

Newsletter No. 37 (EN)

Dual Nationality Thailand/Germany

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*The passport is the finest part of a person.  
 It comes, as well, not so easily into being as a person.  
 A person can be brought about everywhere, in the most light-  
 hearted way  
 and without any good reason, but never a passport.  
 Therefore a passport is recognized, if it is a good one,  
 whereas a person might be as good as possible  
 and is nevertheless not recognized.*

Berthold Brecht, Flüchtlingsgespräche

## I. Who belongs to a nation state and who does not?

This question is usually posed in two situations, either when a child is born or when someone wants or has to change the citizenship. Hereinafter the acquisition of nationality by birth shall be explained.

Countries are generally free to determine who their own nationals are. This is usually stated in customary international law (See Art. 1 Hague Convention of 1930 on certain questions relating to the conflict of nationals).

Three basic principles are involved according to the legal system:

1. *ius soli* – the territorial principle (birthplace), (e.g. United States of America, Ireland (1<sup>st</sup> generation), France (3<sup>rd</sup> generation),
2. *ius sanguinis* – the principle of descent, (e.g. Germany, Denmark, Italy)
3. *ius domicilii* – the principle of residence (e.g. Netherlands (minimum 5 years), Germany (minimum 8 years), France (minimum 5 years).

*Ius soli* and *ius sanguinis* regulate how nationality is acquired by birth. Apart from the acquisition of nationality of birth, citizens of one state can become citizens a different state by naturalization. In this case the residence of the person is used as a criterion to attribute nationality (*ius domicilii*).

The combination of *ius sanguinis* and *ius soli* may lead to dual nationality although the principle of avoidance of multiple nationalities remains immanent in the law on nationality. In general, those applying for naturalization must give up their foreign nationality. But there are generous exceptional rules, which allow the previous nationality to be retained.

This applies for example to:

- naturalization of the citizens of the European Union
- release from the foreign nationality is legally impossible or unacceptable for such persons (e.g. degrading methods of release)
- elderly persons

- victims of political persecution

Multiple nationalities can be passed on to children of multinationals.

## II. Thai and German Nationality Act

### In Thailand

According to the Thai Nationality Act (2535 B. E.), a person either born within the territory of the Kingdom of Thailand (except at least one parent is an illegal foreigner) or born of a father or a mother with Thai nationality outside the territory of the Kingdom of Thailand regularly acquires the Thai nationality. Double citizenship is allowed, therefore, a person of Thai nationality doesn't have to renounce Thai nationality while acquiring a foreign nationality.

### In Germany

Germany combines the *ius sanguinis* with elements of the *ius soli*. In addition to *ius sanguinis* rules, an *ius soli* for children is implemented, provided certain prerequisites are fulfilled.

In principle the child is German if one of his parents is German (*ius sanguinis*).

Children born abroad, whose German parent was born abroad after 31 December 1999 and permanently residing abroad, will in principle no longer acquire German nationality.

### Exceptions to this rule:

1. The German parents report the birth to the competent diplomatic representation within one year. Where both parents are German nationals, this legal consequence shall only apply where they both fulfil the conditions stipulated in Sect. 4 (4) Citizenship Act (Staatsangehörigkeitgesetz "StAG"), or
2. The child would otherwise be stateless.

Children of foreign parents shall acquire German citizenship by birth in the domestic territory if one parent has legally been resident in the domestic territory for at least eight years and possesses a right of residence or has possessed a residence permit for an unlimited period for three years. Between the age of 18 and 23 years, these children have to decide whether or not they want to keep the German nationality or the nationality of their parents. Where the person considers he wishes to keep the foreign citizenship, German citizenship shall be lost upon the statement being received by the competent authority. It shall also be lost where no statement has been made by the 23<sup>rd</sup> birthday.

### III. Example:

A Thai woman and a German man marry. The marriage has to be acknowledged by the German immigration authorities. If the marriage is not regarded as a fictitious marriage, the

woman regularly gets the German nationality after 3 years of staying in Germany (including the 2 years of marriage). During this time, the original Thai nationality has to be given up.

After the marriage the couple gets a child. This child acquires the German nationality as a result of *ius sanguinis*. In addition, depending on the following preconditions, the child acquires the Thai nationality:

Place of birth Thailand

→ the child gets both nationalities

Place of birth Germany

→ the child gets both nationalities if its mother (still) holds the Thai nationality

If the child is born in Germany after his mother gave up her Thai nationality, the child can only acquire the German nationality.

Multiple nationalities can be passed on to this child if it is born in the United States of America and its mother is still a Thai citizen. The child acquires the American nationality as a result of *ius soli*, the Thai and the German nationality as a result of *ius sanguinis*.

