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**Laws of the Far Eastern Countries
Concerning Citizens who Apply for Foreign Citizenship
and Return to Their Country**

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Nationalist China
(Republic of China)

The legislature of the Republic of China includes representatives of overseas Chinese in its highest legislative bodies. The Nationalist Chinese Government, during the post-World War II general election organized electoral districts among the overseas Chinese in foreign countries and allotted them 65 seats in the National Assembly, 19 in the Legislative Yuan and 8 in the Control Yuan.^{1/} A large percentage of these overseas Chinese whom they represented at the Chinese legislature are dual nationals. Judging from the legal materials of Nationalist Chinese origin currently available in the Library, we find that Nationalist China does not have a specific enactment punishing a Chinese citizen for his act of applying for or acquiring a foreign nationality upon his return to the Republic of China.

According to the Chinese Nationality Law^{2/} a Chinese citizen does not automatically lose his Chinese citizenship upon the acquisition of a foreign nationality.

Article 11 of the above law provides that a person who has voluntarily acquired a foreign nationality may give up the nationality of the Republic of China only when such permission

^{1/} China Handbook 1950, (NewYork, 1950), p. 24.

^{2/} Promulgated and became effective on Feb. 5, 1929.

is granted by the Ministry of the Interior. Article 12 states, however, that the said Ministry shall not grant such permission to a Chinese citizen if, (1) he is within the age limit of military service and has not fulfilled his military service obligations, (2) he is in the military service or (3) he is in the government service, either as a civilian or a military officer.

Articles 15 and 16 of the same law provide that a person, with the approval of the Ministry of Interior, may have his Chinese nationality restored. Article 18 stipulates that such persons, after regaining their Chinese nationality, are not allowed to serve at certain government posts (enumerated in Article 9) within three years subsequent to their nationality restoration.

It is reported that in the past the Nationalist Chinese government "has held that the Chinese abroad should remain Chinese, and that they should learn their mother tongue as their first language."^{3/} However, a shift in Taipei's policy toward overseas Chinese stems from 1957. In that year the government of South Vietnam proclaimed that all Vietnamese-born aliens who failed to adopt Vietnamese nationality would be considered illegal residents. As a result the overseas Chinese who are loyal to the Taipei cause found themselves in a dilemma.

^{3/} The Chinese World (San Francisco), January 5, 1963.

The Nationalist Chinese government protested vigorously at first but has gradually changed its policy to that of "free choice" in the nationality problem of the overseas Chinese.^{4/}

On January 2, 1963, Dr. Tingfu F. Tsiang, Nationalist Chinese ambassador to the United States, said to an American correspondent that "the problem of the overseas Chinese can best be solved if they adopt the citizenship of the countries where they live." In explaining his view on the overseas-Chinese problem it was reported that he said that these Chinese have "suffered a great deal" from the movement to bar them from businesses and that "such prejudice will gradually disappear as they become citizens and take an interest in the nation in which they live."^{5/}

The Taipei government seems to take a more passive attitude toward the citizenship question. Mr. Kao Hsin, chairman of the Overseas Chinese Affairs Commission of the Nationalist Chinese government, about one month after Dr. Tsiang's remark, in clarifying Taipei's policy on the overseas-Chinese citizenship problem, stated that "the government has never encouraged the overseas Chinese to become the nationals of foreign countries. However, if the overseas Chinese, in order

^{4/} Ibid.

^{5/} Ibid.

to adapt themselves to the circumstances, voluntarily acquire the nationality of the countries they reside in, the government will let them have their free choice, and has never interfered with their option."^{6/}

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^{6/} The Chinese Journal (New York), March 2, 1963.

Communist China
(People's Republic of China)

Communist China has not yet enacted a nationality law. According to the last national census of the Peking government, there are nearly twelve million "overseas Chinese." These are obviously considered by the government in Mainland China to be nationals of the People's Republic of China. A large percentage of them, especially those in Southeast Asia, hold dual nationality. This indicates that Communist China probably does not have any special law to penalize a Chinese national for his having applied for or acquired a foreign nationality.

