Habitual Residence And Its Role In Matters Of The Nationality

Ahmed Sabah Mohialdeen[1] ,
Dr. Zeena Hazim Khalaf[2]

[1]College of Law, University of Mosul, Iraq
ahmedsabah.edu.iq@gmail.com
[2]Assistant Professor of Private International Law
College of Law, University of Mosul, Iraq
zina.hazim@uomosul.edu.iq

Abstract

The habitual residence is one of the most important standards in private international law, as it has been used in several fields at the national and international levels, as it replaced the domicile and nationality, being more flexible and open to the needs of individuals, until it became a key attribution officer to determine international jurisdiction and determine the applicable law in many national legislation and international conventions.

Keywords: Habitual residence, Nationality, Naturalization, Social integration, Conflict.

Introduction

First: Definition of the research:

Habitual residence is used in various fields, such as tax law, social security law and law relating to foreign nationals in private law, it appears primarily in private international law through its use as a support officer, and the determination of the applicable law in a case related to a foreign state, and also aims at procedural law forms the basis of place and international jurisdiction in terms of legal policy, and nationality has been replaced by habitual residence, as the latter has become more flexible and open to the needs of individuals, moreover, habitual residence often allows the application of the country's local laws, this eases the burden on the burdensome courts and authorities of having to deal with foreign law.

Second: Research Problem:

The problem of the research revolves around the lack of a clear and agreed concept of habitual residence, as all laws that adopted habitual residence relied on their own criteria to determine their concept, which many courts have to define the term fully.

Third: Research Methodology:

Our study of the subject of habitual residence and its problems in private international law requires that we follow the comparative approach in order to address our subject in all its aspects, as we will address it through a comparison between Iraqi legislation and Belgian law.

Fourth: Research Structure:

Our study required that it be divided into three sections as well as the introduction and conclusion, as in the first, we dealt with the concept of habitual residence, while in the second we dealt with the habitual residence in the original nationality, and in the third we devoted it to the habitual residence of acquired nationality.

First topic

The concept of habitual accommodation

The habitual residence plays an important role in the scope of private international law, as it is related to nationality and conflict of laws and international jurisdiction, so it was necessary for us to know the concept of habitual residence from its inception and developments, and will touch on the definition of habitual residence, we will also show the habitual residence pillars, according to the following division:

First Requirement

The concept of habitual accommodation

The general idea of habitual residence is the attachment of a person to a particular place with certain links showing the close connection and center of gravity of the person in that territory, therefore, it was necessary for us to show the emergence of the habitual residence and its concept and the statement of its pillars, and therefore we will address the above section according to the following demands:

First Requirement

Historical development of habitual accommodation

Habitual residence is one of the most important criteria in contemporary private international law, as it aims to establish a stable and effective link between the person and the geographical area in which he is located, it is about finding a different link capable of translating the levels of social integration of a person in an area governed by a certain legal system, taking into account the objectively verifiable elements, habitual residence first appeared and was then used as a compromise solution to the problem between domicile and nationality[1] in the bilateral agreement between France and Prussia in 1880, it was a translation of the German term "gewöhnlicher Aufenthalt" which was used for the second time by the Hague Convention on Civil Procedure on November 14, 1896 because the domicile had acquired many different meanings in these countries, as a result, habitual residence has been an alternative to domicile in many conventions[2].

Since then, the habitual residence has become the preferred place in the work of the Hague Conference, especially since its third stage of development as well as in accordance with the rules of private international law enacted in recent years, today's realist perception highlights that the linking element of habitual residence is a modern trend of private international law[3].

Section II

Definition of habitual residence

In order to determine the definition of habitual residence under study, it is necessary to include the definition of habitual residence as follows

In statistical terminology, the habitual residence in Eurostat within the Community Population Census Programme in 2001 was defined as "The geographical place where the enumerated person normally resides, and the place of his or her legal residence may also be, or the place where the person is at the time of the census"[4].

Through the definition of Eurostat, we note that it is allocated in statistical matters related to the census without mentioning the nature of habitual residence and what its criteria are.

As for the definition of habitual residence in the legal terminology, it did not receive much attention from legislators in particular in countries that adopt the nationality system and moved away from home in regulating the provisions of conflict of laws and international jurisdiction, including the Iraqi legislator.

