran's nationality according to Article I of the Constitution of nationality law. In accordance with Article 978 if from citizens of a country a child born in Iran in which countries:

- Considers their own nationals the born children from Iranian nationals and B. Take permission the refer to the Iranian nationality in this case with born children from nationals of these countries will interact behavior in Iran

**SIXTH TOPIC: ANALYSIS OF THE RELATIONSHIP BETWEEN PARAGRAPHS 4 AND 5 OF ARTICLE 976 WITH PARAGRAPHS “A” AND “B” OF ARTICLE 977**

Accuracy in paragraph “A” of Article 977 will lead us to this point that there is deep continuities between this paragraph and paragraph 4 of Article 976.

In other words, sense of continuities between the two mentioned paragraphs is the secondary way to disconnect people’s nationality who become Iranian through paragraph 4 of Article 976 by accepting exceptional soil system at birth moment, this is that observance the provisions of paragraph “A” of 977.

Those persons that become Iranian through applying Paragraph 4 of Article 976 it may be different in terms of nationality status of parents (especially their fathers) and belong their father’s government to soil or blood system. Consider the paragraph “A” of Article 977 in following two assumptions. For example, suppose:

- Whenever from a French parent that one of them was born in Iran, born a child in Iran

Based on previous learning and adapting to paragraph 4 of Article 976 mentioned child at birth moment undoubtedly has certain Iran’s nationality. On the other hand, the mentioned child at birth moment certainly will know as France national due to the his parent’s French nationality. Because government of the child’s parents by accepting the blood system believes in transmission the parent’s nationality to born child in Iran (this is called dual birth nationality). Therefore, paragraph “A” of Article 977 in order to prevent the creation of dual birth nationality for mentioned child will allow to mentioned child be able to present his father’s government certificates (France) exceptionally leave the Iranian nationality after reaching the age of 18.

It is important to note that exceptional exit of mentioned child merely consider as a right not assignment, therefore, if the mentioned child after reaching the age of 18 years want stay on his own Iranian nationality, he has any problem and he will have dual birth nationality (Afra nia, 1996):

- Whenever from parent pursuant absolute soil system born a child in Iran with this stipulation that one of them born in Iran

Accordance with paragraph 4 of Article 976 Iran’s government will assume Iranian certain nationality for mentioned child and because of that mentioned child was not born in his parent’s government due to the acceptance of soil system by child’s parent’s government that country will not have any interest in child’s naturalization.

The legal effect of applying paragraph “A” of Article 977 is quite manifest in this example. Because of mentioned child after reaching the age of 18 years does not affected without nationality due to leave Iran’s nationality, paragraph “A” of mentioned Article fully conscious has established the mentioned leave subject to verification of his father government due to the mentioned government know him as its national (Ebrahimi, 2005a, b).

As was noted, purpose of paragraph “A” of Article 977 will obvious in such examples. It should be noted that the first example is merely located in order to prevent the arbitrary of dual nationality from Iran’s legislator opinion. Because it is naturally that pursuant government to the blood system know its nationals the children obtained from its nationals at the moment of birth. Therefore, attach or not attach of acknowledge the mentioned government based on acceptance a child to that government nationality will typically consider as the statement of exit from Iran’s nationality. While, insert the statement providing condition in the paragraph “A” of Article 977 especially in the second assumption has been to avoid such a person merely from non-nationality (Nazif, 2010).

This analysis can considered applicable to paragraph “B” of Article 977 with a slight difference in wording and by considering the difference in the concept of absolute birth nationality and shaken birth nationality (as referred to in paragraph 4 of Article 976 and paragraph 5 of Article 976 of the Civil Code).

**CONCLUSION**

With regard to the mentioned contents and the writer’s opinion, it is clear that paragraph one of Article 976 have a temporary impact and mentioned Article lost his effectiveness after identifying and stabilizing and determine the nationality of all inhabitants at that time and therefore, cannot extended mentioned paragraph to the times after consolidation the nationality status of Iran’s inhabitants. Meanwhile, after stabilizing necessity of eliminating the paragraph one of Article 976 paragraph is

undeniable matter from Iran's legal set of rules which unfortunately such important matter has been neglected from Iran's legislator so far.

Based on the first five paragraphs of Article 976 it is clear that the first paragraph was a general rule to stabilize the initial state of the Iranian nationals which has no relevance today and should be removed as soon as possible by the legislator from Iran's set of rules and second paragraph relating to the acceptance of the blood system and the third, fourth and fifth paragraphs are typically related to the adoption of the soil system in Iran.

Meanwhile, according to the distribution rules of nationality in particular, no formulation single Article to determine the characteristics of child's nationality born in Iran obtained from marriage of Iranian women with foreign men along with other nationalities in one volume and non-compliance the single Article with mentioned 5 paragraphs necessary to a revision and development of integrated nationality rules is impossible matter in a specific volume. Due to problems related to child's nationality of Iranian mothers that married with non Iranian men, so, it is recommended that addet some paragraphs as follows to Article 976:

- Those who born in Iran and their mother is Iranian
- Those who born from Iranian mother in abroad, until they reach the age of 18 if accepted into the nationality of Iran that mother's Iranian nationality is outstanding after marrying a foreign man. In this case at the request of the mother, the child will accept to Iran's nationality, provided that the government accepted the child's exit nationality from home

- Every child who is born abroad from an Iranian mother can requests the Iran's nationality after reaching the age of 18
- In case of death of the spouse or divorce, if the mother has not lost his Iranian nationality the child will maintenance with wife by competent authorities. Upon the request of the mother, the child will be accepted to Iran's nationality, regardless of whether the child is born in or out

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