NOTTEBOHM CASE (SECOND PHASE)

Judgment of 6 April 1955

The Nottebohm case had been brought to the Court by an Application by the Principality of Liechtenstein against the Republic of Guatemala.

Liechtenstein claimed restitution and compensation on the ground that the Government of Guatemala had acted towards Mr. Friedrich Nottebohm, a citizen of Liechtenstein, in a manner contrary to international law. Guatemala, for its part, contended that the claim was inadmissible on a number of grounds, one of which related to the nationality of Nottebohm, for whose protection Liechtenstein had seised the Court.

In its Judgment the Court accepted this latter plea in bar and in consequence held Liechtenstein's claim to be inadmissible.

The Judgment was given by eleven votes to three. Judges Klaestad and Read, and M. Guggenheim, Judge *ad hoc*, appended to the Judgment statements of their dissenting opinions.

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In its Judgment the Court affirmed the fundamental importance of the plea in bar referred to above. In putting forward

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this plea, Guatemala referred to the well-established principle that it is the bond of nationality between the State and the individual which alone confers upon the State the right of diplomatic protection. Liechtenstein considered itself to be acting in conformity with this principle and contended that Nottebohm was, in fact, its national by virtue of the naturalization conferred upon him.

The Court then considered the facts. Nottebohm, born at Hamburg, was still a German national when, in October 1939, he applied for naturalization in Liechtenstein. In 1905 he went to Guatemala, which he made the centre of his business activities, which increased and prospered. He sometimes went to Germany on business and to other countries for holidays, and also paid a few visits to Liechtenstein, where one of his brothers had lived since 1931; but he continued to have his fixed abode in Guatemala until 1943, that is to say, until the events which constituted the basis of the present dispute. In 1939 he left Guatemala at approximately the end of March; he seems to have gone to Hamburg and to have paid a few brief visits to Liechtenstein, where he was at the beginning of October 1939. It was then, on 9th October, 1939, a little more than a month after the opening of the Second World War, marked by Germany's attack on Poland, that he applied for naturalization in Liechtenstein.

The necessary conditions for the naturalization of foreigners in Liechtenstein are laid down by the Liechtenstein Law of 4th January, 1934. This Law requires among other things: that the applicant for naturalization must prove that acceptance into the Home Corporation (*Heimat verband*) of a Liechtenstein commune has been promised to him in case of acquisition of the nationality of the State; that, subject to waiver of this requirement under stated conditions, he must prove that he will lose his former nationality as the result of naturalization; that he has been resident in the Principality for at least three years, although this requirement can be dispensed with in circumstances deserving special consideration and by way of exception; that he has concluded an agreement concerning liability to taxation with the competent authorities and has paid a naturalization fee. The Law reveals concern that naturalization should only be granted with full knowledge of all the pertinent facts and adds that the grant of nationality is barred where circumstances are such as to cause apprehension that prejudice may enure to the State of Liechtenstein. As regards the procedure to be followed, the Government examines the application, obtains information concerning the applicant, submits the application to the Diet, and, if this application is approved, submits a request to the Reigning Prince who alone is entitled to confer nationality.

In his application for naturalization Nottebohm also applied for the previous conferment of citizenship of Mauren, a commune of Liechtenstein. He sought dispensation from the condition of three years' prior residence, without indicating the special circumstances warranting such a waiver. He undertook to pay (in Swiss francs) 25,000 francs to the Commune and 12,500 francs to the State, the costs of the proceedings, and an annual naturalization tax of 1,000 francs—subject to the proviso that the payment of these taxes was to be set off against ordinary taxes which would fall due if the applicant took up residence in Liechtenstein—and to deposit as security the sum of 30,000 Swiss francs. A Document dated 15th October, 1939 certifies that on that date the citizenship of Mauren had been conferred upon him. A Certificate of 17th October, 1939 evidences the payment of the taxes required to be paid. On 20th October Nottebohm took the oath of allegiance and on 23rd October an arrangement concerning liability to taxation was concluded. A Certificate of Nationality was also produced to the effect that Nottebohm had been naturalized by a Supreme Resolution of the Prince of 13th October, 1939. Nottebohm then obtained a Liechtenstein passport and had it visa-ed by the Consul General of Guatemala in Zurich on 1st December, 1939, and returned to Guatemala at the beginning of 1940, where he resumed his former business activities.

These being the facts, the Court considered whether the naturalization thus granted could be validly invoked against Guatemala, whether it bestowed upon Liechtenstein a sufficient title to exercise protection in respect of Nottebohm as against Guatemala and therefore entitled it to seise the Court of a claim relating to him. The Court did not propose to go beyond the limited scope of this question.