Even the legislation of States that have established a special law on habitual residence, including the Canadian province of Manitoba of 29/10/1990[5], which legislated the law of domicile and habitual residence and did not define habitual residence, however, there is no legal definition agreed upon at the international or European level, and this seems to have been intentional, this is one of the advantages enjoyed by the habitual residence, in order to maintain its flexibility and keep pace with developments at the international and domestic levels, so a "purely practical" approach was used and allowed the courts to make decisions "on the basis of available factual data and guided by them as an intact processing[6] and the legislation in which we found the definition of habitual residence is the Belgian Private International Law of 2004 in Article (4/2) thereof by stipulating that "For the purposes of the application of this Law, habitual residence shall mean that "The place where the natural person proves his main capacity, even in the absence of any registration and apart from permission to remain or prove himself to identify such place, particular account shall be taken of circumstances of a personal or professional nature that reveal permanent links with that place or the desire to establish such ties[7]."

The judiciary has played a role in defining habitual residence in a number of courts, including the Supreme Court of Quebec[8], which defined habitual residence in one case as "a place where he resides regularly, habitually lives and is not only the place where a person passes but requires that that place achieve more permanent ties than mere ties of ordinary residence"[9].

The Supreme Court's definition is absolute and ambiguous in determining the nature of habitual residence, it stated that habitual residence was the habitual residence of a person in a particular territory, with links or factors associated with habitual residence.

Through the above definitions, the Supreme Court of Quebec definition of habitual residence can be weighed over the other definitions as "The place where a person resides regularly, with more permanent ties than residence" This is because this definition is characterized by generality and the absence of specific criteria for example, thus, the concept of this term shifts from flexibility to rigidity, as does the concept of domicile and nationality, which negates the purpose for which the habitual residence was established.

Although we favour the definition of the Supreme Court of Quebec, we prefer not to limit habitual residence to a specific definition this is

because the reason for choosing the habitual accommodation in the first place is due to its real and real nature not because they are associated with inconsistent legal definitions and interpretations arising from different legal systems, this is an advantage of habitual residency in that it is not deprived of flexibility, keeps abreast of developments in societies and is used as a "purely pragmatic" approach to the courts when making decisions based on available factual data and guided by them as intact processing.

Second Requirement

Habitual Residence Pillars

Through what was mentioned in the definition of habitual residence, we find that it consists of two pillars: the material element and embodied in the actual existence, the moral pillar is embodied in the intention to stay in this place for an unlimited period, and we will explain this as follows:

Section I

Material Pillar

The jurist Marc Cziesielsky argued that[10] residence has a kind of physical existence, the mere intention to settle in a particular state or territorial unit is not sufficient in itself, moreover, the term "Habitual" indicates that the mere physical existence alone is not sufficient but must be combined with the element of duration, even if the duration is interrupted by some period, but the place of residence must be at least the place where the person can be regularly located, adding that the person's demonstrable intent is unnecessary, if the actual presence continues for a long period of time, it is not necessary for the person to have an intention to make the place or territorial unit habitual residence, this was the view of the German Federal Court in one of its decisions, stating that "habitual accommodation depends primarily on factual circumstances"[11].

Section II

Moral Pillar

Others argued that[12] there are three basic pillars of habitual residence: actual residence, continuity of residence, and persistence and perseverance to stay, actual residence refers to the place of the current person and not the place from which he passes or moves, as for the continuity residence, which is the duration of stay, for as long as this period is appreciable, because the habitual stay depends on "stability and permanent communication between the person and the place, and the temporary place

or brief stops are excluded, as for the last element, which is the insistence residence, it includes a degree of stability to maintain the place of residence in the specified place, but the last element was criticized by this name, because the content of the insistence on survival must be investigated by the intention of the person's survival, in other words that the last element is simply the intention of the person to survive[13], this intention is extracted from actions and facts from which the actual residence is inferred with the intention of staying without taking into account the duration of this intention.

Therefore, habitual residence requires the existence of two pillars, the material element, represented by actual existence, and the moral element, represented by the intention of survival.

The second topic

The role of habitual residence in matters of nationality

If habitual residence is the material element of domicile, its role in nationality is no less important than in domicile, with regard to the acquisition, loss and recovery of nationality, this is because the majority of States make habitual stay for a certain period in the territory of a State one of their essential and basic conditions for this purpose, therefore, we will address the role of habitual residence in the original nationality, which is granted either on the basis of the right of blood or on the right of the territory, and its role in the acquired nationality, which is granted either on the basis of change of sovereignty or through naturalization, and the role of habitual residence is important for the acquisition of nationality, and the original nationality is defined as "Nationality imposed on a person immediately upon birth because of his national origin, and this is called a criterion or basis (the right of blood) or because of his place of birth, and it is called the criterion or basis (the right of territory) or on the basis of both, and it is established for the person by virtue of the law without the need to submit an application or obtain approval from a particular body, its nature does not change its establishment at a date subsequent to birth, since its establishment is retroactive to the date of birth[14], and it is also imposed because of the change of sovereignty in the territory[15], through the above definition, it is clear to us that the original nationality is granted either by blood or regional association, or by birth in Iraq without residence in it, or when sovereignty in the region changes, which what is known as the nationality of incorporation, we must address each of them and show the role of habitual residence in it, as follows:

