

Dual Citizenship: A Legal Paradox

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I. INTRODUCTION

Dual citizenship, as a condition or status of having dual allegiance to two different countries at the same time, is universally recognized as undesirable. Dual allegiance, in the long run, would be detrimental to both countries of which a person may legally claim to be a citizen in terms of questionable loyalties and abuse of citizenship for convenience devoid of the fealty or loyal commitment inherent in allegiance and citizenship. A person so situated, by accident of birth, must choose only one nationality and devote his single and undivided allegiance and loyalty to the country of his choice.¹

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1. *Tan Chong v. Secretary of Labor*, 79 Phil. 257 (1947), cited in *Aznar v. Commission on Elections*, 185 SCRA 703, 714 (1990) (Padilla, J., dissenting) (wherein the majority opinion acknowledged that "even before the 1987

The above mentioned policy against dual allegiance adopted under the present Constitution provides that "[d]ual allegiance of citizens is inimical to national interest and shall be dealt with by law."²

In *Mercado v. Manzano*,³ the Supreme Court distinguished dual citizenship from dual allegiance, and interpreted "dual citizenship" — as a disqualification from running for any local elective position under the Local Government Code and the Charter of the City of Makati — to really mean "dual allegiance." Hence, dual citizenship is not a ground for disqualification to be a candidate as long as the foreign citizenship is renounced at the time of the filing of the certificate of candidacy. In its unanimous decision, the High Court made the distinction between dual citizenship from dual allegiance: "[d]ual allegiance refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is involuntary, dual allegiance is the result of an individual's volition."⁴

Republic Act No. 9225 — otherwise known as the Citizenship Retention and Reacquisition Act — was enacted into law, allowing reacquisition of Filipino citizenship by all natural-born Filipino citizens who have lost Filipino citizenship through naturalization as citizens of another country by the simple expedience of taking an oath of allegiance to the Republic of the Philippines.⁵ Derivative dual Filipino citizenship of those who are deemed not to have lost or have re-acquired Filipino citizenship under the law is extended to the unmarried child, below 18 years of age — whether legitimate, illegitimate, or adopted.⁶

Constitution, our country had already frowned upon the concept of dual citizenship or allegiance.").

2. PHIL. CONST., art IV, § 5.

3. *Mercado v. Manzano*, 307 SCRA 630 (1999).

4. *Mercado*, 307 SCRA at 640-41.

5. An Act Making the Citizenship of Philippine Citizens who Acquire Foreign Citizenship Permanent, Amending for the Purpose Commonwealth Act No. 63 As Amended, and for Other Purposes, Republic Act No. 9225 (2003). The oath of allegiance in section 3 provides:

I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I imposed this obligation upon myself voluntarily without mental reservation or purpose of evasion.

6. *Id.* § 4.

The main distinction that "while dual citizenship is involuntary, dual allegiance is the result of an individual discretion"⁷ appears to have been washed away by the enactment of the Citizenship Retention and Reacquisition Act — providing for dual Filipino citizenship to natural-born Filipinos who have been naturalized in a foreign country — even without the Act expressly doing away with such distinction in the text of the law. The recognition of dual citizenship is implicit in section 5, allowing those who retain or reacquire Filipino citizenship to run for public office, provided that they personally renounce their foreign citizenship at the time of the filing of the Certificate of Candidacy, as well as allowing them to be appointed to public office in the Philippines, provided they renounce their oath of allegiance to the foreign country. By necessary implication, dual citizenship would be maintained by not seeking elective or appointive public office in the Philippines.

This article will examine the legal paradox of dual citizenship, more specifically its legal status under Philippine Law and the issues that may be spawned by its application in Private International Law under the generally accepted Nationality Principle.

II. HIGH CONSTITUTIONAL QUESTION

The Limited Recognition of Dual Citizenship in Philippine Setting

Prior to the enactment of the Citizenship Retention and Reacquisition Act, the recognition of dual citizenship, as a status of simultaneously being a citizen of two countries, was limited only to a situation where, by accident of birth, a person is recognized as a citizen of both countries, *without performing an act*. As explained by the Supreme Court in *Mercado*:

For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of *jus sanguinis* is born in a state which follows the doctrine of *jus soli*. Such a person, *ipso facto* and without any voluntary act on his part, is concurrently considered a citizen of both states. Considering the citizenship clause (Art. IV) of our Constitution, it is possible for the following classes of citizens of the Philippines to possess dual citizenship:

1. Those born of Filipino fathers and/or mothers in foreign countries which follow the principle of *jus soli*;
2. Those born in the Philippines of Filipino mothers and alien fathers if by the laws of their fathers' country such children are citizens of that country

7. *Mercado*, 307 SCRA at 641.

3. Those who marry aliens if by the laws of the latter's country the former are considered citizens, unless by their act or omission they are deemed to have renounced Philippine citizenship.