In order to establish that the Application must be held admissible, Liechtenstein argued that Guatemala had formerly recognized the naturalization which it now challenged. Examining Guatemala's attitude towards Nottebohm since his naturalization, the Court considered that Guatemala had not recognized Liechtenstein's title to exercise protection in respect to Nottebohm. It then considered whether the granting of nationality by Liechtenstein directly entailed an obligation on the part of Guatemala to recognize its effect; in other words, whether that unilateral act by Liechtenstein was one which could be relied upon against Guatemala in regard to the exercise of protection. The Court dealt with this question without considering that of the validity of Nottebohm's naturalization according to the Law of Liechtenstein.

Nationality is within the domestic jurisdiction of the State, which settles, by its own legislation, the rules relating to the acquisition of its nationality. But the issue which the Court must decide is not one which pertains to the legal system of Liechtenstein; to exercise protection is to place oneself on the plane of international law. International practice provides many examples of acts performed by States in the exercise of their domestic jurisdiction which do not necessarily or automatically have international effect. When two States have conferred their nationality upon the same individual and this situation is no longer confined within the limits of the domestic jurisdiction of one of these States but extends to the international field, international arbitrators or the Courts of third States which are called upon to deal with this situation would allow the contradiction to subsist if they confined themselves to the view that nationality is exclusively within the domestic jurisdiction of the State. In order to resolve the conflict they have, on the contrary, sought to ascertain whether nationality has been conferred in circumstances such as to give rise to an obligation on the part of the respondent State to recognize the effect of that nationality. In order to decide this question, they have evolved certain criteria. They have given their preference to the real and effective nationality, that which accorded with the facts, that based on stronger factual ties between the person concerned and one of these States whose nationality is involved. Different factors are taken into consideration, and their importance will vary from one case to the next: there is the habitual residence of the individual concerned but also the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc.

The same tendency prevails among writers. Moreover, the practice of certain States, which refrain from exercising protection in favour of a naturalized person when the latter has in fact severed his links with what is no longer for him anything but his nominal country, manifests the view that, in order to be invoked against another State, nationality must correspond with a factual situation.

The character thus recognized on the international level as pertaining to nationality is in no way inconsistent with the fact that international law leaves it to each State to lay down the rules governing the grant of its own nationality. This is so failing any general agreement on the rules relating to nationality. It has been considered that the best way of making such rules accord with the varying demographic conditions in different countries is to leave the fixing of such rules to the competence of each State. But, on the other hand, a State cannot claim that the rules it has laid down are entitled to recognition by another State unless it has acted in conformity with this general aim of making the nationality granted accord with an effective link between the State and the individual.

According to the practice of States, nationality constitutes the juridical expression of the fact that an individual is more closely connected with the population of a particular State. Conferred by a State, it only entitles that State to exercise protection if it constitutes a translation into juridical terms of the individual's connection with that State. Is this the case as regards Mr. Nottebohm? At the time of his naturalization, does Nottebohm appear to have been more closely attached by his tradition, his establishment, his interests, his activities, his family ties, his intentions for the near future, to Liechtenstein than to any other State?

In this connection the Court stated the essential facts of the case and pointed out that Nottebohm always retained his family and business connections with Germany and that there is nothing to indicate that his application for naturalization in Liechtenstein was motivated by any desire to dissociate himself from the Government of his country. On the other hand, he had been settled for 34 years in Guatemala, which was the centre of his interests and his business activities. He stayed there until his removal as a result of war measures in 1943, and complains of Guatemala's refusal to readmit him. Members of Nottebohm's family had, moreover, asserted his desire to spend his old age in Guatemala. In contrast, his actual connections with Liechtenstein were extremely tenuous. If Nottebohm went to that country in 1946, this was because of the refusal of Guatemala to admit him. There is thus the absence of any bond of attachment with Liechtenstein, but there is a long-standing and close connection between him and Guatemala, a link which his naturalization in no way weakened. That naturalization was not based on any real prior connection with Liechtenstein, nor did it in any way alter the manner of life of the person upon whom it was conferred in exceptional circumstances of speed and accommodation. In both respects, it was lacking in the genuineness requisite to an act of such importance, if it is to be entitled to be respected by a State in the position of Guatemala. It was granted without regard to the concept of nationality adopted in international relations. Naturalization was asked for not so much for the purpose of obtaining a legal recognition of Nottebohm's membership in fact in the population of Liechtenstein, as it was to enable him to substitute for his status as a national of a belligerent State that of the subject of a neutral State, with the sole aim of thus coming within the protection of Liechtenstein but not of becoming wedded to its traditions, its interests, its way of life or of assuming the obligations—other than fiscal obligations—and exercising the rights pertaining to the status thus acquired.

For these reasons the Court held the claim of Liechtenstein to be inadmissible.