First Requirement

Imposition of original nationality on the basis of alternation of sovereignty

The original nationality at the beginning of the establishment of the Iraqi state was granted according to certain conditions, which is known as the original constituent nationality, which is “Nationality that is established for people at the time of the establishment of the state and its establishment is complementary to its constituents of a people, a territory, and an international personality, and states habitually arise either by changing sovereignty over a specific region and its separation from a particular state as a result of war, revolution, separation, or as a result of international agreements and treaties”[16].

The Iraqi nationality of incorporation was imposed on the person in the cases of residence in Iraq or employment in it, and the person can choose it in the event of his birth in Iraq without residing in it, article 3 of the Iraqi Law of Nationality of Incorporation issued on 9/10/1924 No. 42 of 1924 stipulates that "Anyone who was on the sixth day of August 1924 of Ottoman nationality and habitually resides in Iraq shall cease to have Ottoman citizenship and shall be deemed to have Iraqi nationality as of the aforementioned date."

Perhaps what falls within the subject of our research is the state of housing in Iraq, if an Ottoman person resides in Iraq for a certain period specified by law, the Iraqi nationality of incorporation is imposed on him, the Iraqi Nationality Law of 1924 (repealed) considered a person an Iraqi if he was an Ottoman on "August 6, 1924" and was habitually resident in Iraq, the meaning habitually is that he resided in Iraq for the period from "23 August 1921" to "6 August 1924", so that he ceases to have Ottoman citizenship and is considered to have acquired Iraqi citizenship from the said date[17].

It should be noted that the term "habitually resident of Iraq" includes a special concept set out in article II, item (e), which states: "Habitually resident in Iraq: an expression that includes anyone who had his habitual residence from 23 August 1921 until 6 August 1924" and benefits from the aforementioned text that the Iraqi legislator has adopted the habitual residence as a basic condition for the Iraqi nationality of incorporation[18].

By reading the text of item (second) of the above article, it becomes clear that the basic condition for constituent nationality is the habitually residence in Iraq, which is represented from "August 23, 1921" to "August 6, 1924", which is a period of two years, eleven months and fifteen days.

Although the law did not explicitly clarify this, the text remains ambiguous, in addition to the fact that the nationality of the establishment is a temporary and transitional nationality at the beginning of the establishment of the state until its stability and the development of a new law that carries the provisions and visions of the nascent state for the distant future.

Second Requirement

Imposition of original nationality on the basis of jus sanguinis

The right of jus sanguinia is defined as the right of an individual to acquire the nationality of the State to which the father belongs, regardless of the place of his birth, this nationality is called the nationality of birth or descent, because its basis is the family origin from which the father descends, on this basis, we note that the Iraqi legislator, under the Nationality Act (in force) No. 26 of 2006, has adopted a new situation not known in previous Iraqi nationality legislation when it fully equates the right of blood descended from the father with the right of blood descended from the mother as a basis for original citizenship in Iraq, in the text of article 3 (a) of the Nationality Law (in force)[19], according to the above-mentioned text, anyone born to an Iraqi father is considered an Iraqi by law at the moment of his birth, provided that the father possesses Iraqi nationality at the moment of the birth of his child, whether his Iraqi nationality is original or acquired.

As for the Belgian Nationality Law of 1984, we find that it took the right of blood as a basis for the original nationality in Article (8/I) which considers a Belgian is everyone who was born in Belgium to a Belgian citizen, or born abroad to a citizen born in Belgium or the territory under Belgian administration, or to a Belgian citizen who, within a period of five years from the date of his birth, has submitted a declaration claiming that Belgian nationality has been granted to his child, or is of Belgian origin, provided that he does not retain another nationality until the age of eighteen or is freed before that age[20]. With regard to the role of habitual residence in the original nationality on the basis of the right of blood, we can say that there is no house of habitual residence therein, this is because once the right of blood is established, citizenship is granted without any conditions or restrictions and had to be mentioned to complete the habitual residence role in matters of nationality.

