

Thursday, August 13, 2009

Children of foreign father declared Lebanese

Court establishes strong basis for gender equality by granting citizenship to underage youngsters

Editor's Note: Across the Arab world, a basic discrimination takes place: women married to foreigners cannot usually pass their nationality to their children. The following judgment, rendered by a Lebanese first instance court under the presidency of Judge John al-Qazzi, breaks new gender-equality ground. The facts are straightforward: Plaintiff, a Lebanese woman married to an Egyptian, sued the Lebanese state for denying her children their right to Lebanese nationality. The court found for her, on the basis of constitutional arguments of non-discrimination in the presence of an obscure nationality law. Rooting the argument in the constitutional protection of equality is remarkable. While the ruling remains narrow, and passes under silent international treaties, especially the legacy of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), it establishes a strong basis for gender equality in an issue which remains highly discriminatory to Middle East women who marry foreigners: passing on their nationality to their children.

Civil Status

Decision: 200/2009

Plaintiff: Samira Soueidan

Defendant: Lebanese State

Judgment

In the name of the Lebanese people

The First Instance Court in Mount Lebanon – Fifth Chamber sitting in Jdeidet al-Metn, Civil Status. President Judge John al-Qazzi with the membership of judges Rana Habaka and Lamis Kazma,

After examining the papers, and upon confirming their authenticity ...

Decides:

1. On procedure

The plaintiff Samira Soueidan requests [the state] to consider her under-age children at the time the case was introduced Lebanese nationals, in accordance with Article 4.2 of Order 15, 1925.

Disputes over the issues of nationality and the application of the rules on nationality on individuals comes in accordance with Article 9 of Order 15 dated 19/1/1925 under the jurisdiction of the civil courts ... This court therefore considers itself competent to adjudicate the present case.

2. On substance

The court examined the details and, after considerable deliberation, was drawn to the specificity of the situation of plaintiff Mrs. Samira Soueidan. She is a Lebanese citizen married to a foreign national, and the marriage resulted in the birth of four children, three among whom minor when the present case was introduced.

The children deserve protection in light of legal texts that govern nationality rules, some of which are obscure, and some prone to interpretation, though all generally imprecise and in need of careful appreciation.

The central question, from which derive several others, is about the rights of the Lebanese woman who is married to a foreigner, in fact and in law. With the Constitution being superior to other laws, where lies the right to equality among citizens? Why can a Lebanese man give nationality to his children while a [Lebanese] woman married to a foreigner cannot? Does it make sense that the foreign woman who is married to a Lebanese man get a better treatment than a Lebanese woman who keeps her nationality? It is reasonable that a Lebanese woman would seek an illegitimate [out-of-wedlock] status for her children since she would not be able to give them nationality if they are legitimate? What is the role of the judge in protecting the family? Is it right to leave these minors who were born and raised in Lebanon with their Lebanese mother, to suffer and be subjected to complicated procedures for residency and work permits while their mother is Lebanese and they are treated in her country as foreigners? What is the role of the judge in interpreting the legal texts which contain ambiguity and incoherence, particularly in the absence of a textual prohibition? How is the silence of legislation in this case to be treated?

To appreciate the fullness of the issue, it is necessary first to consider the general principles that govern it:

The mission of the judiciary requires, in justice and in law, attention to classification, precedent, qualification of the case, and the establishment of the proper responsibility. If the legal rule is ambiguous or incomplete, the judge's essential mission consists in varying upon the rule or finding a new solution through legal interpretation in order to reach a just and humane solution in conformity with justice and equity to the extent possible.

The judge cannot under the pretext of the absence of legal texts in the case at hand reject legal action or refuse to discuss the case, for he would be guilty of denial of justice.

Jurisprudence, when looking for an appropriate solution in a complicated case, searches for the real intent of the legislator:

If the text is clear, then the intent of the legislator is accurately reflected and the judge should apply it. There is no room for interpretation in the presence of a clear text. If however the exact intent [of the legislator] cannot be derived from the text because of its obscurity, then one needs to look for the presumed intent (la volonté présumée).

In case of absence of a text on the case at hand, the search for the presumed intent of the legislator is required by deduction, including reasoning by analogy (le raisonnement par analogie), that is to give the case at hand the same treatment given to a past case when they are similar and united in the same causation; or the reasoning a fortiori, that is to apply to the case terms considered in another case to have a stronger causality than the case at hand, in other words when the conditions for the case at hand are more suitable for applying the law than those stipulated by the legislator, which is a logical device that emphasizes causation of stronger cases for application to weaker ones.

NB: Reasoning a fortiori consists in applying the solution to a case because there are stronger motives of application in the case at hand (Raymond Farhat, Introduction à l'étude du droit, Beryte ed., 62 [In French])

In case a solution cannot be found despite the abovementioned, then it is necessary to extrapolate general principles from legislative texts and their solution for new cases, on the basis that such principles and solutions derive from the legislator's presumed intent when enacting the law, such presumed intent which must be translated and expressed with a view to the needs and interests of a society in perpetual change ...

So with reference to the facts in the current case, it appears that:

First: The plaintiff Samira Soueidan is Lebanese, register 36/Hanin, married Mahmoud Abdel-Aziz Ahmad, Egyptian, on 04/04/1985; husband deceased on 14/11/1994 (see personal registration extract issued on 09/08/1995, marriage and death acts attached to the pleadings).