Although German law does not accept dual nationality in most cases, this child does not have to decide whether to keep the nationality either of his father or his mother: The child acquires two nationalities, it becomes a dual national.

## Appendix:

### Citizenship Act (Staatsangehörigkeitsgesetz, (StAG)

In the version published on 22 July 1913 (Reich Law Gazette I p. 583 - Federal Law Gazette III 102-1), as last amended by the Act of 23 July 1999 (Federal Law Gazette I pp. 1618 ff.)

#### **Chapter I General Provisions:**

##### **Section 1**

A German is any person possessing citizenship in a federal state (Bundesstaat) (sections 3 to 32) or direct citizenship of the Reich (sections 33 to 35).

(...)

#### **Chapter II Citizenship in a federal state**

##### **Section 3**

Citizenship in a federal state shall be acquired

1. by birth (section 4);
2. by a declaration pursuant to section 5;
3. by adoption (section 6);
4. by the issue of a certificate pursuant to section 15 subsection 1 or 2 of the Federal Expellees Act (section 7);
- 4a. by transfer as a German without German citizenship within the meaning of Article 116 paragraph 1 of the Basic Law (section 40a);
5. for a foreigner by naturalisation (sections 8 to 16 and 40b).

##### **Section 4**

(1) A child shall acquire German citizenship by birth where one parent possesses German nationality. Where at the time of the birth only the father is a German national, and where for proof of descent under German law recognition or determination of paternity is necessary, the claim for acquisition shall require a determination of paternity which is valid under German law; the declaration of recognition must be made or the procedure for determination com-

menced before the child has attained its 23<sup>rd</sup> birthday.

(2).....

3) A child of foreign parents shall acquire German citizenship by birth in the domestic territory if one parent has legally been normally resident in the domestic territory for eight years and possesses a right of residence or has possessed for three years a residence permit for an unlimited period. The acquisition of German citizenship shall be recorded by the registrar responsible for certifying the birth of the child. The Federal Ministry of the Interior shall be empowered, with the consent of the Bundesrat, to issue on the basis of a statutory order regulations for the procedure for the registration of the acquisition of citizenship in conformity with the first sentence of this subsection.

(4) German citizenship shall not be acquired in keeping with subsection 1 in the case of a birth abroad where the German parent was born abroad after 31 December 1999 and is normally resident there unless the child would otherwise become stateless. The legal consequence contemplated by the preceding sentence shall not ensue where the German parent reports the birth to the competent diplomatic representation within one year. Where both parents are German nationals, the legal consequence contemplated by the first sentence of this subsection shall only ensue where they both fulfil the conditions there stipulated.

(...)

##### **Section 29**

(1) A German who after 31 December 1999 has acquired citizenship pursuant to section 4 subsection 3 or through naturalisation pursuant to section 40b and possesses a foreign citizenship shall be required to state after attaining the age of majority and after being advised in keeping with subsection 5 whether he wishes to retain the German or the foreign citizenship. The statement shall be made in writing.

(2) Where the person incurring the obligation contemplated by subsection 1 states that he wishes to keep the foreign citizenship, German citizenship shall be lost upon the statement being received by the competent authority. It shall also be lost where no statement has been made by the 23<sup>rd</sup> birthday.

(3) Where the person incurring the obligation contemplated by subsection 1 states that he wishes to keep German citizenship, he shall be obliged to furnish proof that he has given up or lost the foreign citizenship. Where such proof is not furnished by his 23<sup>rd</sup> birthday, German nationality shall be lost unless the German has already received upon application the written approval of the competent authority to retain German citizenship (retention approval). The application for the granting of retention approval, including as a precautionary measure, may only be made up to the 21<sup>st</sup> birthday (exclusion limit). The loss of German nationality shall only take effect when the application becomes the subject of a final rejection. The possibility of provisional legal redress under section 123 of the Rules of the Administrative Courts shall remain unaffected.

(4) The retention approval pursuant to subsection 3 shall be granted where giving up or losing the foreign citizenship is not possible or cannot reasonably be expected or where multiple nationality would have to be or could be accepted or in the case of naturalisation in accordance with section 87 of the Aliens Act.

(5) The competent authority shall advise the person who is subject to the requirement contemplated by subsection 1 of his obligations and of the possible legal consequences as set out in subsections 2 to 4. The advice shall be formally served. Such service shall be made immediately after the 18<sup>th</sup> birthday of the person who is subject to the requirement of section 1. The provisions of the Act to regulate service in administrative proceedings shall be applied

(6) The continuation or loss of German nationality under this provision shall be determined ex officio. The Federal Ministry of the Interior may, by statutory order and with the consent of the Bundesrat, issue provisions regulating the procedure to determine the continuation or loss of German nationality.

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