



Südtiroler Freiheit Parliamentary Club

**DUAL CITIZENSHIP AS A MEANS OF MINORITY PROTECTION
IN EUROPEAN AND INTERNATIONAL STANDARDS**

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Dual Nationality in International, European and Constitutional Law

DANIEL TURP

*Professor of International and Constitutional Law at the Faculty of Law of the Université de Montréal
Former member of the House of Commons of Canada and the National Assembly of Québec*

SUMMARY

Although some international legal instruments, such as the 1948 *Universal Declaration of Human Rights* (article 15) or the 1997 *European Convention on Nationality* (article 4), provide for or refer to a « right » to nationality, there does not exist a right to dual nationality under rules of international law. Dual nationality can occur however through the combined application of domestic legislation relating to nationality adopted by States whose exclusive jurisdiction is acknowledged by international law. The state of the law of nations in this matter has been clearly stated in advisory opinions and judgments of the Permanent International Court of Justice (*Nationality Decrees Issued in Tunis and Morocco*, 1923), the International Court of Justice (*Nottebohm v. Lichteinstein*, 1955) and the European Court of Human Rights (*Genevose v. Malta*, 2012). In exercising such jurisdiction, States can grant nationality to persons belonging to national minorities in other States. This can be achieved through legislation, but can be provided through bilateral treaties. Countries have been very reluctant however to adopt measures or negotiate treaties that would lead the dual citizenship of persons belonging to national minorities in neighbouring countries.

International instruments relating specifically to minorities have showed very little concern with issues of nationality. The text of the 1992 United Nations *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* does not even refer to the concept of nationality. It does state in its article 2 § 5 that « [p]ersons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties ». Article 17 of the 1997 *European Framework Convention of National Minorities* requires that [t]he Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage. ».

In case of persons belonging to national minorities that have been granted dual citizenship, the OSCE'S 2008 *Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations & Explanatory Note* remind us « that while States have limited jurisdiction over their citizens residing abroad, this should be exercised with respect for the principles of sovereignty and friendly, including good neighbourly, relations. Moreover, the State of residence holds primary responsibility for the protection of its residents, including persons belonging to minorities, even though they may hold multiple citizenship, and should not discriminate against dual citizens. To avoid conflict of loyalties, a State can legitimately ask its citizens to rescind other citizenships before taking up high political positions such as Head of State or a member of government ».

The issue of dual citizenship may also be discussed from a supranational as well as an infranational perspective. In a supranational context and the specific case of the European Union, it is interesting to note that, according to article 22 of the *Charter of Fundamental Rights of the European Union*, « [t]he Union shall respect cultural, religious and linguistic diversity ». The European citizenship of persons belonging to national minorities within member States of the European can thus be seen as a source of protection of minority rights corresponding to the obligations enunciated in article 22. At an infranational level and through constitutional or legislative means such as those that have been relied upon in federal unions, the creation of an infranational citizenship which would superposed itself the nationality of the State which encompasses such minorities could create a novel form of dual citizenship.