Second: Her children from the aforementioned husband for whom she requires Lebanese nationality are Faten (born on 22/06/1987), Samir (born on 25/11/1990) and Mohammad (born on 17/02/1992) (See copies of their Egyptian passports presented in the conclusions of the plaintiff on 19/04/2007).

Third: The children were minors on the date the present pleading was introduced, 7/4/2005;

Fourth: The Egyptian children do not know Egypt; they reside with their mother in Bourj Hammoud (See attestation of the Directorate of General Security presented in the conclusions of the defendant).

The application of the legal reasoning to the facts in the present case leads to the following:

Article 4 of Order 15 on 19/01/1925 and amended by the law of 11/01/1960 stipulates that “a woman who marries a foreigner acquires Lebanese nationality and that the adult children of the foreigner turned national can apply for and be granted Lebanese nationality without residency conditions, whether by decree conferring this nationality to the husband, father, mother or by special decree. Similarly, minor children of a father who acquired Lebanese nationality or a mother getting this nationality and still alive after the death of the father, become Lebanese unless they refuse it within one year of becoming adults.”

In addition, paragraph 2 of the same article regulates the case of illegitimate children whose nationality is granted before adulthood, and considers them Lebanese “if [their] filiation to one [Lebanese] parent is confirmed.”

Note that it is the mother who generally gives her nationality to the illegitimate child.

The aforementioned article offered two ways for the acquisition of Lebanese nationality by minors following the Lebanese nationality of the mother, but remained silent in the case of a minor born to a Lebanese mother who kept her nationality or got it back, and who was still minor when his father dies. This is a situation where proper legal logic requires an inclusion under the said article a fortiori, for it is not logical to consider the woman who acquires a new nationality to be in a better situation than the Lebanese woman by birth who kept her nationality, especially in the absence of any convincing argument which would justify the lack of equality between the latter and the former.

Is it conceivable that Lebanese law prefers the foreign woman to the Lebanese women? No law can stipulate rights giving more protection to a foreigner than to a national ...

Article 7 of the Lebanese Constitution establishes the principle of equality before the law among all Lebanese, women and men. It does not discriminate between them in terms of rights and obligations, the permissible and the prohibited. The Lebanese woman is a partner to man in citizenship, obligations and rights, and

has therefore the right to give her nationality to her children if she marries a foreigner, strengthening thereby the children's attachment to their mother country, securing the unity of the family's citizenship, facilitating the belonging of the family and its living together in one country, which is a fact in the case since the children of the plaintiff Samir Soueidan reside with her in Lebanon, in Bourj Hammoud specifically. They are not related their father's country other than through their Egyptian nationality.

The court in its approach to the case at hand seeks to protect the interest of the family and the relevant kinship in light of the laws in force and acts in its quality as protector of the family and family stability. Protection of the family is the main component of society from which the judge derives his power, and he rules in its name by avoiding deficiencies and gaps [in the statutory language].

Whereupon to argue against the granting of this right to the mother and the adoption of a narrow and literal interpretation of the text leads to discrimination between citizens who are equal under the Constitution, in rights and duties, in addition to discriminating between Lebanese and foreign married women, and the discrimination between children resulting from marriage and their separation in two categories, where protection and rights are for the Lebanese father and the foreign mother married to him, while the other category is ignored and denied its rights when the mother is a Lebanese national married to a foreigner, even if she retains her Lebanese nationality! With all that ensues in terms of moral pain when she is forced to deal with her minor children as foreigners to her own country, forcing her to follow the rules of residency necessary for foreigners to remain legally [on Lebanese territory].

By leaving the decision to the appreciation of the court, the appellate public prosecution in Mount Lebanon is also leaving the facts to guide the court's decision and overcome the statutory gaps or deficiencies, and removing any hurdle on its course. Public prosecution represents the public interest and intervenes for the protection of the public interest whenever endangered, on the basis of Article 8 of the Civil Procedure code.

In the light of our analysis, the children of the plaintiff Samira Soueidan who were minors at the date of submitting the present case, Faten, Samir and Mohammad Ahmad, should be considered Lebanese because their mother retained her Lebanese nationality and lost her foreign husband; unless they reject the nationality in the year that follows their reaching adulthood, a possibility not applicable presently.

Accordingly, the court decides to accept the claim of the plaintiff and to consider Faten, Samir and Mohammad Mahmoud Abdel Aziz Ahmad, Lebanese; to register them in the category of their mother in the records of Civil Status of Hanin/Bint Jbeil; and to give them Lebanese identity cards ...

Therefore, the Court rules unanimously:

First: To accept jurisdiction.

Second: To consider Faten, Samir and Mohammad Mahmoud Abdel-Aziz Lebanese nationals.

Third: To register them under their mother's file in the register of Civil Status in Hanin/Bint Jbeil no. 36, to give each one of them a Lebanese identity card and to notify whomever it may concern as appropriate.

Fourth: To reject any additional and contradictory reasons.

Fifth: To charge the defendant, The Lebanese Republic, with all fees.

Judgment reached and made effective on 16/6/2009

Signed: President Qazzi, members Kazma and Habaka