There may be other situations in which a citizen of the Philippines may, without performing any act, be also a citizen of another state; but the above cases are clearly possible given the constitutional provisions on citizenship.⁸

It is within the above limited context that the Supreme Court recognized the validity of dual citizenship and distinguished it from dual allegiance, which is constitutionally declared as inimical to the public interest.

The question may be asked: "May Congress legislate on dual citizenship by granting Filipino citizenship to those natural-born Filipinos who have become naturalized as citizens of a foreign country without running afoul of the constitutional policy against dual allegiance?"

Naturalization, which involves taking an oath of allegiance to a foreign country, is a ground for losing Philippine citizenship. Naturalization is the only ground permitted for re-acquisition of Philippine citizenship under the Citizenship Retention and Reacquisition Act and is indispensably interconnected with the dual allegiance condemned by the Constitution as inimical to the national interest.

Naturalization in a foreign country and renunciation of Filipino citizenship are recognized modes of losing Filipino citizenship under sections 1 and 2 of Commonwealth Act No. 63.⁹ The Supreme Court earlier held in

8. *Mercado*, 307 SCRA at 640-41.

9. An Act Providing for the Ways in which Philippine Citizenship may be Lost or Reacquired, Commonwealth Act No. 63, §§1-2 (1936):

Sec. 1. *How citizenship may be lost.* — A Filipino citizen may lose his citizenship in any of the following ways and/or events:

1. By naturalization in a foreign country;
2. By express renunciation of citizenship;
3. By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more: Provided, however, That a Filipino may not divest himself of Philippine citizenship in any manner while the Republic of the Philippines is at war with any country;
4. By rendering services to, or accepting commission in, the armed forces of a foreign country: Provided, That the rendering of service to, or the acceptance of such commission in, the armed forces of a foreign country, and the taking of an oath of allegiance incident thereto, with the consent of the Republic of the Philippines, shall not divest a Filipino of his Philippine citizenship if either of the following circumstances is present:

- (a) The Republic of the Philippines has a defensive and/or offensive pact of alliance with the said foreign country; or
- (b) The said foreign country maintains armed forces on Philippine territory with the consent of the Republic of the Philippines: Provided, That the Filipino citizen concerned, at the time of rendering said service, or acceptance of said commission, and taking the oath of allegiance incident thereto, states that he does so only in connection with his service to said foreign country: And provided, finally, That any Filipino citizen who is rendering service to, or is commissioned in, the armed forces of a foreign country under any of the circumstances mentioned in paragraph (a) or (b), shall not be permitted to participate nor vote in any election of the Republic of the Philippines during the period of his service to, or commission in, the armed forces of said foreign country. Upon his discharge from the service of the said foreign country, he shall be automatically entitled to the full enjoyment of his civil and political rights as a Filipino citizen;

5. By cancellation of the of the certificates of naturalization;
6. By having been declared by competent authority, a deserter of the Philippine armed forces in time of war, unless subsequently, a plenary pardon or amnesty has been granted; and
7. In the case of a woman, upon her marriage to a foreigner if, by virtue of the laws in force in her husband's country, she acquires his nationality.

The provisions of this section notwithstanding, the acquisition of citizenship by a natural born Filipino citizen from one of the Iberian and any friendly democratic Ibero-American countries or from the United Kingdom shall not produce loss or forfeiture of his Philippine citizenship if the law of that country grants the same privilege to its citizens and such had been agreed upon by treaty between the Philippines and the foreign country from which citizenship is acquired.

Sec. 2. *How citizenship may be reacquired.* — Citizenship may be reacquired:

1. By naturalization: Provided, That the applicant possess none of the disqualifications prescribed in section two of Act Numbered Twenty-nine hundred and twenty-seven,
2. By repatriation of deserters of the Army, Navy or Air Corp: Provided, That a woman who lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of this Act after the termination of the marital status; and
3. By direct act of the National Assembly.

the case of *Frivaldo v. Commission on Elections*¹⁰ that there was a loss of citizenship by naturalization and renunciation when the petitioner took an oath as a naturalized citizen of the United States, wherein he renounced all allegiance to other countries.¹¹

When a former natural-born Filipino citizen, who has been naturalized as a citizen of a foreign country, takes his oath of allegiance under the Citizenship Retention and Reacquisition Act to retain or re-acquire his Filipino citizenship without renouncing his foreign citizenship, we have a situation of dual allegiance arising from dual citizenship in derogation of the policy under section 5, article I of the Constitution against dual allegiance. This is because it is inimical to public interest.

When a former natural-born Filipino citizen who has become naturalized as an American takes his oath of allegiance to the Republic of the Philippines to retain or regain his Filipino citizenship, he loses American citizenship. As noted by the Supreme Court in *Mercado*, citing the second *Frivaldo* case, "[b]y the laws of the United States, petitioner Frivaldo lost his American citizenship when he took his allegiance to the Philippine Government."¹² In this case, dual citizenship under the Citizenship Retention and Reacquisition Act is only illusory.