The Sino-Indonesian Treaty on Dual Nationality^{1/} is the first major bilateral agreement that Communist China has made to settle the dual-nationality problem with a nation having a large Chinese population. Under the Treaty, a person with dual nationality, after having chosen the nationality of one country, may regain the nationality he relinquished if he takes up permanent residence outside of the territory of the country he opts for, without the consent of the appropriate authorities of the country he so renounces. In such a case he will automatically lose the nationality of the country he previously chose upon regaining the nationality of the other country.^{2/}

^{1/} Came into force in January 1960.

^{2/} Article 7 of the Sino-Indonesian Treaty on Dual Nationality.

However, it should be noted that it is very likely that a citizen of Communist China, after having applied for or acquired the nationality of a foreign country, would be imprisoned or sent to a labor camp upon his return to China if such an act, in the view of the Chinese Communist party and government authorities, is detrimental to the interest of Communist China. Communist China has adopted the principle of crime by analogy in its criminal enactments. Therefore, a Chinese citizen may be punished for his act of applying for or acquiring a foreign nationality even if such offense is not specifically declared punishable in the statute. For instance, Article 16 of the Regulations for the Suppression of Counterrevolutionaries^{3/} provides that ". . . All other crimes committed with counterrevolutionary intent but not specified in the law should be punished according to analogous specified crimes."

Article 11 of the above-mentioned Regulations indicates that Communist China may severely punish a person for his act of leaving the national boundaries without the government's permission. It provides that "persons who have secretly crossed the national borders for counterrevolutionary purposes shall be punished by a prison term of five years or more, life imprisonment, or death."

It is interesting to note that Communist China often grants asylum right to foreign nationals for ideological reasons.

^{3/} Enacted in 1951.

Article 99 of the Constitution of Communist China^{4/} states:

Art. 99. The People's Republic of China grants the rights of asylum to any foreign national persecuted for supporting a just cause, for taking part in the peace movement or for engaging in scientific activity.

Some American turncoats of the Korean War have recently returned to the United States after staying in Communist China for a number of years; and some still are living there. Obviously, these defectors were allowed to stay in Communist China under the above-cited provision of the Communist Chinese Constitution.

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^{4/} Promulgated in 1954.

Japan

Freedom to choose one's own nationality is expressly set forth in Article 22, paragraph 2, of the Constitution of Japan:^{1/}

Art. 22.

Par. 2. Freedom of all persons to move to a foreign country and to divest themselves of their nationality shall be inviolate.

Under the provisions of the Nationality Law,^{2/} any Japanese national who has acquired a foreign nationality at his own will automatically loses his Japanese nationality. Reference is made to Article 8 of the above Law which provides:

Art. 8. A Japanese national shall lose his or her Japanese nationality when he or she acquires a foreign nationality at his or her own will.

A Japanese national having dual nationality, however, may renounce his Japanese nationality by notifying the Minister of Justice. Article 10 of the same Law states:

(1) A Japanese national having a foreign nationality may renounce his or her Japanese nationality.

(2) The renunciation of nationality shall be made by notifying the Minister of Justice.

(3) One who has renounced his or her nationality shall lose Japanese nationality.

A Japanese national who has lost his Japanese nationality by virtue of Articles 8 and 10 mentioned above may apply to the Minister of Justice to restore his Japanese nationality in accordance with Article 3 of the same Law:

^{1/} Promulgated on Nov. 3, 1946, and came into force on May 3, 1947.

^{2/} Law No. 147, May 4, 1950.

Art. 3. Any person who is not a Japanese national (hereinafter referred to as an "alien") may acquire Japanese nationality by naturalization.^{3/}

(2) The permission of the Minister of Justice shall be obtained for naturalization.