Third Requirement

Imposition of original nationality on the basis of the right of territory

The right of territory is defined as "the connection between an individual and the land in which he was born, irrespective of the nationality of his parents, whether they are nationals or foreigners, they are the basis for the imposition of original nationality[21]."

The Iraqi Nationality Act (in force) has played a role in regulating this geographical basis in the text of article 3 (b)[22], it came up with a set of conditions that must be met by a minor in order to prove his original nationality in Iraq, The Belgian Nationality Code also stipulates the right of the Territory in Article 10/1, a Belgian is considered to be anyone born in Belgium until he reaches the age of eighteen, but does not have another nationality[23], Article 11 (I) stipulates that a Belgian child shall be considered on the basis of birth to be any person born in Belgium, provided that one of his parents is: born in Belgium and resident in Belgium for five of the ten years preceding the person's birth, or has lived in Belgium from birth and has foreign parents (or adoptive parents) born abroad and have resided in Belgium for 10 years and who issued the declaration of attribution before the twelfth birthday of the person[24].

From the foregoing, it is clear to us that there is no role for habitual residence in the original nationality on the basis of the right of territory, since the person acquires nationality directly without the need for residence or other naturalization procedures such as taking an oath or other conditions or procedures, as if the original nationality was imposed on the basis of jus sanguine, birth in Iraq and finding a foundling in Iraqi territory cannot be counted as habitual because of the lack of the habitual elements of residence in Iraq and none of its factors.

The third topic

Habitual residence is a basis for granting acquired citizenship

Acquired nationality is defined as "nationality granted to a person at his request and under certain conditions"[25].

In the Iraqi Nationality Law (in force) No. 26 of 2006, we find the Iraqi legislator, nationality acquired in the event of change of sovereignty, naturalization, double birth, mixed marriage and dependency is provided for, as follows:

First Requirement

Acquisition of nationality by change of sovereignty

The change of sovereignty relates to the nationality of the incorporation that we talked about earlier in the original nationality of incorporation, however, it is here for the acquired nationality of incorporation, as the nationality of incorporation is granted voluntarily as stipulated in Article (7) of the Nationality Law of 1924 (repealed), which stipulates that: "Whoever has reached the age of majority of the Ottoman Empire and is not habitually resident in Iraq, except that he was born there, may submit on or before July 17, 1927, a written statement choosing Iraqi nationality, then becomes an Iraqi if the Iraqi Government so agrees and has an agreement with the Government of the State in which that person resides, if such an agreement is required[26]."

Accordingly, the habitual residence here was one of the conditions for granting the acquired nationality of incorporation, but its application comes in reverse, represented by the absence of the Ottoman habitual presence in Iraq, that is, he does not have a habitual residence during the period specified in the text, which is from August 23, 1921 until August 6, 1924, and the Belgian Nationality Act of 1984 did not provide for the nationality of incorporation.

The second requirement

Acquisition of citizenship by habitual residence (ordinary naturalization)

Nationality is no longer an eternal bond between a person and the state, rather, a person has the right to change his nationality at any time, this is confirmed by Article (15/2) of the Universal Declaration of Human Rights of 1948, as it stipulates that “It is not permissible to arbitrarily deprive any person of his nationality nor the right to change his nationality.” Therefore, naturalization is the normal way for every foreigner to obtain the nationality of a country at a date later than birth[27].

Naturalization define as “Acquisition of the nationality of the State after birth and based on the request associated with the availability of certain conditions and in respect of which the State has the power of discretion.” Naturalization is granted to him, and the state has the freedom of discretion, as it has the right to answer or reject the request[28].

Iraqi nationality is acquired by naturalization in four cases, namely the acquisition of Iraqi nationality on the basis of birth outside Iraq from an Iraqi mother of an unknown or stateless father, double birth, extraordinary naturalization, and naturalization on the basis of long residence, the Iraqi legislator referred in the Nationality Law No. 43 of 1963 (repealed) in article

8, corresponding to the provision of article 6/I of the Iraqi Nationality Law (in force) on ordinary naturalization and specified its conditions as follows:

First: The Minister may accept the naturalization of a non-Iraqi when the following conditions are met:

a- To be of the age of majority.
b- He entered Iraq legally and resides in it at the time of submitting the application for naturalization, with the exception of those born in Iraq and residents and those who have a civil status book and have not obtained a certificate of nationality.
c- Legally resided in Iraq for a period of not less than ten consecutive years prior to the submission of the application.
d- To be of good conduct and reputation and not convicted of a felony or misdemeanor involving moral turpitude.
e- To have a clear means of subsistence.
f- To be safe from communicable diseases.