By being declared as in contravention of the Constitutional policy against dual allegiance, the Citizenship Retention and Reacquisition Act would be reduced to a simple mode of reacquisition of Philippine citizenship by former natural-born Filipino citizens who had been naturalized abroad under its separability clause, keeping valid and effective provisions thereof not affected by any provision of the Act which is held unconstitutional or invalid.¹³

It appears that the category of dual citizenship is confined only to a situation where a person, *by accident of birth*, without having to take any action, is recognized as a citizen of both countries until he ultimately makes the choice of becoming a citizen solely of either country.

10. *Frivaldo v. Commission on Elections*, 174 SCRA 245 (1989).

11. *Id.* at 252. *See also*, *Labo v. Commission on Elections*, 176 SCRA 1 (1989).

12. *Mercado v. Manzano*, 307 SCRA 630, 648 (1999) (citing *Frivaldo v. Commission on Elections*, 257 SCRA 727, 759 (1996)).

13. An Act Making the Citizenship of Philippine Citizens who Acquire Foreign Citizenship Permanent, Amending for the Purpose Commonwealth Act No. 63 As Amended, and for Other Purposes [Citizenship Retention and Reacquisition Act of 2003], Republic Act No. 9225 § 6 (2003).

III. DUAL CITIZENSHIP AND THE APPLICATION OF THE NATIONALITY PRINCIPLE IN PRIVATE INTERNATIONAL LAW (CONFLICTS OF LAW)

A question has been raised in relation to dual citizenship as to which law will apply in case of conflict between Philippine law and the law of the state which the Filipino is considered a dual citizen of.

The solution is found in the pronouncement of our Highest Court that "Philippine courts are only allowed to determine who are Filipino citizens and who are not. Whether or not a person is considered an American under the laws of the United State does not concern us here."¹⁴ As echoed by eminent constitutionalist, Joaquin G. Bernas, S.J., in the course of drafting the 1987 Constitution, "[d]ual citizenship is just a reality imposed on us because we have no control of the laws on citizenship of other countries. We recognize a child of a Filipino mother. But whether or not she is considered a citizen of another country is something completely beyond our control."¹⁵

Consequently, under the nationality principle, Philippine courts will apply Philippine law in case of conflict with the law of the foreign country which recognizes a Philippine national as also being its own citizen. Philippine laws apply to Filipino citizens, even if abroad, on family rights and duties, status, condition, and legal capacity.¹⁶ Philippine courts will not apply the law of the foreign country which dually recognizes the Filipino as also its own citizen because Philippine courts are not concerned with his dual citizenship abroad.

IV. CONCLUSION

Dual citizenship, as a political and civil status of being simultaneously a citizen of two countries, is a legal paradox because one cannot have allegiance to two countries at the same time. Single devotion, undivided loyalty, and total commitment are the inherent hallmarks of citizenship and allegiance.

Dual citizenship involving dual allegiance both to the Philippines and to a foreign country runs against the grain of the constitutional policy declaring dual allegiance as inimical to public interest which must be dealt with by Congress accordingly. Whether or not Congress has the authority to enact the Citizenship Retention and Reacquisition Act indispensably involving

dual allegiance is subject to serious constitutional challenge. Naturalization necessarily involves oath of allegiance to the foreign country. Retention or reacquisition of Filipino citizenship under the said law also requires taking an oath of allegiance to the Republic of the Philippines. Where such allegiance does not result in the renunciation of foreign citizenship under the law of the foreign country, there arises dual allegiance which the Constitution declares to be inimical to the public interest and must be dealt with accordingly by Congress. It is a declaration of policy in the Constitution, on which no discretion is granted to Congress as to whether the policy should be enforced or not. It is a mandatory policy specifically laid down as definitely inimical to public interest to be dealt with accordingly by Congress, to implement only and not to bargain away.

If the Citizenship Retention and Reacquisition Act is declared a valid law on dual citizenship, Philippine courts would apply Philippine law under the nationality principle in private international law in case of conflict with the law of the foreign country where the Filipino citizen is dually recognized as also its own citizen. Philippine courts are concerned only with who are Filipino citizens and who are not and consequently will apply only Philippine laws to Filipino citizens under the nationality principle in private international law.

To ultimately solve the paradox of dual citizenship, it must be recognized only where no dual allegiance is involved before the dual citizen makes a choice by taking an oath of allegiance to the country of his choice in renunciation of dual citizenship in the other country. Dual citizenship under the present law based on dual allegiance to the foreign country required as a final step in naturalization as a citizen of that country, in tandem with the allegiance to the Republic of the Philippines as a mode of retention or reacquisition of dual Philippine citizenship, must be declared unconstitutional.

14. *Aznar v. Commission on Elections*, 185 SCRA 703, 709-10 (1990).

15. 1 RECORD OF 1987 CONSTITUTIONAL COMMISSION 203 (1986).

16. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 art. 15 (1950) ("Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.").