The Minister of Justice shall not permit the said naturalization unless the conditions enumerated in Article 4 of the same Law are fulfilled:

Art. 4. The Minister of Justice shall not permit the naturalization of an alien unless he or she fulfills all of the following conditions:

(1) That one has had a domicile in Japan for five or more years consecutively;

(2) That one is twenty years of age or more and a person of full capacity according to the law of his or her native country;

(3) That one is a man or woman of upright conduct;

(4) That one has property or ability enough to lead independent living;

(5) That one has no nationality, or one's acquisition of Japanese nationality shall cause the loss of one's nationality;

(6) That one is a person who, since the enforcement of the Constitution of Japan has never plotted or advocated, or formed or belonged to a political party or other organization which has plotted or advocated the overthrow of the Constitution of Japan or the Government existing thereunder.^{4/}

^{3/} Under the Nationality Law of 1950, the word "restoration of nationality" is included in naturalization. However, they were treated differently under the old Nationality Law (1899). See Kenta Hiraga, Kokusekihô [Nationality Law] (Tokyo: Teikoku Hanrei Hôki Sha, 1950), p. 144.

^{4/} This provision is patterned after Article 305 of the United States Nationality Act of 1940.

Even if not all the requirements enumerated in the above provision are satisfied, permission for naturalization may be granted to an alien under Article 6 of the same Law:

Art. 6. With respect to an alien who falls under any one of the following items, the Minister of Justice may permit the naturalization of an alien even when the said alien does not fulfill the conditions mentioned in items (1), (2) and (4) of Article 4:

- (1) The wife of a Japanese national;
- (2) A child (excluding child by adoption) of a Japanese national who has a domicile in Japan;
- (3) A child by adoption of a Japanese national who has been domiciled in Japan for one or more years consecutively and who was a minor according to the law of its native country at the time of the adoption;
- (4) One who has lost Japanese nationality (excluding one who has lost the Japanese nationality after one's naturalization in Japan) and who has a domicile in Japan.

Thus, a Japanese national who has lost Japanese nationality may restore his original nationality if he is deemed not to have violated the requirements mentioned in Article 4, items (3) and (5) of the above Law. At present there is no specific law which controls the Japanese national applying for citizenship in a Communist country. However, the person who has acquired such citizenship may be denied the restoration of his Japanese nationality

on the ground that he has violated the "upright conduct" requirement as set forth in Article 4, item (3) of the Nationality Law.^{5/}

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^{5/} As to the question of what constitutes upright conduct, no standards have been established. See Hiraga, Kokusekihô, p. 301. In interpreting the phrase "upright conduct" within the meaning of the Law, however, the Minister of Justice exercises much broader discretion than in interpreting other requirements mentioned in items (1), (2), and (4)-(6) of Article 4. See the Memorandum No. 3,367 issued by the Chief of the Civil Affairs Bureau, the Ministry of Justice, Dec. 28, 1950, Minji geppô, VI, No. 1, p. 92.

South Korea

(Republic of Korea)

The status of the Korean national is governed by the Nationality Law of 1948^{1/} and the Enforcement Regulation^{2/} issued thereunder. With regard to the loss of Korean nationality, Articles 12 and 13 of the Law provide:

Art. 12. A national of the Republic of Korea falling under any one of the following items shall lose the nationality of the Republic of Korea:

(1) - (3). [Irrelevant and omitted].

(4) Any person who voluntarily acquires the nationality of a foreign state;

(5) Any person having dual nationality who has lost the nationality of the Republic of Korea with the approval of the Minister of Justice;

(6) [Irrelevant and omitted].

Art. 13. When the wife or minor child of a man who has lost the nationality of the Republic of Korea acquires the latter's nationality, they shall lose the nationality of the Republic of Korea.

With respect to the question of restoring Korean nationality, Article 14 of the same Law states:

Art. 14. The nationality of the Republic of Korea may be restored to any person who has lost that nationality in accordance with the preceding two articles, provided that he has a place of residence in the Republic of Korea.

^{1/} Law No. 16, Dec. 20, 1948.

^{2/} Presidential Decree No. 567, Nov. 18, 1951.

Regarding the application for permission for the restoring of Korean nationality, Article 4 of the Enforcement Regulation of the Nationality Law provides:

Art. 4. If any person desires restoration of the nationality of the Republic of Korea, he shall submit an application to the Minister of Justice and attach thereto the following documents:

- (1) A document certifying the reasons for the loss of nationality;
- (2) A document certifying that he is a resident in the Republic of Korea;
- (3) In the case of restoration of his nationality to his wife or a minor child, an application with a description to this effect and a document certifying their relations.