What concerns us through Article (6) mentioned above is the text of item (c) represented by residence, the Iraqi legislator has made the habitual period of residence for the acquisition of Iraqi nationality (10) years in order to integrate the foreigner into Iraqi society[29]. Article 6 is that the Iraqi legislature does not require naturalized persons to be fluent in the official language in Iraq, this is the opposite of what was applied in the Iraqi Nationality Act No. 43 of 1963 (repealed), which stipulates this very precisely, both for anyone born in Iraq to a foreigner who was not born in Iraq or for the general conditions of naturalization[30], language is one of the main elements of social integration[31]. Therefore, we suggest that the Iraqi legislator follow what it followed in the Iraqi Nationality Law No. 43 of 1963 (repealed) by adding a new item (j) to Article (6/I) of the Nationality Law (in force) to be as follows: Article (6) First: The Minister may accept the naturalization of a non-Iraqi when the following conditions are met: (j. To be conversant in Arabic or any legally recognized local language), while the Belgian Nationality Law has provided for more than one type of acquired nationality, including ordinary naturalization (long naturalization), provided that he is not less than 18 years old, and has legal residence for a period of ten years without interruption, In addition to the conditions of social integration represented by his knowledge of one of the three national languages (French, German and Dutch), and to prove participation in society[32], naturalization by merit (exceptional naturalization) is a condition of completion of 18 years and legally residing in Belgium and to prove the exceptional advantages he enjoys, whether in the scientific, sports, social or economic fields, and to prove the reason for the impossibility of obtaining

Belgian nationality in accordance with Article (12 bis)[33] the Iraqi legislature did not provide for this, despite the importance of this type of naturalization because of its positive return to the country at all levels, therefore, we suggest that the Iraqi legislator adopt exceptional naturalization to bring distinctive competencies to the country, which will reflect positively either on the social, economic, sports or scientific side, the latter type provided for in the Belgian Nationality Code is naturalization of stateless persons who are at least 18 years of age and have legal residence in Belgium for two years[34].

Third Requirement

Acquisition of citizenship by habitual residence (double birth)

Double birth means multiple births in the territory of a State, such as if the father and son are born in the territory of the same State, some States do not consider mere birth on their territory in order to acquire their nationality and require birth to be accompanied by certain facts that indicate the attachment of the newborn and his physical or moral attachment to the children of that State, including this case, which is known as double birth[35].

It is necessary to focus on what the Iraqi legislator mentioned in Article 5 of the Nationality Law (in force), as it did not specify the habitual length of stay in double childbirth, but by reading the text, it becomes clear that the habitual period of residence is more than ten years, a person (father) cannot marry at the age of ten in order to have a child of his nationality, if we refer to Iraqi law, the minimum age for marriage is for anyone who has completed fifteen years of age and is a licensed minor in accordance with article 8 of the Iraqi Personal Status Law No. 188 of 1959[36], if she is a woman, the habitual period of residence can be ten years, according to Iraqi law. But of course, a foreigner applies his personal law in matters of personal status in relation to marriage, if the person is Arab, most Arab laws have the minimum age for marriage, as is the case in Iraqi law, as for foreign legislation, the age of marriage may be higher than Arab legislation, therefore, we can say that the habitual residence in double birth, at the very least, is more than ten years on the measurement of the age of marriage, in addition, the text only mentions if the father of the newborn was born in Iraq, what is the ruling if the mother of the newborn is the one born in Iraq and habitually residing there? For example, his father is outside Iraq or is present but was not born in Iraq or for any other reason, taking into account the rights of women and their equality with men, in accordance with Article 3 of the Iraqi Nationality Law, in which a woman has the right to transmit the original nationality of her children, a fortiori, the granting of

citizenship to her children on the basis of double birth, the Belgian nationality law does not include double births.

Fourth Requirement

Acquisition of citizenship by habitual residence (mixed marriage)

A mixed marriage is defined as a marriage in which the nationality of both spouses differs at the time of the conclusion of the contract or after that date, the Iraqi Nationality Act (in force) has adopted the idea of mixed marriage as a reason for granting nationality to both the husband as long as the husband or wife is Iraqi, in this context, it is important to distinguish between two situations[37]:

The first case: the acquisition of Iraqi nationality on the basis of mixed marriage by a non-Iraqi married to an Iraqi woman in accordance with article 7 of the Iraqi Nationality Law (in force) and under the same conditions stipulated in article 5 in all its items, provided that the period of residence provided for in item (c) of item I of article 6 of the Iraqi Nationality Law (in force) shall not be less than five years, with the marital bond remaining continuous. Article 7 of the Iraqi Nationality Act in force stipulates that:"The Minister may accept the naturalization of a non-Iraqi married to an Iraqi woman if he meets the conditions set forth in Article 6 of this Law, provided that the period of residence stipulated in item (c) of Clause or not of Article 6 of this Law shall not be less than five years and the marital bond shall remain."

The second case: granting Iraqi nationality on the basis of mixed marriage to non-Iraqi women married to Iraqis under the following conditions:

1. Submit an application to the Minister of the Interior, a condition that automatically requires that this woman be fully competent.
2. The lapse of (5) years since her marriage and residence in Iraq.
3. The continuation of the marital bond until the date of submission of the application.

Exceptions shall be made for those who are divorced or whose husband has died and whose divorced or deceased husband has a child in accordance with article 11 of the Iraqi Nationality Law (in force).

This period is necessary to ensure that the wife is worthy of holding Iraqi nationality, we note that the Iraqi legislator also did not require this type of naturalization to be familiar with the Arabic language, unlike the Belgian legislator, which provided for naturalization by mixed marriage in article 12

bis/3, where it stipulated that it must be completed by 18 years of age, and to be a resident of Belgium for a period of 5 years, and 3 years have passed since his marriage to a Belgian citizen, as well as his conversant of one of the official national languages, in addition to proof of social integration[38].

Conclusion:

After completing our research entitled "Habitual residence and its role in nationality matters", we reached a set of results and recommendations as follows:

First: Results:

1. There is no internationally agreed definition of habitual residence, although it was defined, it was not a comprehensive immune definition that includes all its characteristics, because the habitual residence represents the practical reality of the individual, this is one of its advantages to adapt to all variables and maintain its flexibility as a regenerative support officer.
2. The Iraqi legislator did not clarify the habitual residence, although it is mentioned in several legal texts, as stipulated in the Iraqi Nationality Law No. (42) of 1942, so since then the legislator has taken it but has not made it clear .
3. The Iraqi legislator did not provide for ordinary naturalization in the Nationality Law in force in Article (6) as one of the conditions for naturalization is to be conversant in the Arabic language, contrary to what was applied in the Iraqi Nationality Law No. (43) of 1963 (repealed), it also did not require it for naturalization by mixed marriage, which is one of the most important criteria for habitual residence, which is social integration, which is stipulated in the Belgian nationality law.
4. Habitual residence is one of the criteria of private international law along with nationality and domicile, it has played a major role in international conventions, although it is an independent attribution officer to determine jurisdiction and applicable law, it is closely related to domicile and nationality, therefore, the rules of nationality should be developed and adopted on new controls, the most important of which is the habitual residence, especially since some topics may require the development of Iraqi legal rules in line with international positions because of their desired benefits in achieving a kind of appropriateness and developing means of resolving disputes in a more consistent and just manner with the facts.

Second: Recommendations:

1. We call on the Iraqi legislator to adopt the habitual residence, especially in matters of jurisdiction and to determine the applicable law, because most of the international conventions in this aspect make the habitual residence the main attribution officer for them along with the law of will.
2. We propose to the Iraqi legislator to amend Article (6) of the Nationality Law No. (26) of 2006 by adding a new item to it to be as follows:

   Article (6) First: The Minister may accept the naturalization of a non-Iraqi when the following conditions are met: (j) He must be conversant with Arabic or any legally recognized local language.

References

First: Books:

1. Dr. Iyad Mutashar Sayhoud, The Legal System of National Nationality, Part 1, 1st Edition, Dar Al-Sanhouri, Baghdad, 2019.
2. Dr. Haider Adham Al-Taie, Lectures on Private International Law in the Provisions of Iraqi Nationality, Domicile and Legal Status for Foreigners, Part 1, Dar Al-Sanhouri, Beirut, 2016.
3. Dr. Saeed Youssef Al-Bustani, Nationality and Nationalism in the Legislation of Arab Countries, Al-Halabi Human Rights Publications, Beirut, 2003.
4. Dr. Abdul Rasoul Abdul Redha Al-Asadi, Perspectives on the Iraqi Nationality Law No. 26 of 2006, Dar Al-Sadiq, Babylon, 2008.
5. Ghaleb Ali Al-Daoudi, Private International Law (A Comparative Study), 1st Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2011.
6. Dr. Fouad Riad, Mediator in Nationality and Foreigners Center, 5th Edition, without place of printing, without year of publication.
7. Dr. Mohamed Kamal Fahmy, Private International Law, 2nd Edition, without place of publication, 1980.
8. Dr. Mohammed Kamal Fahmy, The Origins of Private International Law, 2nd Edition, University Culture Foundation, Alexandria, 2006.
9. Dr. Nafie Bahr Sultan, Belgian Private International Law, 1st Edition, Dar Al-Sanhouri, Beirut, 2023.
10. Dr. Hisham Ahmed Mahmoud, UAE Private International Law, Dar Al-Kutub Al-Qanoon, Egypt, 2017.
11. Dr. Yassin Taher Al-Yasiri, Private International Law (Nationality and Foreigners Center), 2nd Edition, Dar Al-Hikma, Baghdad, 2019.