At the present time, the Anti-Communists Act^{3/} and the National Security Law,^{4/} which outlaw the Communist Party and control the Communist activities, are in force. Under these laws, the Minister of Justice conducts thorough investigations should any person apply for restoring his Korean nationality. Moreover, the question regarding the status of the Korean national applying for citizenship in a Communist country and returning to Korea remains largely academic as far as Korea is concerned.

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^{3/} Law No. 643, July 3, 1961.

^{4/} Law No. 549, June 10, 1960, as amended by Law No. 1151, Sept. 24, 1962. The maximum penalty under these two laws is a death sentence.

Thailand
(Kingdom of Thailand)

In Thai law, there seems to be no specific provision directly concerned with the problem of a Thai national who has applied for foreign citizenship and then wishes to return to Thailand. However, there are provisions concerning the loss and the reacquisition of nationality.

I. Loss of Thai Nationality:

According to the Nationality Act B. E. 2495 (1952):

Section 13. A Thai woman loses her Thai nationality by marriage with an alien if by the law of her husband's country she is permitted to take her husband's nationality and the woman herself has made specific declaration to the Marriage Registrar to forgo her Thai nationality.

Section 14. A person born in the Kingdom of an alien father is entitled to forgo his Thai nationality in order to take up his father's nationality if by the law of his father's country he is permitted to do so. For this purpose the person forgoing Thai nationality shall make application to the Thai diplomatic or consular officer in a foreign country or to the competent official in Thailand within one year from the date of his completing twenty years of age.

If the Minister is satisfied with the evidence produced by the applicant under the foregoing paragraph he shall grant the application to forgo Thai nationality and the same shall become effective upon publication in the Government Gazette.

Section 15. A Thai subject who has any other nationality at the same time may make application to the Minister to forgo Thai nationality under the rules and procedure prescribed by Ministerial Regulations.

It is within the discretion of the Minister to grant or refuse such an application.

The forgoing of Thai nationality shall take effect upon its publication in the Government Gazette.

The said forgoing of Thai nationality is personal to the applicant only.

Section 16. When any person having Thai nationality for the reason of being born within the Kingdom but having an alien father has taken up residence in his father's country for an uninterrupted period of over ten years from the date of his becoming sui juris or is proved to retain his father's nationality or has done anything which is detrimental to the safety, interests or right of Thailand or the welfare or prosperity of the public the Court may, upon the application of the Public Prosecutor, make an order denaturalising such a person. The said order shall be published in the Government Gazette.

Section 17. A Thai subject who has taken up any other nationality by naturalisation loses his Thai nationality.^{1/}

II. Reacquisition of Thai nationality:

According to the Nationality Act, B. E. 2495:

Section 20. Any person having lost his Thai nationality by whatever reason who wishes to reacquire it shall make application to the Minister in accordance with the rules and procedure prescribed in Ministerial Regulations.

It is within the discretion of the Minister to grant or refuse such an application except the following cases:

- (1) The applicant is a Thai woman who lost her Thai nationality by reason of marriage with an alien which marriage has terminated by whatever reason.

^{1/} Nationality Act B. E. 2495, Royal Thai Government Gazette, No. 160 (March 5, 1952), p. 49.

(2) The applicant is a Thai subject who lost his Thai nationality by reason of his taking up any other nationality after either of his parents while he was not sui juris and who now makes application to reacquire Thai nationality within two years after he has become sui juris.

Re-naturalisation shall take effect upon its publication in the Government Gazette.^{2/}

III. Communism:

Since Thailand has consistently followed the policy of anti-Communism, Thai law in regard to Communism and Communist activities is extensive and sweeping. The Anti-Communist Activities Act B. E. 2493 (1952) defines "Communist organization" as "any group of persons or association of persons which has as its object the carrying on of Communist activities, whether directly or not."^{3/}

The term, "Communist activities," is defined as:

(a) The overthrow of the democratic form of government with the King as the Head of State, or

(b) The changing of the national economic system whereby private ownership of means of production is expropriated by the State by forfeiture or otherwise without payment of just compensation, or

(c) Any act of intimidation, sabotage or deceitful means such as to foment hatred among members of the public if calculated to enforce, assist, support or prosecute the object described in (a) or (b).^{4/}

Section 4 of the same Act states that "whoever is engaged in Communist activities shall be punished with imprisonment from ten years up to life imprisonment."^{5/}

^{2/} Ibid., pp. 50-51.