Second: Master's Theses:

12. Raya Sami Saeed Al-Saffar, The Role of Domicile in Nationality: A Comparative Study, Master Thesis, University of Mosul, 2005.

Third: Constitutions and Laws:

13. The Iraqi Constitution of 2005.
14. Iraqi Nationality Law No. (42) of 1924 (repealed).
15. Iraqi Personal Status Law No. (188) of 1959, as amended.
16. Iraqi Nationality Law No. (43) of 1963 (repealed).
17. Iraqi Nationality Law No. 26 of 2006.
18. The Belgian Nationality Act of 1984 is published on the website: https://www.ejustice.just.fgov.be/eli/loi/1984/06/28/1984900065/justel#t.
19. Canadian Manitoba Act of 1990 published at: https://web2.gov.mb.ca/laws/statutes/ccsm/d096.php?lang=en

Fourth: International Centers:

20. Eurostat, published on the Internet and on the following website: https://www.tarifdouanier.eu/info/abreviations/3031

Fifth: Foreign Sources:

21. Pippa Rogerson, Habitual Residence: The New Domicile,2000.
22. Mo Zhang, Habitual Residence v. Domicile: A Challenge Facing American Conflicts of Laws, Volume 70 Number 2 Article 2, 2018,p.4, https://digitalcommons.law.uga.edu/stu_llm/287/,2022/10/21.
23. Jan Kropholler, Internationales Privatrecht,2006.
24. Binchy Irish Conflicts, Irish Conflicts of Law Butterworths: Ireland,1988.
25. L.I. De Winter, Nationality or Domicile?: The Present State of Affairs, 1969.
26. D. Izabel Rigo Portocarrero, La residencia habitual como criterio de conexión: un renovado debate en Derecho Internacional Privado,p.1,https://www.universidadviu.com/es/actualidad/nuestros-expertos/la-residencia-habitual-como-criterio-de-conexion-un-renovado-debate-en.
27. Gérald Goldstein, The Concepts of Habitual Residence and Ordinary Residence in Light of Quebec Civil Law, the Divorce Act and the Hague Conventions of 1980 and1996. https://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/rhro_qc/pdf/rhro_qc.pdf.
28. Marc Cziesielsky, nationality,domicile and hubitual residence,2000, https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1264&context=stu_llm.

[1] Binchy Irish Conflicts, Irish Conflicts of Law Butterworths: Ireland,1988,p.98.
[2] L.I. De Winter, Nationality or Domicile?: The Present State of Affairs, 1969, p. 423.
[3] D. Izabel Rigo Portocarrero, La residencia habitual como criterio de conexión: un renovado debate en Derecho Internacional Privado,p.1, https://www.universidadviu.com/es/actualidad/nuestros-expertos/la-residencia-habitual-como-criterio-de-conexion-un-renovado-debate-en,2022/10/10.
[4] Eurostat was established in 1994 and is part of the European Commission and is responsible for the production of community statistics. Published on the Internet

and on the following website:
https://www.tarifdouanier.eu/info/abreviations/3031, visit date 10/10/2022.
[5] Manitoba is a Canadian province with Winnipeg as its capital.
[6] Mo Zhang, Habitual Residence v. Domicile: A Challenge Facing American Conflicts of Laws,2018,p.177, https://digitalcommons.mainelaw.maine.edu/cgi/viewcontent.cgi?article=1654&context=mlr, 17/10/2022.
[7] Quoted from Dr. Nafie Bahr Sultan, Belgian Private International Law, 1st Edition, Dar Al-Sanhouri, Beirut, 2023, p. 17.
[8] Quebec is a Canadian province and the second largest province after Montreal.
[9]Gérald Goldstein, The Concepts of Habitual Residence and Ordinary Residence in Light of Quebec Civil Law, the Divorce Act and the Hague Conventions of 1980 and1996, P.6. https://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/rhro_qc/pdf/rhro_qc.pdf
[10] Marc Cziesielsky, nationality,domicile and hubitual residence,2000,p.96. https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1264&context=stu_llm.
[11] Jan Kropholler, Internationales Privatrecht, 2006, p. 283.
[12] Mo Zhang, op. cit.,p.4, https://digitalcommons.law.uga.edu/stu_llm/287/, 2022/10/21.
[13] Pippa Rogerson, Habitual Residence: The New Domicile,2000,p.90.
[14] Dr. Abdul Rasoul Abdul Reda Al-Asadi, Perspectives on the Iraqi Nationality Law No. 26 of 2006, Dar Al-Sadiq, Babylon, 2008, p. 14, Dr. Muhammad Kamal Fahmy, The Origins of Private International Law, 2nd Edition, University Culture Foundation, Alexandria, 2006, p. 167.
[15] Dr. Yassin Taher Al-Yasiri, Private International Law (Nationality and the Status of Foreigners), 2nd Edition, Dar Al-Hikma, Baghdad, 2019, p. 65.
[16] Ghaleb Ali Al-Daoudi, Private International Law (A Comparative Study), 1st Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2011, pp. 52-54.
[17] Dr. Yassin Taher Al-Yasiri, Private International Law (Nationality and Status of Foreigners), op. cit., p. 66.
[18] Raya Sami Saeed Al-Saffar, The Role of Domicile in Nationality: A Comparative Study, Master's Thesis, University of Mosul, 2005, p. 31.
[19] Article 3 (a) of the Nationality Law in force stipulates that: "Anyone born to an Iraqi father or an Iraqi mother shall be deemed an Iraqi."
[20] Article (8/1) from Private International Law of Belgium.
[21] Dr. Saeed Youssef Al-Bustani, Nationality and Nationalism in the Legislation of Arab Countries, Al-Halabi Human Rights Publications, Beirut, 2003, p. 125.
[22] Article 3 (b) stipulates that: "An Iraqi born in Iraq to unknown parents shall be deemed to have been born in Iraq unless evidence to the contrary is established."
[23] Article (10/1) from Private International Law of Belgium.
[24] Article (11/1) from Private International Law of Belgium.
[25] Dr. Fouad Riad, Mediator in Nationality and Foreigners Center, 5th Edition, without place of printing, without year of publication, p. 176.
[26] Dr. Iyad Mutashar Sayhoud, The Legal System of National Nationality, Part 1, 1st Edition, Dar Al-Sanhouri, Baghdad, 2019, p. 33.
[27] Dr. Hisham Ahmed Mahmoud, UAE Private International Law, Dar Al-Kutub Al-Qanoon, Egypt, 2017, p. 67.
[28] Dr. Mohamed Kamal Fahmy, Private International Law, 2nd Edition, without place of publication, 1980, p. 176.
[29] Article (4/I) of the Iraqi Constitution of 2005 stipulates that: "Arabic and Kurdish are the official languages of Iraq..."

[30] Article 8/6 of the repealed Iraqi Nationality Law No. 43 of 1963 stipulates that: "The minister may accept the naturalization of a foreigner with Iraqi nationality under the following conditions: He must be conversant with Arabic or any legally recognized local language."

[31] Among the forms of social integration is speaking the language of the country in which a person intends to acquire his nationality, and this condition is not stipulated by the Iraqi legislator as one of the conditions for naturalization, and we believe that this condition is important in achieving integration, how can a foreigner who acquires Iraqi nationality without speaking Arabic be assimilated.

[32] Article (12 bis/2) from Private International Law of Belgium.

[33] Article (19/1) from Private International Law of Belgium.

[34] Article (19/2) from Private International Law of Belgium.

[35] Dr. Iyad Mutashar Sayhoud, The Legal System of National Nationality, op. cit., p. 100.

[36] Article 8 of the Iraqi Personal Status Act No. 188 of 1959, as amended, stipulates that: (1. If a person who has completed fifteen years of age asks for marriage, the judge may authorize it if he proves his capacity and physical ability after the consent of his legal guardian. 2. The judge may authorize the marriage of a person who has reached the age of fifteen if he finds it absolutely necessary to do so, and it is required to give permission to achieve legal puberty and physical ability).

[37] Dr. Haider Adham Al-Taie, Lectures on Private International Law in the Provisions of Iraqi Nationality, Domicile and Legal Status of Foreigners, Part 1, Dar Al-Sanhouri, Beirut, 2016, p. 44.

[38] Article (12 bis/3) from Private International Law of Belgium.