^{3/} Anti-Communist Activities Act B. E. 2493, Royal Thai Government Gazette, No. 188 (Nov. 21, 1952), p. 489.

^{4/} Ibid.

^{5/} Ibid.

Some of the other provisions of this Act are as follows:

Section 5. Whoever incites, advises, encourages, conducts a propaganda, holds any secret meeting, joins any association, allows, enters into any agreement with others or makes any preparation with an intent to carry on Communist activities or knowingly of any commission of offence against this Act, present or future, assists in keeping it secret shall be punished with imprisonment from five to ten years.

All printing presses and other properties connected with the commission of any offence under the preceding paragraph shall be forfeited.^{6/}

Section 6. Whoever is a member of any Communist organization shall be punished with imprisonment from five to ten years.

Whoever serves as principal, manager or officer of any Communist organization shall be punished with imprisonment from ten to fifteen years.

Section 7. Any Thai national who commits any of the offences punishable under sections 4 or 5 abroad or is a member of any Communist organization established abroad shall be punished with the same penalty therein provided.

Section 8. Whoever attends any Communist meeting shall be presumed to be a member of the Communist organization calling the meeting unless he can prove that he did so in ignorance of its nature and object.^{7/}

Following the coup d'etat of October 20, 1958, the country was placed under martial law which is still in operation at present. The Revolutionary Group headed by Field Marshall Sarit Thanarat issued the following proclamation having the force of law:

^{6/} Ibid.

^{7/} Ibid., p. 490.

Proclamation of the Revolutionary Group
No. 12

...

1. In all cases involving a charge under the Anti-Communist Act B. E. 2495, whether or not including charges for other offences, and whether or not the accused was under detention on, before or after the date of this proclamation, the investigation authorities shall have the power to detain the accused throughout the period of investigation without having to act in conformity with the provisions of law concerning the period during which an accused may be detained.

2. All cases including a charge as stated in Clause 1 shall lie within the jurisdiction of the military courts, whether or not the offence was committed on, before, or after the date of the proclamation of martial law on the 20th of October 1961.

3. This order does not apply to cases being tried on the date of this proclamation.

Section 17 of the Interim Constitution of January 28, B. E. 2502 (1959) states:

During the enforcement of the present Constitution, wherever the Prime Minister deems appropriate for the purpose of repressing or suppressing actions whether of internal or external origin which jeopardize the national security or the Throne or subvert or threaten law and order, the Prime Minister, by resolution of the Council of Ministers, is empowered to issue orders or take steps accordingly. Such orders or steps shall be considered legal.

On May 31, 1961, two convicted Thai Communist leaders were executed by a firing squad, by the order of the Prime Minister, using the power given him in the above paragraph.^{10/}

^{8/} Proclamation of the Revolutionary Group No. 12, Royal Thai Government Gazette, II, No. 115 (Nov. 21, 1958), p. 665.

^{9/} Interim Constitution, Royal Thai Government Gazette, II, No. 125 (Feb. 7, 1959).

^{10/} "The-thalaengkan mang rathaban ruang karabor" (Government Announcement concerning the case of treason), Sardasan, IV, No. 5 (June 10, 1961), pp. 7-11.

In addition to the above legislation, it is the policy of the government to restrict travel to Communist countries to only Government officials who are on official business in such countries. Applications for passports and permissions to leave Thailand are carefully reviewed by the Department of Police, under the Ministry of the Interior. Thailand has not accorded recognition to the People's Republic of China; Thai nationals are prohibited from visiting that country; and an explicit statement to that effect is stamped on every Thai passport.

Clandestine travel to Communist countries sometimes occurs; however, the traveller must be prepared to face grave consequences upon his return and when his activities are discovered. In view of the above-mentioned circumstances, the case of a Thai national who has applied for citizenship in a Communist country who wishes to return to Thailand would be inconceivable.

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